

IN THE SUPREME COURT OF THE STATE OF NEVADA

SHAFIK HIRJI, INDIVIDUALLY,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 59629

**FILED**

NOV 01 2013

ORDER OF AFFIRMANCE

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY *[Signature]*  
DEPUTY CLERK

This is an appeal from a district court order granting a permanent injunction and awarding restitution and fines in a deceptive trade practices action. Eighth Judicial District Court, Clark County; Mark Denton, Judge.

Appellant Shafik Hirji owns a chain of automotive repair stores, Purrfect Auto Services, Inc.<sup>1</sup> Following receipt of over 500 consumer complaints regarding Purrfect Auto's trade practices and an undercover investigation, respondent State of Nevada filed a complaint against Hirji, alleging that Purrfect Auto had been defrauding consumers by charging for services that were not performed or by charging for unnecessary services.<sup>2</sup> When Hirji failed to attend a pre-trial calendar call, the district court entered an order of default. Following a prove-up hearing, the district court entered default judgment against Hirji and

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<sup>1</sup>As the parties are familiar with the facts, we do not recount them further except as necessary to our disposition.

<sup>2</sup>The Nevada Attorney General, Bureau of Consumer Protection, filed the complaint on behalf of the State of Nevada.

awarded approximately \$218,000 in civil penalties and restitution, as well as a grant of permanent injunctive relief.

On appeal, Hirji does not challenge the district court's entry of default. Rather, he argues that the district court erred by (1) applying an incorrect evidentiary standard at the prove-up hearing, (2) granting injunctive relief, and (3) awarding the civil penalties and restitution. We disagree.

*Substantial evidence supports the district court's judgment*

It is well-settled in Nevada that an "[e]ntry of default acts as an admission by the defending party of all material claims made in the complaint." *Estate of LoMastro ex rel. LoMastro v. Am. Family Ins. Grp.*, 124 Nev. 1060, 1068, 195 P.3d 339, 345 (2008). When a default judgment is entered and the amount of damages is uncertain, in order to "justify a money judgment, the amount as well as the fact of damage must be proved by substantial evidence." *Kelly Broad. Co. v. Sovereign Broad., Inc.*, 96 Nev. 188, 193-94, 606 P.2d 1089, 1093 (1980), *superseded on other grounds by Countrywide Home Loans, Inc. v. Thitchener*, 124 Nev. 725, 741-43, 192 P.3d 243, 253-55 (2008). "Substantial evidence is evidence that a reasonable mind might accept as adequate to support a conclusion." *Countrywide*, 124 Nev. at 739, 192 P.3d at 252 (internal quotations omitted).

Hirji argues the district court improperly applied the prima facie standard set forth in *Foster v. Dingwall*, 126 Nev. \_\_\_, \_\_\_, 227 P.3d 1042, 1049 (2010), rather than requiring the State to prove damages by substantial evidence. *Kelly Broad.*, 96 Nev. at 193-94, 606 P.2d at 1093. We disagree.

In addition to the allegations in the State's Amended Complaint, which were deemed admitted upon entry of default, *Estate of LoMastro*, 124 Nev. at 1068, 195 P.3d at 345, the State presented testimony from several witnesses at the prove-up hearing, as well as a summary of consumer complaints and receipts of damages suffered by approximately 78 victims. The evidence included testimony from two investigators who described Purrfect Auto's pattern of fraudulent practices, as well as the testimony of three former franchise owners and Hirji's accountant, each of whom testified in nearly identical terms that Hirji controlled all business operation decisions and that the managers of the Purrfect Auto locations were ordered to report directly to Hirji instead of the recorded franchise owners.

Thus, even if the district court did rely on the lesser prima facie standard discussed in *Foster*, 126 Nev. at \_\_\_, 227 P.3d at 1049, in reaching its decision, the record still includes substantial evidence to support both the amount and fact of damage. *Kelly Broad.*, 96 Nev. at 193-94, 606 P.2d at 1093. Because this court will not disturb a correct conclusion on appeal, even if based on faulty reasoning, *Hotel Riviera, Inc. v. Torres*, 97 Nev. 399, 403, 632 P.2d 1155, 1158 (1981), we conclude substantial evidence supports the district court's judgment.

*The district court properly granted injunctive relief*

Where "the Attorney General has reason to believe that a person *has engaged or is engaging in a deceptive trade practice*," the State may bring an action for a permanent injunction. NRS 598.0963(2) (emphasis added). The decision to grant a permanent injunction rests in the sound discretion of the district court and will not be overturned absent an abuse of discretion. *Housewright v. Simmons*, 102 Nev. 610, 613, 729

P.2d 499, 502 (1986), *overruled on other grounds by Las Vegas Novelty, Inc. v. Fernandez*, 106 Nev. 113, 118, 787 P.2d 772, 775 (1990).

Hirji argues that the district court erred in permanently enjoining him from further engaging in deceptive trade practices and from concealing his ownership or control of an automotive repair business. Specifically, Hirji argues that there is no evidence of a *continuation* of the deceptive practices.

We reject this argument, as NRS 598.0963(2) allows for a permanent injunction based upon either past or ongoing violations. The district court concluded that Hirji committed multiple deceptive trade practice violations over the course of two years. Because the record includes sufficient evidence that Hirji's business model was corrupt and based largely on the concealment of his identity, we conclude that the district court did not abuse its discretion by granting injunctive relief.<sup>3</sup> *Las Vegas Novelty*, 106 Nev. at 118, 787 P.2d at 775.

*The district court's damages award is proper*

Broad discretion is given to a district court in calculating an award of damages, and a determination of reasonable expenses will be upheld if supported by substantial evidence. *Asphalt Prods. Corp. v. All Star Ready Mix, Inc.*, 111 Nev. 799, 802, 898 P.2d 699, 701 (1995).

Here, the district court awarded restitution in the amount of \$118,474.93 pursuant to NRS 598.0993, which authorizes damages as

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<sup>3</sup>Hirji also argues that the injunction is overly broad because it effectively "bans [him] from an entire industry" and that he "now faces a lifetime of uncertainty" related to his involvement in the auto repair industry. Because the injunctions simply enjoin Hirji from engaging in deceptive practices or further concealing his identity or control over an auto repair business, this argument lacks merit.

“necessary to restore . . . any person in interest” for harm caused by deceptive trade practices. To arrive at this amount, the district court relied on the testimony of an investigator who spoke directly with approximately 78 of the 500 victims that filed consumer complaints against Purrfect Auto. The investigator obtained receipts totaling \$118,474.93 in damages from these victims, and a detailed summary of this report was admitted into evidence.

With regard to civil penalties, NRS 598.0999(2) provides that “if the court finds that a person has willfully engaged in a deceptive trade practice, [the State] may recover a civil penalty not to exceed \$5,000 for each violation.” Citing this authority, the district court awarded 20 civil penalties in the amount of \$5,000 each. In doing so, the district court noted that many more violations occurred, but that it chose to utilize only 20 of the violations and impose the maximum amount for each in order to arrive at a total of \$100,000 in civil penalties, for a total award of \$293,474.93 including attorney fees.

Thus, we conclude that the district court’s award of damages is supported by substantial evidence.<sup>4</sup> *Asphalt Prods. Corp.*, 111 Nev. at 802, 898 P.2d at 701. Accordingly, we

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<sup>4</sup>Hirji also argues that this court’s ruling in *Landex, Inc. v. State ex rel. List*, 94 Nev. 469, 582 P.2d 786 (1978), mandates reversal of the restitution damages because there is no evidence that consumers were lured into Purrfect Auto by misleading advertisements. We reject this argument. Because restitution damages are available under NRS 598.0993 for harm caused by deceptive trade practices, it was not necessary for the State to also show reliance on misleading advertisements.

ORDER the judgment of the district court AFFIRMED.

Hardesty, J.  
Hardesty

Parraguirre, J.  
Parraguirre

Cherry, J.  
Cherry

cc: Hon. Mark Denton, District Judge  
Malcolm LaVergne/Las Vegas  
Attorney General/Consumer Protection Bureau/Las Vegas  
Eighth District Court Clerk