

IN THE SUPREME COURT OF THE STATE OF NEVADA

ROBERT B. METZ,
Appellant,
vs.
NEVADA DIVISION OF INSURANCE,
Respondent.

No. 49640

FILED

DEC 10 2007

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. Wurado*
DEPUTY CLERK

ORDER OF AFFIRMANCE

The is a proper person appeal from a district court order denying judicial review in a bail license revocation and fine matter. Second Judicial District Court, Washoe County; Steven P. Elliott, Judge.

Respondent, the Nevada Division of Insurance (DOI), filed a complaint and application for an order to show cause, alleging that appellant Robert B. Metz had failed to comply with several Nevada bail and bail agent licensing laws. The requested order was issued, directing Metz to appear on May 21, 2002, and show cause why disciplinary action should not be taken against him. The order informed Metz that he could be represented by counsel and present written and oral evidence at the hearing. At the same time, Metz was informed that the permanent revocation of his bail agent license would be considered at the hearing.

At Metz's request and the DOI's accord, the show cause hearing was rescheduled for January 15, 2003. On January 13, 2003, Metz filed a motion dated January 10, 2003, in which he stated that he had just that day received copies of the DOI's evidence package and in which he asked for a continuance to conduct discovery. His motion was denied the same day, January 13. Nevertheless, Metz failed to appear at the administrative hearing or otherwise formally oppose the charges.

Consequently, the hearing officer revoked Metz's bail agent license and assessed a fine against him. The district court denied judicial review, and Metz appealed.¹

This court, like the district court, reviews an administrative decision to determine whether the decision is arbitrary, capricious, or an abuse of discretion, whether it was based upon an error of law, or whether it was made in excess of authority, upon unlawful procedure, or in violation of constitutional or statutory provisions.² Although we independently review an agency's legal determinations, the agency's fact-based conclusions of law are entitled to deference and will not be disturbed if supported by substantial evidence.³

Here, Metz argues that the hearing officer improperly denied his January 2003 request for discovery. He also asserts that the district court improperly failed to hold a hearing on his petition for judicial review,

¹We deny the DOI's request to dismiss this appeal based on its assertion that Metz filed his civil proper person appeal statement one day late. See NRAP 25(1)(a)(i). Moreover, this appeal is governed under our orders establishing and continuing the pilot program for civil proper person appeals. See ADKT No. 385 (Order Establishing Pilot Program in Civil Appeals, June 10, 2005, and Order Extending Pilot Program for Civil Proper Person Appeals, May 10, 2006). As that program has no briefing requirements, Metz was not required to file an appellate brief, and any failure to do so does not impact the merits of this appeal.

²NRS 233B.135(3); State, Dep't Mtr. Veh. v. Jones-West Ford, 114 Nev. 766, 772, 962 P.2d 624, 628 (1998).

³Ayala v. Caesars Palace, 119 Nev. 232, 235, 71 P.3d 490, 491 (2003).

as timely requested, and demonstrated bias against him based on a pending lawsuit that he instituted against court security staff.

We have considered these assertions, and we conclude that they lack merit. The hearing officer exercised discretion in deciding whether to consider Metz's motion, since it was made less than ten days before the hearing was scheduled.⁴ Given that Metz was afforded adequate notice of the administrative charges against him and an opportunity to request discovery in this matter before that date,⁵ and in light of his failure to do so, we cannot conclude that the hearing officer abused her discretion in denying his motion as untimely and unwarranted.

Moreover, the district court's failure to hold a hearing does not warrant reversal in this instance,⁶ since the district court's review was confined to the record and Metz appears to have requested a hearing

⁴See NAC 679B.415(3)(b).

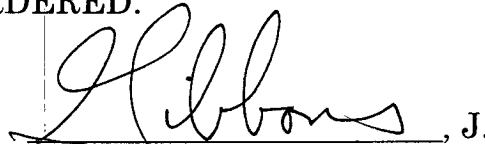
⁵See, e.g., NRS 233B.127(3) (governing license revocation proceedings); NAC 679B.413(1) ("A party who desires to contest a complaint or order to show cause may file an answer."); NAC 679B.260 (explaining that any party may request a prehearing conference to make discovery-related arrangements, including "the exchange of proposed exhibits or prepared expert testimony"); NAC 679B.280 (governing subpoenas); NAC 679B.381 (governing the exchange of documentary exhibits); see also NRS 233B.121 (governing contested case proceedings).

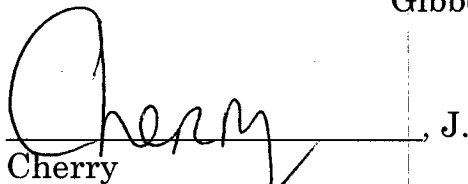
⁶See NRS 233B.133(4) ("Unless a request for hearing has been filed, the matter shall be deemed submitted.").

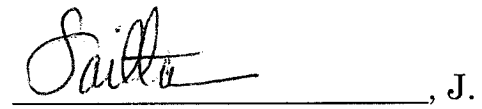
merely to present to the district court new evidence bearing on the merits of the DOI's charges.⁷

For these reasons, we affirm the district court's order denying judicial review of the hearing officer's decision to revoke Metz's bail agent license and impose a fine.

It is so ORDERED.


Gibbons


Cherry


Saitta

cc: Hon. Steven P. Elliott, District Judge
Robert B. Metz
Attorney General Catherine Cortez Masto/Carson City
Washoe District Court Clerk

⁷See NRS 233B.135(1)(b) (stating that the district court's review of an agency's decision is limited to the administrative record, unless the court accepts outside evidence relating to alleged procedural irregularities); see also Valdez v. Employers Ins. Co. of Nev., 123 Nev. ___, ___ n.28, 162 P.3d 148, 154 n.28 (2006) (suggesting that, even when a hearing is otherwise required, no violation of due process requiring reversal results from any failure to hold a hearing when the hearing is unnecessary to resolve the matter); Wieslander v. Iowa Dept. of Transp., 596 N.W.2d 516, 520 (Iowa 1999) (indicating that due process is met when an opportunity—either written or oral—to respond is provided) (citing Kernodle v. Com'r of Ins. State of Iowa, 331 N.W.2d 132, 135 (Iowa 1983)).

In light of this conclusion and the lack of any evidence of bias in the record, we conclude that Metz's remaining allegation of district court prejudice is without merit.