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**STATE OF MINNESOTA
IN COURT OF APPEALS
A13-1643**

In the Matter of the Resident Agency License of Northwest Title Agency, Inc.;
the Resident Insurance Producer's License of Wayne B. Holstad;
the Notary Commission of Wayne B. Holstad;
and Northwest Abstract Company.

**Filed May 19, 2014
Affirmed
Randall, Judge***

Commissioner of Commerce
File No. 2-1004-23080

Frederic W. Knaak, Holstad & Knaak, PLC, St. Paul, Minnesota (for relators)

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Paul, Minnesota (for respondent)

Considered and decided by Smith, Presiding Judge; Connolly, Judge; and Randall,
Judge.

UNPUBLISHED OPINION

RANDALL, Judge

Relators Northwest Title Agency and Wayne Holstad appeal the retroactive revocation of their insurance-agency and insurance-producer licenses and the fines imposed by the Minnesota Department of Commerce Commissioner, asserting that (1) the government illegally seized documents from their office, (2) the administrative

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

law judge improperly admitted evidence at the hearing, (3) the evidence at the hearing was insufficient to support the commissioner's conclusions, and (4) the commissioner's sanctions against them were too severe. We affirm.

FACTS

Relator Northwest Title Agency (NWTa) is owned by relator Wayne Holstad. Holstad has been a licensed attorney in the state of Minnesota since 1980 and was a licensed insurance producer until March 2012, when he permitted his insurance license to lapse voluntarily. NWTa was a licensed insurance producer, operating in Minnesota and several other states. NWTa also conducted real-estate closings. NWTa was not permitted to issue title insurance without a valid contract with an underwriter. Until December 12, 2011, NWTa had a contractual agency relationship with Stewart Title Insurance Co. (Stewart Title), a licensed title insurance underwriting business. As such, NWTa was exempt from the closing-agent licensing requirement.

In November or December of 2011, NWTa's chief financial officer, Tom Foley, informed Holstad that Foley had improperly transferred \$130,000 from NWTa's escrow account to its operating account. Foley also informed Stewart Title of the improper disbursements. After conducting an audit, on December 12, 2011, Stewart Title terminated its contract with NWTa.

NWTa then hired Alan Kantrud, who was an attorney and a title agent through Old Republic Title Insurance Company (ORTIC). ORTIC is a licensed title insurance underwriting business similar to Stewart Title. On December 19, 2011, ORTIC declined NWTa's application to become a policy issuing agent for ORTIC. Two days later,

ORTIC terminated its agency relationship with Kantrud because he improperly allowed NWTa employees to issue commitment-protection letters on behalf of ORTIC.

In December 2011, the Minnesota Department of Commerce (department) received a tip regarding NWTa's alleged escrow improprieties and began conducting an investigation. As part of the investigation, the department discovered that NWTa had engaged in unlicensed real-estate-closing activities after Stewart Title had terminated its agency contract with NWTa. NWTa performed two closings for which it was paid on December 30, 2011 and January 4, 2012. The department also discovered that NWTa issued commitment-protection letters through Kantrud on behalf of ORTIC between December 16 and 19, 2011 without permission from ORTIC.

In addition, the department learned that the State of Nebraska Department of Insurance and the State of Kansas Commissioner of Insurance took disciplinary actions against Holstad. The State of Nebraska Department of Insurance issued an order stating that "Holstad handled escrow and/or security deposits in conjunction with real estate closings for property located in Nebraska without a surety bond, letter of credit, certificate of deposit, or a deposit of cash or securities" in violation of Nebraska law. As a result, Holstad was ordered to pay a \$500 fine. The State of Kansas Commissioner of Insurance issued an order revoking NWTa's insurance license for not reporting the Nebraska disciplinary proceedings to Kansas. Holstad did not report either of these disciplinary actions in Minnesota.

On September 4, 2012, the department commenced an administrative enforcement action against Holstad and NWTa under chapter 14 of the Minnesota Statutes. NWTa

and Holstad were charged with eighteen counts, including (9) being subject to administrative actions in other jurisdictions, in violation of Minnesota Statutes section 60K.43, subdivision 1(9) (2010); (10) failure to report administrative actions from other jurisdictions, in violation of Minnesota Statutes section 60K.54, subdivision 1 (2010), and Minnesota Rule 2795.0700, subpart 2 (2009); (11) engaging in unlicensed real estate abstracting activities, in violation of Minnesota Statutes sections 386.62 (2010) and 386.76 (2010) and Minnesota Rule 2830.0030 (2009); (12) engaging in unlicensed real estate closing activities, in violation of Minnesota Statutes section 82.641 (2010); and (13) engaging in unlicensed title insurance activities, in violation of Minnesota Statutes section 60K.49, subdivision 2 (2010), and Minnesota Rule 2795.0800 (2009). The commissioner summarily suspended Holstad's insurance-producer license and NWTAs agency license, pending final determination of the administrative enforcement action.

In October 2012, Holstad moved to dismiss counts 9, 11, and 12, and NWTAs moved to dismiss counts 9, 10, 11, and 12. In December 2012, the administrative law judge dismissed count 12 as to Holstad because, as an attorney, he is exempt from certain licensing requirements. The administrative law judge did not dismiss count 12 as to NWTAs because it concluded that NWTAs was a separate corporate entity that could not rely on Holstad's attorney license for an exemption to the licensure requirements. The administrative law judge also dismissed part of count 9 against Holstad, "insofar as [it] appl[ies] to actions by the Kansas Department of Insurance," another part of count 9 against NWTAs, "as [it] appl[ies] to actions by the Nebraska Department of Insurance," and count 11 against NWTAs.

On February 28 and March 1, 2013, an administrative law judge conducted hearings on the charges. On April 16, 2013, the administrative law judge recommended to the commissioner that counts 9 and 10 against Holstad and NWTa and counts 12 and 13 against NWTa were supported by a preponderance of the evidence. The administrative law judge recommended for the remaining charges to be dismissed. On August 5, 2013, the commissioner adopted the findings of fact, conclusions, and recommendations of the administrative law judge. The commissioner's order revoked NWTa's insurance-agency license and imposed a \$20,000 civil penalty on NWTa. The commissioner's order also revoked Holstad's insurance-producer license and imposed a \$3,500 civil penalty on Holstad. This appeal followed.

D E C I S I O N

I. Seizure

Relators contend that state agents obtained evidence against them in violation of their constitutional rights. We hold that the department properly obtained the documents. The relators' argument does not persuade us.

Minnesota law authorizes the department to conduct searches and to seize documents of regulated entities, such as licensees. Minnesota Statutes section 45.027, subdivision 1(5) (2012), states,

[T]he commissioner of commerce may . . . examine the books, accounts, records, and files of every licensee, and of every person who is engaged in any activity regulated; the commissioner or a designated representative shall have free access during normal business hours to the offices and places of business of the person, and to all books, accounts, papers,

records, files, safes, and vaults maintained in the place of business[.]

Minnesota Statutes section 45.027, subdivision 1a (2012) also explains,

An applicant, registrant, certificate holder, licensee, or other person subject to the jurisdiction of the commissioner shall comply with requests for information, documents, or other requests from the department within the time specified in the request, or, if no time is specified, within 30 days of the mailing of the request by the department. Applicants, registrants, certificate holders, licensees, or other persons subject to the jurisdiction of the commissioner shall appear before the commissioner or the commissioner's representative when requested to do so and shall bring all documents or materials that the commissioner or the commissioner's representative has requested.

These two subdivisions unambiguously give the department legal authorization to search and seize documents from NWTa, a regulated, licensed title insurance entity. In addition, there is nothing in the record to suggest that Holstad or any NWTa employee objected when the department investigators arrived at the NWTa office. The search of NWTa's office and the seizure of documents were permissible under Minnesota Statutes section 45.027. No constitutional violations occurred.

II. Admissibility of Evidence

Relators assert that the administrative law judge erred by admitting inadmissible evidence at the hearing. We conclude that rules of evidence do not strictly apply in administrative proceedings.

The Administrative Procedure Act states, "In contested cases agencies may admit and give probative effect to evidence which possesses probative value commonly accepted by reasonable prudent persons in the conduct of their affairs. They shall give

effect to the rules of privilege recognized by law. They may exclude incompetent, irrelevant, immaterial and repetitious evidence.” Minn. Stat. § 14.60, subd. 1 (2012).

The Minnesota rules on administrative hearings also explain:

The judge may admit all evidence which possesses probative value, including hearsay, if it is the type of evidence on which reasonable, prudent persons are accustomed to rely in the conduct of their serious affairs. The judge shall give effect to the rules of privilege recognized by law. Evidence which is incompetent, irrelevant, immaterial, or unduly repetitious shall be excluded.

Minn. R. 1400.7300, subp. 1 (2011). These provisions make it clear that the normal civil rules of evidence do not apply in administrative proceedings.

Relators generally assert that the “exhibits submitted into evidence to prove violations of the insurance statute were irrelevant” and later specifically state that the title-commitment exhibits, commitment-protection letters, and gap letters were “irrelevant” to whether NWT A or Holstad violated the law. The state correctly points out in its brief that “[t]hese documents are part of the selling, solicitation or negotiation of insurance, and thus are regulated as the business of insurance.” The documents listed by relators as irrelevant or inadmissible have probative value on whether NWT A or Holstad illegally engaged in the business of title insurance. The administrative law judge properly admitted the documents into evidence under Minnesota Statutes section 14.60, subdivision 1, and Minnesota Rule 1400.7300, subpart 1.

III. Commissioner’s Conclusions

Relators generally argue that the evidence does not support the conclusions made by the commissioner on whether relators did not properly report violations in other states,

whether NWTa acted as a closing agent without a valid license, and whether NWTa engaged in the business of title insurance without a valid license. Substantial evidence supports the commissioner's conclusions. We affirm the conclusions.

“An agency's quasi-judicial determinations will be upheld unless they are unconstitutional, outside the agency's jurisdiction, procedurally defective, based on an erroneous legal theory, unsupported by substantial evidence, or arbitrary and capricious.” *Cole v. Metro. Council HRA*, 686 N.W.2d 334, 336 (Minn. App. 2004) (quotation omitted). An agency's conclusions are not arbitrary and capricious so long as there is a rational connection between the facts found and the choice made. *In re Review of 2005 Annual Automatic Adjustment of Charges*, 768 N.W.2d 112, 120 (Minn. 2009). “Substantial evidence is defined as: (1) such relevant evidence as a reasonable mind might accept as adequate to support a conclusion; (2) more than a scintilla of evidence; (3) more than some evidence; (4) more than any evidence; or (5) the evidence considered in its entirety.” *Cannon v. Minneapolis Police Dep't*, 783 N.W.2d 182, 189 (Minn. App. 2010) (quotation omitted).

A. Holstad and NWTa's Failure to Report Disciplinary Actions in Other States

Insurance producers “shall report to the commissioner any administrative action taken against the producer in another jurisdiction or by another governmental agency in this state within 30 days of the final disposition of the matter. This report must include a copy of the order, consent to order, or other relevant legal documents.” Minn. Stat. § 60K.54, subd. 1 (2012). In addition,

The commissioner may, by order, restrict, censure, suspend, revoke, or refuse to issue or renew an insurance producer's license or may levy a civil penalty . . . [for] having an insurance producer license, or its equivalent, denied, suspended, or revoked, or having been the subject of a fine or any other discipline in any other state, province, district, or territory[.]

Minn. Stat. § 60K.43, subd. 1(9) (2012).

Relators were required to report their violations in Nebraska and Kansas. Here, the commissioner found that (1) “[t]he [d]epartment demonstrated by a preponderance of the evidence that Wayne B. Holstad was the subject of an administrative order of discipline in another jurisdiction (Nebraska) and did not report the discipline to the [d]epartment within 30 days” and (2) “[t]he [d]epartment demonstrated by a preponderance of the evidence that NWTa was the subject of an administrative order of discipline in another jurisdiction (Kansas) and did not report the discipline to the [d]epartment within 30 days.” These findings are supported by the record.

Relators assert that they were not required to report their violations in Nebraska and Kansas based on “procedural, statutory, and constitutional grounds.” They contend that they did not violate Minnesota Statutes section 60K.54 because their attorney instructed them not to report the out-of-state proceedings, but the state correctly explains that there is not an exception to the reporting requirements for reliance on the advice of an attorney. It is undisputed that the State of Nebraska fined Holstad for improperly handling escrow accounts; that the State of Kansas revoked NWTa's license; and that Holstad and NWTa did not report the Nebraska or Kansas proceedings to Minnesota.

We hold that substantial evidence supports the commissioner's conclusion that relators violated Minnesota Statutes section 60K.54.

B. NWT A Acted As Closing Agent Without a License

The department of commerce is empowered by statute to regulate real-estate-closing activities. *See* Minn. Stat. § 82.641, .89 (2012). Subject to certain exemptions, a person may not engage in real-estate-closing activities without a license issued by the commissioner. Minn. Stat. § 82.641. In chapter 82, a “person” means “a natural person, firm, partnership, corporation or association, and the officers, directors, employees and agents thereof.” Minn. Stat. § 82.55, subd. 14 (2012). Non-natural persons, such as corporations, partnerships, limited liability companies, limited liability partnerships, and other business structures that hold real-estate broker licenses, are sometimes referred to as “brokerages.” *See id.*, subd. 2 (2012). There is no dispute that NWT A is a corporation.

There are seven exemptions to the closing-agent licensing requirement under chapter 82, two of which are relevant to this case. The first is an exemption for “a title company that has a contractual agency relationship with a title insurance company authorized to do business in this state, where the title insurance company assumes responsibility for the actions of the title company and its employees or agents as if they were employees or agents of the title insurance company.” Minn. Stat. § 82.641, subd. 6(7). The second is an exemption for licensed attorneys or direct employees of licensed attorneys. *Id.*, subd. 6(2).

Prior to December 12, 2011, NWTa had a contractual relationship with Stewart Title and, as such, was exempt from the closing-agent-licensing requirement under subdivision 6(7) of section 82.641. On December 12, 2011, Stewart Title terminated its agency contract with NWTa, at which point the subdivision 6(7) exemption no longer applied to NWTa. The department discovered that NWTa had, on two occasions, engaged in unlicensed real estate closing activities after December 12, 2011.

Relators maintain that the real-estate-closing licensing statute applies only to individuals, not corporations. Relators likely mean “natural persons” when they use the term “individuals.” But the plain language of Minnesota Statutes section 82.55, subdivision 14, states that “person” includes “a natural person, firm, partnership, corporation or association.” This statute shows that corporations are subject to the licensing requirement in Minnesota Statutes section 82.641.

Relators also contend that the attorney exemption in Minnesota Statutes section 82.641, subdivision 6(2), should apply to attorney-owned corporations. The attorney exemption states, “The following persons, when acting as closing agents, are exempt from the requirements of this section and sections 82.75 and 82.81 unless otherwise required in this chapter: . . . (2) a licensed attorney or a direct employee of a licensed attorney.” Minn. Stat. § 82.641, subd. 6(2). NWTa is not a “licensed attorney” or a “direct employee of a licensed attorney.” Looking to the plain and ordinary meaning of the statutory language, NWTa is not entitled to the exemption in Minnesota Statutes section 82.641, subdivision 6(2). *See Fannie Mae v. Heather Apartments Ltd. P’ship*,

811 N.W.2d 596, 599 (Minn. 2012) (stating that, when engaged in statutory interpretation, courts should “give words and phrases their plain and ordinary meaning.”).

Relators relatedly argue that it is impossible to separate a corporation from the individual for closing-licensing purposes. But, again, because a corporation is included within the definition of “person,” a corporation such as NWTa can be a separate “closing agent” and is, therefore, subject to the real-estate-closing license requirement. *See* Minn. Stat. § 82.55, subd. 14. It should be noted that section 82.63, subdivision 2 (2012), makes it easy for a licensed closing agent to obtain an additional license for or on behalf of a business entity. Relators do not argue that this subdivision should be expanded to allow attorneys to also obtain additional licenses for business entities. Rather, they argue that the attorney-owned corporations need no license at all. Relators’ argument contradicts the plain language of the statute. We affirm the conclusion of the commissioner that NWTa acted as a closing agent without a valid license.

C. NWTa Engaged in Business of Title Insurance Without Appointment By Insurer

“A person shall not sell, solicit, or negotiate insurance in this state for any class or classes of insurance unless the person is licensed for that line of authority[.]” Minn. Stat. § 60K.32 (2012). Under Minnesota Statutes section 60K.49, subdivision 2 (2012),

[A] licensed insurance producer shall not engage in the business of insurance with an insurer unless the producer either: (1) has been appointed by that insurer; or (2) has the permission of the insurer to transact business on its behalf and obtains an appointment from the insurer within 15 days after the first application is submitted to the insurer.

This statute does not include an element of intent and holds insurance producers strictly liable.

The commissioner concluded, “The [d]epartment demonstrated by a preponderance of the evidence that NWTa engaged in the business of title insurance without permission or appointment by an insurer.” The commissioner based his decision on two commitment-protection letters created by NWTa’s employee, Kantrud, on December 16 and 19, 2011. These letters were created even though NWTa did not have authority to issue them on behalf of an insurer.

Relators assert that they are not in violation of Minnesota Statutes section 60K.49, subdivision 2, because the commitment-protection letters containing ORTIC’s and NWTa’s names are not covered by the statute because they are not insurance policies. But the state clarifies that “[t]hese documents are part of the selling, solicitation or negotiation of insurance, and thus are regulated as the business of insurance.” The statute states “business of insurance,” which includes issuing commitment-protection letters along with issuing insurance policies.

Relators also contend that Kantrud had authority from ORTIC to create commitment-protection letters on ORTIC’s behalf through December 21, 2011. Relators believe that Kantrud’s agency relationship with ORTIC satisfies the requirements of Minnesota Statutes section 60K.49, subdivision 2, but appellants do not address that NWTa did not have permission to issue insurance through ORTIC and that Kantrud was hired to issue the documents for NWTa. Substantial evidence exists in the record to show that NWTa engaged in the “business of insurance” without the appointment of an

insurer. We affirm the commissioner's ruling that NWTa violated Minnesota Statutes section 60K.49, subdivision 2.

IV. Penalties

The imposition of sanctions lies within the discretion of an administrative agency and will only be reversed if the agency abuses that discretion. *See In re Haugen*, 278 N.W.2d 75, 80 n.10 (Minn. 1979). Relators state that the commissioner's retroactive revocation of appellants' insurance-producer licenses is "entirely inappropriate" and that their fines are "excessive and should be vacated or, at a minimum, reduced to a nominal amount." Relators contend that these sanctions should be reversed because they did not commit "intentional fraud or dishonesty." The state reasons that the sanctions should be upheld because they are authorized by statute and are "well within the commissioner's discretion." We hold that the state's argument prevails.

All of the sanctions imposed on NWTa and Holstad are authorized under Minnesota Statutes section 45.027 (2012). Subdivision 11 explains,

If a license lapses, is surrendered, withdrawn, terminated, or otherwise becomes ineffective, the commissioner may institute a proceeding under this subdivision within two years after the license was last effective and enter a revocation or suspension order as of the last date on which the license was in effect, or impose a civil penalty as provided for in subdivision 6.

Subdivision 6 states, "The commissioner may impose a civil penalty not to exceed \$10,000 per violation upon a person who violates any law, rule, or order related to the duties and responsibilities entrusted to the commissioner unless a different penalty is

specified.” Contrary to relators’ interpretation, the statute does not require a finding of intent or fraud for sanctions to be imposed.

As the commissioner stated in his order, Holstad and NWTa faced penalties up to \$80,000 total. Yet the commissioner fined NWTa only \$20,000 and Holstad only \$3,500. The commissioner’s retroactive revocation of NWTa and Holstad’s licenses is also within the commissioner’s statutory authority under Minnesota Statutes section 45.027, subdivision 11.

Relators cite *Matter of Ins. Agents’ Licenses of Kane*, 473 N.W.2d 869, 871 (Minn. App. 1991), *review denied* (Minn. Sept. 25, 1991) for the proposition that they should not be sanctioned because they did not commit “misconduct that rises to the level of intentional fraud or dishonesty.” This court held in *Kane* that the revocation of the appellants’ licenses was an abuse of the commissioner’s discretion because the victims were reimbursed after the business made misleading solicitations. *Id.* at 877-78. In addition, this court remanded for sanctions “not [to] exceed what is necessary to protect the public and to deter such conduct in the future.” *Id.* at 878. *Kane* does not involve any of the violations found in NWTa and Holstad’s case. Most importantly, this court did not hold that there must be a finding of “fraud or dishonesty” for the commissioner to impose sanctions. *See id.* at 876-77. *Kane* is not factually similar to this case. Based on the seriousness of the violations, the commissioner properly imposed sanctions on Holstad and NWTa.

Affirmed.