

IN THE SUPREME COURT OF THE STATE OF NEVADA

BOBBY VAVLA; BV NV HOLDINGS  
D/B/A NATIONWIDE DISCOUNT  
MORTGAGE,

Appellants,

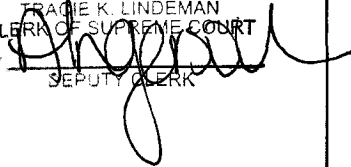
vs.

THE STATE OF NEVADA,  
DEPARTMENT OF BUSINESS AND  
INDUSTRY, DIVISION OF MORTGAGE  
LENDING,  
Respondent.

No. 60623

**FILED**

DEC 18 2013

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 regarding an administrative revocation of a mortgage broker license and a mortgage agent license. Eighth Judicial District Court, Clark County; Rob Bare, Judge.

BV Nevada Holdings, Inc., d.b.a. Nationwide Discount Mortgage, was a licensed Nevada mortgage broker. Bobby Vavla was a licensed mortgage agent and was Nationwide's president, secretary, treasurer, director, and employee. After receiving complaints about Vavla's conduct, the State of Nevada, Department of Business and Industry, Division of Mortgage Lending instituted administrative proceedings against Vavla and Nationwide. The appeals officer determined that Vavla made material misrepresentations in violation of

NRS 645B.670(1)(c)(2),<sup>1</sup> and engaged in deceitful, fraudulent, or dishonest business practices in violation of NRS 645B.670(1)(c)(8). The appeals officer revoked Vavla's and Nationwide's licenses and imposed a \$10,000 fine. The district court denied Vavla's and Nationwide's petition for judicial review. This appeal followed. As the parties are familiar with the facts, we do not recount them further except as necessary for our disposition.

We conclude that (1) the appeals officer applied the proper standard of proof, (2) use of the substantial evidence standard of proof does not violate Vavla's rights to due process or equal protection (3) the appeals officer did not rely on improper evidence, (4) there was substantial evidence to support the appeals officer's determinations, and (5) the fines imposed by the appeals officer were not disproportionate to Vavla's misconduct.

*Standard of review*

We review an agency's decision for an abuse of discretion, and we will affirm the decision if there is substantial evidence to support it. *Gilman v. State Bd. of Veterinary Med. Exam'rs*, 120 Nev. 263, 267-68, 89 P.3d 1000, 1003 (2004). However, we review issues of law de novo. Accordingly, we "review[] de novo an administrative law judge's interpretation of the law." *Nellis Motors v. State, Dep't of Motor Vehicles*, 124 Nev. 1263, 1266, 197 P.3d 1061, 1064 (2008).

---

<sup>1</sup>In 2013, the Nevada Legislature renumbered the provisions of NRS 645B.670. 2013 Nev. Stat., ch. 39, § 9, at 117-20. Because the Legislature did not make any substantive changes that are relevant to this case, we refer to the provisions of NRS 645B.670 as they are currently enacted.

*The appeals officer applied the proper standard of proof in this matter*

Vavla contends that because the Legislature failed to provide a standard of proof, we must determine the appropriate standard of proof. NAC 645B.555 provides for a substantial evidence standard of proof for a hearing before an appeals officer. This standard of proof was adopted by the Division's Commissioner pursuant to his legislative power to enact regulations necessary to carry out the provisions of NRS Chapter 645B. NRS 645B.060(2)(b); *see also* NRS 223B.040(1). Because "[w]e 'will not readily disturb an administrative construction that is within the language of the statute,'" we find that the substantial evidence standard of proof was properly adopted and, thus, is applicable. *Meridian Gold Co. v. State ex rel. Dep't of Taxation*, 119 Nev. 630, 636, 81 P.3d 516, 520 (2003) (quoting *State ex rel. Tax Comm'n v. Saveway Super Serv. Stations, Inc.*, 99 Nev. 626, 630, 668 P.2d 291, 294 (1983)). Therefore, we conclude that the appeals officer did not err in applying a substantial evidence standard of proof.

*The substantial evidence standard of proof does not violate Vavla's due process rights*

Vavla contends that his rights to procedural due process were violated by the use of the substantial evidence standard of proof. Sufficient process must be accorded when a person's life, liberty, or property is being taken by the state. *Nellis Motors*, 124 Nev. at 1268, 197 P.3d at 1065. There is not a rigid standard for due process in an administrative hearing because "the legal process due in an administrative forum is flexible and calls for such procedural protections as the particular situation demands." *Id.* (quoting *Minton v. Bd. of Med. Exam'rs*, 110 Nev. 1060, 1082, 881 P.2d 1339, 1354 (1994)). Due process

requires a meaningful opportunity for a party to be heard. We weigh three distinct factors in evaluating whether due process was provided:

First, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and finally, the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail.

*Mathews v. Eldridge*, 424 U.S. 319, 335 (1976).

None of the three *Mathews* factors favors a heightened standard of proof in this case. First, this court has not previously found that mortgage broker and mortgage agent licenses are "significant private interest[s]. Although the revenue [earned from them] may be substantial, the loss of revenue alone does not weigh towards a heightened evidentiary standard." *Nellis Motors*, 124 Nev. at 1268, 197 P.3d at 1065. Second, a heightened evidentiary standard would not reduce the risk that Vavla and Nationwide might be erroneously deprived of their licenses. Third, the Division has a significant interest in protecting consumers by regulating the conduct of individuals involved in the creation and sale of mortgage loans. Taken together, these factors do not favor an increased standard of proof. As a result, the substantial evidence standard does not violate Vavla's due process rights.

*The substantial evidence standard of proof does not violate Vavla's right to equal protection*

Vavla argues that the imposition of the substantial evidence standard of proof is a violation of equal protection because Nevada applies a different evidentiary standard to mortgage agents than it does to other professional licensees. Both the United States Constitution and the

Nevada Constitution require equal protection under the law. *In re Candelaria*, 126 Nev. \_\_\_, \_\_\_, 245 P.3d 518, 523 (2010). “Equal protection allows different classifications of treatment, but the classifications must be reasonable.” *Flamingo Paradise Gaming, LLC v. Chanos*, 125 Nev. 502, 520, 217 P.3d 546, 558 (2009).

Equal protection only applies if the government treats similarly situated persons differently under the law. *In re Candelaria*, 126 Nev. at \_\_\_, 245 P.3d at 523. If the parties are not similarly situated, then, then equal protection does not apply. *See Reel v. Harrison*, 118 Nev. 881, 886, 60 P.3d 480, 483 (2002). Individuals are similarly situated when their job functions are similar. *Edwards v. City of Reno*, 103 Nev. 347, 351, 742 P.2d 486, 488-89 (1987) (concluding that door-to-door solicitors and door-to-door peddlers are similarly situated). Individuals with the same job title or statutory definition are similarly situated. *Starlets Int’l, Inc. v. Christensen*, 106 Nev. 732, 735-36, 801 P.2d 1343, 1344-45 (1990) (recognizing that “outcall promoters” called to hotels and “outcall promoters” called to other locations are similarly situated). However, when one class of individuals is granted a power that is not granted to another class, the two classes are not similarly situated with regard to that power. *Zaragoza v. Bennett-Haron*, 828 F. Supp. 2d 1195, 1209-10 (D. Nev. 2011) (concluding that police officers and private individuals are not similarly situated with regard to the lawful use of force).

Applying these standards, mortgage agents are not similarly situated to other professionals such as doctors or lawyers. A mortgage agent is a professional whose statutory definition differs significantly from that of a doctor or a lawyer. *See* NRS 49.065 (defining lawyer); NRS 49.215(2) (defining doctor); NRS 645B.0125 (defining mortgage agent).

Each profession has a different function, requires a different level and type of education, employs vastly different skill sets, and causes varying degrees and types of consequences if performed negligently. Because of these differences, we find that a mortgage broker is not similarly situated to other professionals. Therefore, we decline to analyze the differences in treatment between different types of professionals. We conclude that the use of a substantial evidence burden does not violate Vavla's equal protection rights.

*The appeals officer did not rely on improper evidence*

Vavla argues that the appeals officer improperly relied on the fake letter on Evergreen Home Loan's letterhead for which a chain of custody was not established. NRS 233B.123(1) authorizes the admission of evidence when "it is of a type commonly relied upon by reasonable and prudent persons in the conduct of their affairs." An appeals officer "is not bound by the technical rules of evidence" and may relax them if it "will aid in determining the facts." NAC 645B.560. Authentication is a condition precedent for the admissibility of a document, NRS 52.015, and can be established by testimony of a witness with knowledge that the document "is what it is claimed to be." NRS 52.025. Though it is styled as a challenge to authenticity, Vavla's argument about deficiencies in the Evergreen letter's chain of custody is primarily an argument about weight and credibility. *See United States v. Lampson*, 627 F.2d 62, 65 (7th Cir. 1980) (holding that "an adequate chain of custody goes to the weight of the evidence, rather than admissibility").

Because we do not evaluate the credibility or weight of evidence, we only consider whether the Evergreen letter was authenticated when reviewing the propriety of this piece of evidence.

*Minton*, 110 Nev. at 1079, 881 P.2d at 1352. Here, an Evergreen employee authenticated the letter because she testified that the letter admitted at the hearing was identical to the letter received by Evergreen. Because a reasonable and prudent person could rely upon this testimony about the letter's authenticity, the appeals officer did not rely on inadmissible evidence.

*There was substantial evidence to support the appeals officer's determinations*

Vavla contends that there was insufficient evidence to support the appeals officer's determination with regard to each finding of wrongdoing. We will affirm the decision of an agency if there is substantial evidence to support it. *Gilman v. State Bd. of Veterinary Med. Exam'rs*, 120 Nev. 263, 268, 89 P.3d 1000, 1003 (2004). "Substantial evidence is 'that which a reasonable mind might accept as adequate to support a conclusion.'" *Id.* (quoting *McClanahan v. Raley's, Inc.*, 117 Nev. 921, 924, 34 P.3d 573, 576 (2001)). When reviewing the appeals officer's decision, neither this court nor the district court may substitute its opinion of the record for that of the appeals officer. *Id.* at 267, 89 P.3d at 1003; see NRS 233B.135(3). Finally, we do not "pass on the credibility of witnesses or . . . weigh their testimony." *Minton*, 110 Nev. at 1079, 881 P.2d at 1352. "The burden of proof is on the party attacking or resisting the decision to show that the final decision is invalid . . ." NRS 233B.135(2).

With regard to the Evergreen letter, the evidence in the record shows that Vavla "made a material misrepresentation in connection with [a] transaction governed by [NRS 645B]" in violation of NRS 645B.670(1)(c)(2), and engaged in a "deceitful, fraudulent or dishonest business practice" in violation of NRS 645B.670(1)(c)(8). An Evergreen

employee testified that Vavla was not authorized to create this type of pre-approval letter on Evergreen's behalf. The employee further testified that she received the pre-approval letter from a concerned real estate agent. Vavla testified that he had created similar letters for other companies and that the body of letter matched the body of the other letters that he created. However, he testified that he had not created the letter for his client on Evergreen's letterhead, but instead on his own letterhead. Vavla failed to produce any other evidence or testimony to support this assertion. See NRS 233B.135(2) (stating that the burden of proof is on the party attacking the agency's decision).

Because the appeals officer was tasked with taking testimony and reviewing evidence, she acted within her discretion in determining that Vavla's testimony was not credible and that he had created the pre-approval letter on Evergreen's letterhead. *Minton*, 110 Nev. at 1079, 881 P.2d at 1352. Therefore, there is sufficient evidence to uphold her decision that Vavla acted deceitfully and made a material misrepresentation in creating a loan pre-approval letter for a client regarding a loan that was not in fact pre-approved by Evergreen.

Additionally, substantial evidence demonstrates that Vavla engaged in a "deceitful, fraudulent or dishonest business practice" in violation of NRS 645B.670(1)(c)(8) on a separate occasion. It is uncontroverted that Vavla deleted a client's social security number and bankruptcy notation from her credit report when he sent it to a ~~lender~~ <sup>real estate agent</sup> to obtain a refund of the client's earnest money. Vavla admitted to altering the credit report and explained that he acted to protect the client. Because the issue of his stated motive relates to his credibility as a witness, we will not disturb the appeals officer's determination about its

Changed per  
order filed  
4-2-14. →



Changed per  
order filed  
4-2-14. →

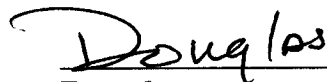
weight and credibility. The fact that Vavla redacted a client's social security number and bankruptcy notation from her credit report before sending it to a ~~lender~~ <sup>real estate agent</sup> constitutes substantial evidence of a deceitful, fraudulent or dishonest business practice. Therefore, we find that substantial evidence exists for each of the appeals officer's determinations.


*The fine imposed by the appeals officer was not disproportionate*

Vavla contends that the fine imposed by the appeals officer was disproportionate to his misconduct. A \$25,000 fine and a revocation of a broker's or agent's license may be imposed for each violation of NRS 645B. NRS 645B.670(1)(a), (b). The appeals officer found that Nationwide and Vavla committed multiple violations with regard to the Evergreen matter and the credit report alteration. Because the \$10,000 fine for all violations was less than the maximum statutory fine for each violation that occurred, the appeals officer did not impose a disproportionate fine. For the foregoing reasons,<sup>2</sup> we

ORDER the district court's order denying judicial review  
AFFIRMED.

  
\_\_\_\_\_, J.  
Gibbons

  
\_\_\_\_\_, J.  
Douglas.

  
\_\_\_\_\_, J.  
Saitta

<sup>2</sup>We have considered Vavla's remaining arguments and conclude that they are without merit.

cc: Hon. Rob Bare, District Judge  
William F. Buchanan, Settlement Judge  
Kirk T. Kennedy  
Attorney General/Carson City  
Attorney General/Las Vegas  
Eighth District Court Clerk