

IN THE SUPREME COURT OF THE STATE OF NEVADA

STATE OF NEVADA, OFFICE OF THE
ATTORNEY GENERAL, EX. REL.
CATHERINE CORTEZ MASTO,
ATTORNEY GENERAL, IN THE PLACE
OF NEVADA DEPARTMENT OF
BUSINESS AND INDUSTRY, CONSUMER
AFFAIRS DIVISION; SHARON JACKSON;
AND DONNA LIBONATI,
Appellants,
vs.
BASHIR A. CHOWDHRY, M.D.,
Respondent.

No. 56320

FILED

JAN 23 2012

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *H. Angel*
DEPUTY CLERK

ORDER OF REVERSAL AND REMAND

This is an appeal from a district court order granting a petition for judicial review in a deceptive trade practices administrative law action. Eighth Judicial District Court, Clark County; Kenneth C. Cory, Judge.

FACTS AND PROCEDURE

In a June 17, 2009, decision, the State of Nevada, Department of Business and Industry, Consumer Affairs Division (Division) sanctioned respondent for violations of Nevada's Deceptive Trade Practices Act, NRS Chapter 598. Respondent then petitioned the district court for judicial review. Concluding that the administrative decision failed to address what it viewed as an important legal issue—specifically whether the Division was allowed to pierce the corporate veil and sanction respondent individually—the district court granted the petition for judicial review, vacating the administrative decision and ordering that the matter be remanded to the Division or any other appropriate agency. Appellants have now appealed to this court.

DISCUSSION

On appeal, appellants argue that the district court abused its discretion in granting the petition for judicial review. Specifically, appellants contend that the piercing-the-corporate-veil issue was raised for the first time during the district court proceedings, and thus, the district court improperly resolved the petition on a matter that went beyond the administrative record. Appellants also contend that the district court's concerns regarding piercing the corporate veil were misplaced, as the plain language of NRS Chapter 598 expressly addresses violations by "a person." Finally, appellants assert that the remand was improper, since the district court had been informed that the Division had been abolished by the 2009 Legislature and that no other agency had been established to rehear matters previously resolved by the Division.

Respondent disagrees, instead arguing that the district court's order should be affirmed. More particularly, respondent contends that the piercing-the-corporate-veil issue was sufficiently raised during the administrative proceedings and that, regardless, he was free to raise the issue for the first time in district court since it was purely a matter of law. Additionally, respondent asserts that the district court acted properly in ordering the remand because, given the conclusion that the piercing-the-corporate-veil issue must be addressed, the court had no other option than to completely set aside the administrative decision. Appellants have also filed a reply brief that addresses the arguments raised by respondent.

This court reviews issues of law, including questions of statutory construction, de novo. Public Agency Compensation Trust v. Blake, 127 Nev. ___, ___, ___ P.3d ___, ___ (Adv. Op. No. 77, November 23, 2011). Having reviewed the parties' arguments and the record on appeal, we conclude that the district court erred in its determination that the piercing-the-corporate-veil issue should be administratively addressed,

and therefore reverse the order granting the petition for judicial review and remand this case to the district court. Id. To the extent that the district court resolved the petition for judicial review on an issue of law not developed during the administrative proceedings, we perceive no error here. See State, Bd. of Equalization v. Barta, 124 Nev. 612, 621 n.24, 188 P.3d 1092, 1098 n.24 (2008) (explaining that while arguments made for the first time in a petition for judicial review of an administrative decision are generally waived, an exception may exist for purely legal issues). Nevertheless, a review of the current version of the NRS Chapter 598 statutory scheme, as well as the scheme in place prior to the 2009 amendments, reveals that these statutes repeatedly refer to “any person” or “a person,” thus making plain that persons may be sanctioned as individuals for statutory deceptive trade practices. See, e.g., NRS 598.0915-25; NRS 598.096; NRS 598.0963; NRS 598.0985; NRS 598.0999; see also Blake, 127 Nev. at ___, ___ P.3d at ___ (setting forth the standard of review). Therefore, the district court’s concerns regarding piercing the corporate veil were effectively a non-issue, and thus an erroneous basis on which to order a remand.¹

The district court based its determination to set aside the administrative decision on the piercing-the-corporate-veil issue, and does not appear to have reached its general review of whether the administrative decision was otherwise arbitrary or capricious and based on substantial evidence. See generally Law Offices of Barry Levinson v. Milko, 124 Nev. 355, 362, 184 P.3d 378, 383-84 (2008) (explaining that the


¹Because NRS Chapter 598 controls the analysis, respondent’s citations to this court’s general caselaw addressing piercing the corporate veil is not the most relevant authority.

district court reviews administrative agency decisions for clear error or an arbitrary and capricious abuse of discretion, and that an agency's factual findings will be upheld if supported by substantial evidence). Thus, and because the parties' briefing focuses on the effect of the district court's legal conclusions connected to piercing the corporate veil and the decision to remand, we conclude that a remand to the district court is warranted so that it may review the merits of respondent's petition for judicial review.

Accordingly, for the reasons set forth above, we

ORDER the judgment of the district court REVERSED AND REMAND this matter to the district court for proceedings consistent with this order.²


_____, J.
Douglas


_____, J.
Gibbons


_____, J.
Parraguirre

cc: Hon. Kenneth C. Cory, District Judge
Janet Trost, Settlement Judge
Attorney General/Carson City
John H. Cotton & Associates, Ltd.
Eighth District Court Clerk

²As noted above, NRS Chapter 598 was significantly revised by the 2009 Legislature. Given our conclusion that the district court based its remand decision on an erroneous legal issue and that a remand to the district court is warranted for further proceedings, we do not reach the issue of whether the district court also erred in failing to resolve the practical effect of its remand.