


IN THE SUPREME COURT OF THE STATE OF NEVADA

RUSSELL COSTA; AND MILL STREET
AUTO, INC.,
Appellants,
vs.
THE STATE OF NEVADA
DEPARTMENT OF MOTOR VEHICLES;
SIMS AUTO SALES, INC.; AND C & A
ENTERPRISES,
Respondents

No. 47748

FILED

SEP 23 2008

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court order denying a petition for judicial review of an administrative decision awarding compensation in a vehicle dealer's surety bond. Second Judicial District Court, Washoe County; Janet J. Berry, Judge.

The parties are familiar with the facts and we recount them only as necessary for our disposition.

In reviewing district court orders regarding petitions for judicial review, this court, like the district court, reviews an agency's administrative decision to determine whether the agency abused its discretion or whether it was clearly erroneous in view of the record.¹ Like the district court, this court's function in examining an order disposing of a judicial review petition is "to determine, based on the administrative record, whether substantial evidence supports the

¹Weaver v. State, Dep't of Motor Vehicles, 121 Nev. 494, 498, 117 P.3d 193, 196 (2005). See NRS 233B.130(1); NRS 233B.135(3); see also Kay v. Nunez, 122 Nev. 1100, 1105, 146 P.3d 801, 805 (2006).

08-24559

administrative decision.”² Substantial evidence is that which “a reasonable person could accept as adequately supporting a conclusion.”³

Appellants Russell Costa and Mill Street Auto, Inc. (MSAI, or collectively “Costa”) argue that substantial evidence did not support the Department of Motor Vehicles administrative judge’s finding that John Causey was acting as Costa’s representative or salesman, on Costa’s behalf, and within the scope of his employment when Causey entered into the deals with respondents Sims Auto Sales and C&A Enterprises.⁴ Therefore, they argue, the administrative judge erred by allowing recovery on their surety bond because the elements of NRS 482.345(4) were not met.⁵ We disagree.

²Kay, 122 Nev. at 1105, 146 P.3d at 805.

³Flamingo Hilton v. Gilbert, 122 Nev. 1279, 1282, 148 P.3d 738, 740 (2006).

⁴Costa also argued that the administrative judge abused his discretion by admitting and relying on a DMV investigator’s report containing hearsay and conclusions about the ultimate issue. Upon review, we conclude that Costa’s argument is without merit. We also conclude that Costa’s other assignments of error are equally without merit because they depend upon this court holding that the aforementioned report was wrongly considered by the administrative judge.

⁵ NRS 482.345(4) provides:

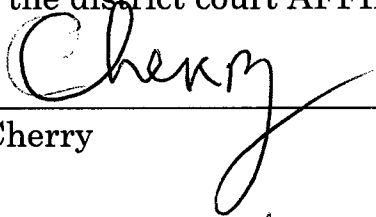
The undertaking on the bond includes any breach of a consumer contract, deceptive trade practice, fraud, fraudulent representation or violation of any of the provisions of this chapter by the representative of any licensed distributor or the salesman of any licensed dealer, manufacturer or rebuilder who acts for the dealer, distributor,

continued on next page . . .

The record shows, and the administrative judge found, among other supporting facts, that Costa signed and submitted a Certificate of Employment to the DMV, naming John Causey as an employee in the capacity of salesman for MSAI. Costa accepted checks written on Causey's Mill Street Auto Sales (MSAS) account for Costa's share of profits from Causey's deals. Costa signed the title for, and had on his lot, at least one of the disputed cars. The DMV Certificate of Employment contained no limitations on Causey's representation which might have alerted Sims or C&A that Causey was working outside the scope of his representation. Finally, both respondents were injured by Causey's actions.

We conclude that substantial evidence supports the administrative judge's decision below.⁶ Accordingly, we

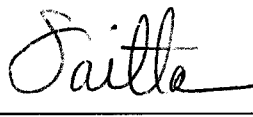
ORDER the judgment of the district court AFFIRMED.



Cherry J.



Maupin J.



Saitta J.

... continued

manufacturer or rebuilder on his behalf and within the scope of the employment of the representative or the salesman.

⁶See Weaver, 121 Nev. at 501, 117 P.3d at 198.

cc: Hon. Janet J. Berry, District Judge
William G. Cobb, Settlement Judge
Wm. Patterson Cashill
Attorney General Catherine Cortez Masto/DMV/Carson City
Law Offices of Curtis B. Coulter
Law Offices of Mark Wray
Washoe District Court Clerk