STATE OF MINNESOTA
IN COURT OF APPEALS
A09-2267

In the Matter of the Teacher Licensures at Tarek ibn Ziyad Academy

Filed August 17, 2010
Affirmed
Larkin, Judge

Minnesota Department of Education

Erick G. Kaardal, Mohrman & Kaardal, P.A., Minneapolis, Minnesota (for relator)

Lori A. Swanson, Attorney General, Kathryn M. Woodruff, Assistant Attorney General, St. Paul, Minnesota (for respondent)

Considered and decided by Bjorkman, Presiding Judge; Shumaker, Judge; and Larkin, Judge.

U N P U B L I S H E D O P I N I O N

LARKIN, Judge

The commissioner of education assessed a penalty against relator under Minn. Stat. § 127A.42 (2008) for noncompliance with teacher-licensure requirements. Relator challenges the penalty, asserting multiple claims of error. We affirm.

FACTS

Relator Tarek ibn Ziyad Academy (TiZA), a Minnesota public charter school, is required to abide by all applicable teacher-licensure requirements. Minn. Stat.

§ 124D.10, subd. 11 (2008). Respondent Minnesota Department of Education (MDE) oversees compliance with these requirements. *Id.* State law permits MDE to withhold general-education aid if a school fails to abide by applicable teacher-licensure requirements. *See* Minn. Stat. § 127A.42 (describing the procedures for withholding state aid for violations of law).[1]

In February and March 2009, MDE received two complaints alleging that TiZA was in violation of teacher-licensure requirements. On March 19, MDE conducted unannounced site visits at TiZA's campuses. On March 27, MDE notified TiZA that MDE had identified 23 TiZA staff members as being out of compliance with state licensure laws. The notice advised TiZA that it had 30 days, or until April 27, to bring its teaching staff into full compliance with Minnesota licensure laws and rules. The notice further informed TiZA that if TiZA failed to demonstrate compliance with state licensure laws and rules, MDE would begin action to withhold state aid on April 30. The notice directed TiZA to file a formal response with MDE by April 13 and to include a status update regarding the school's progress in meeting the compliance deadline.

On April 7, TiZA's director contacted the deputy commissioner of MDE via e-mail and requested a meeting with MDE officials before the April 13 deadline. The

[1] The 2008 version of Minn. Stat. § 124D.10, subd. 11, which was in effect at the time of the violations in this case, stated that "[t]he charter school's state aid may be reduced under section 127A.42 if the school employs a teacher who is not appropriately licensed or approved by the board of teaching." The current version of the statute provides that reductions in state aid for licensure violations are calculated under Minn. Stat. § 127A.43 (2008). Minn. Stat. § 124D.10, subd. 11 (Supp. 2009). The issue of which statute should govern the calculation of any penalty in this case was raised to the commissioner, and she determined that the 2008 statute applied. Because neither party argues that this determination was in error, we apply the 2008 statute.

director also asked: "[I]f we need to apply for a variance or permission but it is not approved by the 30th, how will it affect the funding? If permissions or variances are not obtained in time, can we use short call substitutes to fill the positions?" The deputy commissioner responded the same day: "The Department expects that any requests for waivers, limited licenses or permissions will be, at a minimum, under review by the Department no later than April 30."

In a letter to MDE dated April 13, 2009, TiZA stated: "The purpose of this letter is to update you on the school's progress in meeting the compliance deadline set for April 27, 2009." TiZA identified four additional staff members not included in MDE's March 27 notice who would be deemed non-compliant under TiZA's understanding of MDE's position. TiZA stated that it planned to apply for permission or limited licenses for the four staff members. On April 14, MDE wrote TiZA requesting status updates on several other TiZA staff members by April 27. TiZA responded on April 20 and requested an "in person meeting to finalize all outstanding issues with the goal of meeting the April 27 compliance deadline." On April 25, MDE sent TiZA an e-mail stating, in part:

> The Department will follow up with you after TiZA's April 27, 2009 response and provide a final determination in writing. The school may then appeal the determination to the commissioner; those details will be provided to the school in the determination letter. The Department will not proceed with withholding state aid (if this is part of the determination) until the commissioner issues her decision (if TiZA should choose to appeal the determination).

On April 27, TiZA submitted its response to MDE's notice of violations, charting the status of 29 of its staff members. On June 1, MDE issued its final determination regarding the licensure violations. MDE found that 14 TiZA staff members were out of compliance with teacher-licensure requirements and imposed a $529,626.89 penalty. On June 5, TiZA appealed the final determination to the commissioner of MDE.

On June 8, the commissioner scheduled an appellate hearing for July 7 and ordered that any pre-hearing submissions must be exchanged and submitted by June 25. The commissioner did not limit the number of pre-hearing submissions but did limit each side's presentation of testimony to two hours. At the hearing on July 7, both parties presented oral arguments and witness testimony. The commissioner denied TiZA's request to present the testimony of 26 additional witnesses. The commissioner allowed post-hearing submissions, which were due on July 30. TiZA submitted approximately 10,000 pages of post-hearing submissions.

On November 19, the commissioner issued her decision. She concluded that statutory notice requirements had been met; that TiZA's compliance deadline was no later than April 30, 2009; that TiZA received a full and fair hearing; and that eight TiZA employees were in violation of teacher-licensure requirements. The commissioner assessed a $139,801.66 penalty against TiZA under Minn. Stat. § 127A.42. This certiorari appeal follows.

D E C I S I O N

We begin by identifying the appropriate standard of review. When reviewing an agency decision, we normally apply the standard of review set forth in the Minnesota

Administrative Procedure Act (APA), which was enacted, in part, to provide oversight of administrative agencies and simplify the judicial review process. Minn. Stat. § 14.001 (2008). But the hearing before the MDE commissioner was not governed by the APA. Minn. Stat. § 127A.42, subd. 5 provides that "the [school] board shall be entitled to a hearing by the commissioner under this subdivision and *notwithstanding chapter 14*." (Emphasis added.) While the statute indicates that the hearing before the commissioner need not be conducted in accordance with the APA, there is no similar restriction regarding judicial review of the commissioner's decision. *See id.*, subd. 8a ("A final decision of the commissioner under this section may be appealed in accordance with section 480A.06, subdivision 3."). A party aggrieved by a final decision in a contested case is entitled to judicial review under the provisions of the APA. Minn. Stat. § 14.36 (2008). Because this case involves our review of an agency decision in a proceeding that meets the definition of a contested case,[2] we apply the standard of review set forth in the APA. Accordingly, we may

> affirm the decision of the agency or remand the case for further proceedings; or [we] may reverse or modify the decision if the substantial rights of the petitioners may have been prejudiced because the administrative finding, inferences, conclusion, or decisions are:
>
> (a) in violation of constitutional provisions; or

[2] A contested case is defined as a "proceeding before an agency in which the legal rights, duties, or privileges of specific parties are required by law or constitutional right to be determined after an agency hearing." Minn. Stat. § 14.02, subd. 3 (2008). For purposes of the Act, "'[a]gency' means any state officer, board, commission, bureau, division, department, or tribunal . . . having a statewide jurisdiction and authorized by law to make rules or to adjudicate contested cases." Minn. Stat. § 14.02, subd. 2 (2008).

> (b) in excess of the statutory authority or jurisdiction of the agency; or
> (c) made upon unlawful procedure; or
> (d) affected by other error of law; or
> (e) unsupported by substantial evidence in view of the entire record as submitted; or
> (f) arbitrary or capricious.

Minn. Stat. § 14.69 (2008).

Agency decisions "enjoy a presumption of correctness," and we review them under a narrow standard. *Reserve Mining Co. v. Herbst*, 256 N.W.2d 808, 824-25 (Minn. 1977). An agency's decision is not arbitrary and capricious "so long as a rational connection between the facts found and the choice made has been articulated." *In re Excess Surplus Status of Blue Cross & Blue Shield of Minn.*, 624 N.W.2d 264, 277 (Minn. 2001) (quotation omitted). "If there is room for two opinions on a matter, the agency's action is not arbitrary or capricious even though the court may believe that an erroneous conclusion has been reached." *In re Rochester Ambulance Serv.*, 500 N.W.2d 495, 499 (Minn. App. 1993). We review TiZA's claims with these principles in mind.

I.

> Jurisdiction of an administrative agency consists of the powers granted it by statute. Lack of statutory power betokens lack of jurisdiction. It is therefore well settled that a determination of an administrative agency is void and subject to collateral attack where it is made either without statutory power or in excess thereof.

State ex rel. Spurck v. Civil Serv. Bd., 226 Minn. 253, 259, 32 N.W.2d 583, 586 (1948).

TiZA claims that the commissioner lacked jurisdiction because MDE failed to comply with statutory notice requirements. Minn. Stat. § 127A.42, subd. 9 (2008), states,

in relevant part, that "[a]ny notice [of violations] given to the board of a district will be deemed given when a copy thereof is mailed, registered, to the superintendent of the district, if there is a superintendent, and to the clerk of the board of the district." TiZA argues that because MDE did not send notice of the teacher-licensure violations to the superintendent and the clerk of the district by registered mail, the commissioner did not acquire jurisdiction. The commissioner concluded that TiZA's executive director was the equivalent of a district superintendent and that his receipt of actual notice fulfilled the statutory notice requirements.

TiZA's primary brief does not offer legal argument or authority in support of its jurisdictional claim. Issues not briefed on appeal are waived. *Melina v. Chaplin*, 327 N.W.2d 19, 20 (Minn. 1982). Similarly, an assignment of error in a brief based on "mere assertion" and not supported by argument or authority is waived unless prejudicial error is obvious on mere inspection. *State v. Modern Recycling, Inc.*, 558 N.W.2d 770, 772 (Minn. App. 1997) (quoting *Schoepke v. Alexander Smith & Sons Carpet Co.*, 290 Minn. 518, 519-20, 187 N.W.2d 133, 135 (1971)). When asked at oral argument whether it had properly preserved its jurisdictional challenge for appellate review, TiZA asserted that it raised the claim in its principal brief and that the issue of jurisdiction may be raised at any time. We address each assertion in turn.

The only reference to the jurisdictional claim in TiZA's principal brief is contained in footnote 142. The footnote is to a section of the brief that sets forth TiZA's claim that it did not receive a "full and fair" hearing. And the reference is not explicit.

The footnote states:

> Although the MDE failed to comply with the notice requirement under Minn. Stat. § 127A.42, subd. 9, TiZA does not waive any argument regarding the adequacy of notices. The statute requires notice mailings by registered mail. MDE purports to have sent two notices, one on March 27, 2009 and the other on June 1, 2009.

This footnote does not identify the issue as jurisdictional. In fact, TiZA does not use the term jurisdiction—much less define or analyze the term—in its principal brief. Instead, TiZA presented its jurisdictional argument in its reply brief. But issues not raised or argued in appellant's brief cannot be revived in a reply brief. *McIntire v. State*, 458 N.W.2d 714, 717 n.2 (Minn. App. 1990), *review denied* (Minn. Sept. 28, 1990). An appellant's reply brief "must be confined to new matter raised in the brief of the respondent." Minn. R. Civ. App. P. 128.02, subd. 4.

Our review is further complicated by TiZA's failure to state whether its challenge is to subject-matter or personal jurisdiction. "A judgment is void if the issuing court lacked jurisdiction over the subject matter, lacked personal jurisdiction over the parties through a failure of service that has not been waived, or acted in a manner inconsistent with due process." *Bode v. Minn. Dep't of Natural Res.*, 594 N.W.2d 257, 261 (Minn. App. 1999), *aff'd* 612 N.W.2d 862 (Minn. 2000). Subject-matter jurisdiction is the court's power to hear and determine "cases of the general class or category to which the proceedings in question belong." *Id.* at 259 (quotation omitted). But our caselaw has also applied subject-matter jurisdiction analysis to judgments that exceed statutory authority or contain procedural irregularities. *Id*. In some cases, a finding of lack of

subject-matter jurisdiction is based on an "incurable jurisdictional defect, but not necessarily subject-matter jurisdiction." *Id.* Because of the potential consequences, including the ability to raise an absence of subject-matter jurisdiction at any point in the proceeding, identification of the precise jurisdictional flaw is critical. *Id.* at 260. It is therefore crucial to "analyze exactly what type of jurisdiction is at issue so that we can properly determine the consequences of the jurisdictional defect." *Id.*

But TiZA has failed to identify exactly what type of jurisdiction is at issue. On one hand, a footnote in TiZA's reply brief states that "[t]he fact that TiZA responded to the Commissioner's notice in no way reflects waiver of any jurisdictional argument," and thereby suggests a personal-jurisdiction challenge. *See Miss. Valley Dev. Corp. v. Colonial Enters.*, 300 Minn. 66, 72, 217 N.W.2d 760, 764 (1974) ("A defendant who has subjected himself to jurisdiction by making a general appearance, taking affirmative steps in the action, and invoking the power of the court on his own behalf, cannot later claim that service was insufficient."). On the other hand, TiZA's assertion at oral argument that "jurisdiction" can be raised at any time implies a subject-matter-jurisdiction challenge. *See Cochrane v. Tudor Oaks Condo. Project*, 529 N.W.2d 429, 432 (Minn. App. 1995) ("Because subject matter jurisdiction goes to the authority of the court to hear a particular class of actions, lack of subject matter jurisdiction may be raised at any time, including for the first time on appeal.") (citing Minn. R. Civ. P. 12.08(c) ("Whenever it appears . . . that the court lacks jurisdiction of the subject matter, the court shall dismiss the action.")) (other citation omitted), *review denied* (Minn. May 31, 1995).

TiZA's decision to raise its jurisdictional claim in a footnote in its principal brief, without legal argument or citation, and to argue the claim for the first time in its reply brief, without specifically identifying what type of jurisdiction is at issue, leaves MDE at a disadvantage and this court with a one-sided, incomplete presentation of the issue. We do not condone this approach. Moreover, as a result of TiZA's failure to identify and analyze exactly what type of jurisdiction is at issue, we are not persuaded—even on a preliminary basis—that the alleged procedural defect is a subject-matter-jurisdiction flaw that can be raised at any time. Therefore, because the jurisdictional claim was not adequately raised or argued in TiZA's principal brief and prejudicial error is not obvious on mere inspection, we do not consider the claim. *See Modern Recycling, Inc.*, 558 N.W.2d at 772.

II.

We next address TiZA's claims regarding the compliance deadline. TiZA argues that the commissioner erred by finding that its compliance deadline was no later than April 30, 2009. TiZA asserts that the compliance date was actually May 22. "With respect to factual findings made by the agency in its judicial capacity, if the record contains substantial evidence supporting a factual finding, the agency's decision must be affirmed." *City of Moorhead v. Minn. Pub. Utils. Comm'n*, 343 N.W.2d 843, 846 (Minn. 1984).

Minn. Stat. § 127A.42, subd. 4 states:

> When it appears that a violation is occurring in a district, the commissioner shall notify the board of that district in writing. The notice must specify the violations, set *a reasonable time*

> *within which the district must correct the specified violations*, describe the correction required, and advise that if the correction is not made within the time allowed, special state aids to the district will be reduced or withheld. The time allowed for correction may be extended by the commissioner if there is reasonable ground therefor.

(Emphasis added.)

The commissioner found that the compliance date was originally April 27, but that MDE made an exception for any applications for waivers or limited licenses that were pending as of April 30. Therefore, the commissioner concluded that the compliance date was no later than April 30.

The record demonstrates that on March 27, MDE notified TiZA of the alleged violations and advised TiZA that it had 30 days, or until April 27, 2009, to bring its teaching staff into full compliance with Minnesota licensure laws and rules. On April 13, 2009, TiZA sent a letter to MDE stating: "The purpose of this letter is to update you on the school's progress in meeting the compliance deadline set for April 27, 2009." On April 20, TiZA again stated in writing: "We request an in person meeting to finalize all outstanding issues with the goal of meeting the April 27 compliance deadline." On April 27, TiZA submitted a response to MDE's notification of potential violations, charting the status of 29 of its employees. The letter stated: "This letter serves as the TiZA response to the requests by the Minnesota Department of Education (MDE) on 3/27/09 & 4/14/09 to bring its teaching staff into full compliance with MDE expectations by April 27, 2009."

TiZA argues that because MDE received and considered documents submitted by TiZA after April 27, the compliance date was extended. This argument is unavailing. MDE's ongoing investigation after the compliance deadline did not extend the deadline. MDE is authorized to "further investigat[e] as the commissioner deems necessary" after issuing a notice of violation and before issuing a final determination. Minn. Stat. § 127A.42, subd. 5. And because there is substantial evidence in the record indicating that the compliance deadline was no later than April 30, the commissioner's finding on this issue is not clearly erroneous.

TiZA also claims that the deadline was unreasonable. While MDE's March 27 violation letter established an April 27 compliance deadline, allowing TiZA only 30 days to correct the violations, TiZA consistently acknowledged April 27 as the compliance date, submitted a report on that date, and did not request an extension of that date. If TiZA believed that the April 27 compliance deadline was unreasonable, TiZA could have requested a new compliance deadline. *See* Minn. Stat. §§ 127A.42, subd. 4 ("The time allowed for correction may be extended by the commissioner if there is reasonable ground therefor."); subd. 5 ("The board to which such notice is given may . . . decide to dispute . . . that the time allowed is reasonable . . . ."). TiZA did not seek an extension or exercise its statutory right to dispute that the time allowed was reasonable. Instead, TiZA indicated that it would honor the April 27 deadline. In its brief, TiZA even states: "Upon the receipt of the MDE March 27, 2009 letter, TiZA made a conscious decision not to fight the MDE but to work with it to minimize the disruption to the school." Given

TiZA's acquiescence, we are not persuaded that April 27 was an unreasonable compliance deadline.

III.

TiZA claims that it was denied its right to a full and fair hearing under Minn. Stat. § 127.42, subd. 5. The relevant portion of that statute provides that "[i]f the commissioner, after further investigation as the commissioner deems necessary, adheres to the previous notice, the board shall be entitled to a hearing by the commissioner under this subdivision and notwithstanding [the APA]." Minn. Stat. § 127.42, subd. 5. "The hearings must be designed to give a full and fair hearing and permit interested parties an opportunity to produce evidence relating to the issues involved." *Id.*

Time Limit on Testimony

TiZA first contends that it did not have sufficient time to present testimony because the commissioner limited each side's oral presentation to two hours. TiZA states that "because of the complexity of the allegations and the circumstances involved, two hours of testimony—including time for cross-examination, rebuttable testimony or other procedural necessities—cannot be considered 'full and fair.'" TiZA essentially argues that it was entitled to a full, contested evidentiary hearing. But section 127A.42 does not require a formal administrative hearing under the APA. And caselaw refutes TiZA's suggestion that it was denied due process of law.

> As creatures of statute, governmental entities cannot demand formal hearings based upon constitutional due process[;] they can do so only based upon a statute conferring the right. Where the statute in question . . . establishes a "quasi-judicial" procedure but confers no right to a formal hearing

> upon the school district, it must be assumed that the legislature intended the proceedings to remain informal and nonadversary despite their adjudicative character.

State ex rel. Indep. Sch. Dist. No. 276 v. Dep't of Ed., 256 N.W.2d 619, 624 (Minn. 1977).

The commissioner reasonably determined that the bulk of the evidence could be produced and analyzed in written form. The commissioner therefore allowed each side two hours in which to present live testimony, permitted unlimited pre- and post-hearing submissions, and liberally received hearsay evidence. TiZA fails to show that this process compromised the commissioner's findings or conclusions. In fact, TiZA does not allege that any of the commissioner's findings regarding the licensure violations are erroneous.

Moreover, our review of the commissioner's findings and conclusions indicates that TiZA received a full and fair hearing. MDE had determined that 14 teachers were in violation of licensure requirements. The commissioner reviewed the individual circumstances of each of these teachers and made detailed findings regarding whether the teacher was licensed at the time of the alleged violation; any previous license held; the type of license applied for; whether the application for that license was appropriate; whether the teacher became licensed, and if so, when; and the teacher's eventual compliance date, if any. Based on these extensive findings, the commissioner determined that eight—not fourteen—teachers were in violation of licensure requirements and disapproved MDE's assessment of penalties as to six teachers. The commissioner also rejected MDE's assertion that the sanction should be determined under Minn. Stat.

§ 127A.43 (2008) and instead applied Minn. Stat. § 127A.42, as urged by TiZA. The commissioner further rejected MDE's argument that noncompliance continued through the end of the school year. Finally, the commissioner's review of the evidence and arguments resulted in a penalty of $139,801.66, instead of $529,626.89 as originally assessed by MDE.

The commissioner's decision reflects thorough and objective consideration of a voluminous record and includes many findings and conclusions in TiZA's favor. While a two-hour time limit on testimony might appear unfair on its face, on this record we cannot conclude that the limit resulted in an unfair hearing.

Late Disclosures

TiZA next argues that it did not receive a full and fair hearing because it did not receive documents it requested pursuant to a data-practices request before the hearing. Although TiZA did not receive some of the requested documents before the hearing, it received the documents in time to include them in its post-hearing submissions. We are not persuaded that TiZA was prejudiced by this delay. TiZA did not ask to continue the hearing date or to extend the post-hearing submission deadline based on the late disclosures. And we note that many of the late disclosures concern noncompliance actions related to other schools, which were not relevant given the limited scope of the hearing. *See* Minn. Stat. § 127A.42, subd. 5 (stating that the commissioner's decision after the hearing "must be confined to whether any of the specified violations existed at the date of the commissioner's first notice, whether the violations were corrected within the time permitted, whether the violations require withholding or reduction of the state

aids under this section, and in what amount."). Finally, we are not persuaded by TiZA's argument that it was unable to adequately cross-examine MDE's witnesses as a result of the late disclosure. TiZA was not prevented from identifying inconsistencies and bias in its written closing argument and citing post-hearing submissions as support. TiZA has not shown that it was denied a full and fair hearing as a result of MDE's ongoing responses to its data-practices requests.

Additional Notice

TiZA also asserts that, under Minn. Stat. § 127A.42, subds. 4 and 5, MDE was required to provide a new notice to TiZA after the June 1 final determination letter, because MDE had not "adhered to the previous notice." TiZA argues that because MDE's June 1 final determination differed from the allegations in its March 27 notice by finding "certain individuals compliant, others not, and *adding new individuals*, the notice provisions of Minn. Stat. § 127A.42, subd. 4 are to be reapplied." (Emphasis added.) TiZA raises an issue of statutory construction. But because this issue was not argued to or considered by the commissioner, it is not properly before us on appeal. *See Hentges v. Minn. Bd. of Water & Soil Resources*, 638 N.W.2d 441, 448 (Minn. App. 2002) (stating that when reviewing an administrative agency decision "[t]his court will generally not consider matters not argued and considered below"). Moreover, we note that the penalty assessed by the commissioner was based on her finding that eight TiZA staff members were not in compliance with teacher-licensure regulations at the time of the compliance deadline. Each of these staff members was identified as being out of compliance in MDE's March 27 notice to TiZA. Because the final penalty was not based on a finding

of noncompliance regarding any staff member who was not identified in the March 27 notice, we discern no prejudice and no basis for reversal. *See Midway Ctr. Assocs. v. Midway Ctr. Inc.*, 306 Minn. 352, 356, 237 N.W.2d 76, 78 (1975) (holding that to prevail on appeal, an appellant must show both error and prejudice resulting from the error).

IV.

We last consider TiZA's claim that the commissioner's decision was arbitrary and capricious because she "failed to make findings of fact for each of the 'reasons' justifying the imposition of a multiplier for a penalty." "[T]he assessment of penalties and sanctions by an administrative agency is not a factual finding but the exercise of a discretionary grant of power." *In re Haugen*, 278 N.W.2d 75, 80 n.10 (Minn. 1979). "A reviewing court, therefore, may not interfere with the penalties or sanctions imposed by an agency decision unless a clear abuse of discretion is shown by the party opposing the decision." *In re Qwest's Wholesale Serv. Quality Standards*, 678 N.W.2d 58, 65 (Minn. App. 2004) (quotation omitted).

Under section 127A.42, subdivision 6, the commissioner may impose a financial penalty that is equivalent to

> the proportion that the period during which a specified violation continued, computed from the last day of the time permitted for correction, bears to the total number of days school is held in the district during the year in which a violation exists, multiplied by up to 60 percent of the basic revenue.

The statute allows for a multiplier up to 60 percent but does not set forth criteria for determining when that number can be imposed; instead, it leaves the percentage amount to the commissioner's discretion.

Contrary to TiZA's assertions, the record reflects that the commissioner's decision was not based on "mere whim." The commissioner noted that certain teacher's licenses expired years earlier and were not renewed; that the executive director of TiZA was a member of the Board of Teaching for four years and would be expected to have a basic understanding of the requirements of teacher-licensure laws; that the school's model of teaching did not meet the requirements of state licensure law; and that certain actions, such as submitting applications for limited licenses or waivers on or right before the compliance deadline, even though similar applications were denied a few days earlier, indicate that TiZA tried to avoid the compliance deadline. These explanations indicate that the commissioner's decision is based on reasoned analysis rather than mere whim.

Furthermore, TiZA's complaint that the commissioner's reasons are not supported by corresponding findings of fact is unavailing. TiZA contends that there must be separate findings of fact supporting the commissioner's reasons for the sanction. But many of the commissioner's stated "reasons" are themselves findings of fact, which are supported by substantial evidence in the record. *See Graphic Arts Educ. Found. v. State*, 240 Minn. 143, 145-46, 59 N.W.2d 841, 844 (1953) ("[A] fact found by the court, although expressed as a conclusion of law, will be treated upon appeal as a finding of fact."). And, in the final analysis, the commissioner's decision complies with the statutory obligation to state "the controlling facts upon which the decision is made . . . in

sufficient detail to apprise the parties and the reviewing court of the basis and reason for the decision." *See* Minn. Stat. § 127A.42, subd. 5. Because the commissioner's findings are adequate and TiZA has not shown a clear abuse of discretion, we affirm the penalty.

Affirmed.

Dated:

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Judge Michelle A. Larkin