

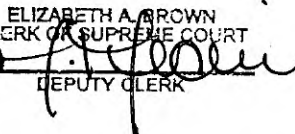
IN THE SUPREME COURT OF THE STATE OF NEVADA

MICHAEL L. BRUNSON,
Appellant,
vs.
THE STATE OF NEVADA
DEPARTMENT OF BUSINESS AND
INDUSTRY, REAL ESTATE DIVISION;
AND SHARATH CHANDRA IN HIS
OFFICIAL CAPACITY AS
ADMINISTRATOR OF THE REAL
ESTATE DIVISION,
Respondents.

No. 85475

FILED

OCT 12 2023

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF REVERSAL AND REMAND

This appeal challenges a district court order denying a petition for judicial review of a final administrative determination by the Nevada Commission of Real Estate Appraisers (the Commission). Eighth Judicial District Court, Clark County; Eric Johnson, Judge.¹

Appellant Michael Brunson is a real estate appraiser licensed by respondent the State of Nevada Department of Business and Industry, Real Estate Division (NRED). For purposes of litigation, Brunson prepared a retrospective appraisal report for a property that was sold at an NRS Chapter 116 HOA foreclosure auction. Brunson was engaged by the property owner to determine if they paid a reasonable price at foreclosure. Brunson calculated the foreclosure value at a range of \$68,700 to \$101,600, and therefore deemed the \$91,300 sales price reasonable. The opposing party retained its own appraiser, Scott Dugan, who appraised the property's

¹Pursuant to NRAP 34(f)(1), we have determined that oral argument is not warranted.

reasonable market value at \$145,000. Thereafter, the NRED filed a disciplinary complaint with the Commission, alleging that Brunson violated the Uniform Standards of Professional Appraisal Practice (USPAP)² in preparing his report. Following a hearing, the Commission found that Brunson violated five USPAP rules. As a result, the Commission imposed a \$5,000 fine and ordered Brunson to pay approximately \$17,000 in fees and costs. On rehearing, the Commission reduced the attorney fee sanction but otherwise reaffirmed its decision. Brunson petitioned the district court for judicial review, which the district court denied. Brunson appeals.

Our role in reviewing petitions for judicial review of administrative decisions is identical to that of the district court. *Elizondo v. Hood Mach., Inc.*, 129 Nev. 780, 784, 312 P.3d 479, 482 (2013). We therefore review an order denying judicial review of an administrative decision by “evaluat[ing] the agency’s decision for clear error or an arbitrary and capricious abuse of discretion.” *Law Offices of Barry Levinson, P.C. v. Milko*, 124 Nev. 355, 362, 184 P.3d 378, 383 (2008). We will not disturb an agency’s fact-based conclusions of law “if they are supported by substantial evidence.” *Id.* at 363, 184 P.3d at 383-84. “Substantial evidence exists if a reasonable person could find the evidence adequate to support the agency’s conclusion” *Id.* “The substantial evidence standard reflects the prudence of deferring to a state professional board’s special competence in recognizing violations of professional standards.” *State, Dep’t of Commerce, Cmty. & Econ. Dev., Div. of Corps., Bus. & Pro. Licensing v. Wold*, 278 P.3d 266, 273 (Alaska 2012). But courts should not “uphold the imposition of

²The Commission has adopted the USPAP. NAC 645C.400. Here, the Commission found that the 2014-2015 edition of USPAP applied to Brunson’s report.

reputationally and economically damaging professional sanctions based on evidence that would not permit a reasonable mind to reach the conclusion in question.” *Id.*

Brunson argues that the Commission’s findings and conclusions are clearly erroneous in view of the reliable, probative, and substantial evidence. We agree.

As to the first violation, the Commission found that Brunson violated the USPAP Scope of Work Rule “[b]y failing to (1) identify the problem to be solved; (2) determine and perform the scope of work necessary to develop credible assignment results; and (3) fully disclose the scope of work in the report.” The Commission’s order, however, is devoid of any analysis as to how Brunson’s report failed to identify the problem to be solved. And its own findings of fact reflect that Brunson’s report met the USPAP requirements for identifying the problem, including that Brunson “was engaged to conduct a retrospective appraisal for litigation purposes”; and that the report (1) identified the characteristics of the property, including that it was distressed, (2) identified the effective date, (3) defined the value measure used, i.e., “Impaired Value,” and (4) listed various conditions bearing on the analysis, including “likely litigation by the banks.” Appraisal Standards Board, *Uniform Standards of Professional Appraisal Practice*, Scope of Work Rule, Comment, U-13 (2014-2015 ed.) (outlining what the scope of work must include).

As to credible assignment results, the USPAP defines credible as “worthy of belief,” and the pertinent USPAP comments provide that such results “require support by relevant evidence and logic,” as “measured in the context of the intended use.” USPAP, Definitions, Comment, U-1. Here, the NRED presented two experts, Daniel Walsh and Scott Dugan. Walsh

cited the work of Dr. Randall Bell, a renowned real estate damages expert, and Stephanie Coleman, of the Appraisal Institute. Walsh stated that it “was very important to consult Bell’s work” and that he had “used Dr. Bell’s information quite a bit.” Walsh also described Coleman as “probably the premier expert when it comes to USPAP.” Walsh further testified that he was not a certified USPAP expert, and that he had never performed an analysis on a superpriority lien foreclosure property. Dugan, who was the opposing party’s appraiser in the litigation which gave rise to the NRED’s complaint against Brunson, testified about how he performed his appraisal in that litigation, acknowledging that his role was to determine the market value of the property before the foreclosure with the assumption that it had a free and clear title. He testified that he did not consider the foreclosure in appraising the property. While Dugan had experience with NRS Chapter 116 foreclosures (namely, the previous litigation), he relied on Dr. Bell’s treatise on damages to testify that an appraisal required an unimpaired value in these cases and that Brunson should have performed a market value analysis in determining whether the sales price was reasonable.

Contradicting Walsh’s and Dugan’s testimony, Dr. Bell testified as an expert on Brunson’s behalf, stating that the unimpaired value was not necessary for Brunson’s scope of work, and that, in an appraiser capacity, Dr. Bell had conducted impaired-value-only analyses in the past. In addressing why Dugan’s and Brunson’s values for the property differed, Dr. Bell explained that both the unimpaired and impaired approaches could be correct even if the numbers were different. Dr. Bell testified that there was no requirement that an appraiser must use the unimpaired value where the scope of work does not require analysis of such a value. Additionally, the Commission admitted email evidence that Coleman

believed that using an “unimpaired value is fine” and that Walsh’s testimony to the contrary mischaracterized her opinion on the matter.

The Commission’s order does not address the expert opinions or whether it found such testimony credible or reliable. The evidence and testimony at the hearing reflect that Brunson was tasked with a unique assignment, and there was no evidence that any NRED expert witness or Commissioners had any meaningful experience with appraisals for NRS Chapter 116 foreclosure properties or with the NRS Chapter 116 foreclosure process. Indeed, one Commissioner conceded that Brunson was “work[ing] in a niche without a roadmap” at the time. And both the expert on real estate damages, Dr. Bell, and the “premier expert on USPAP,” Stephanie Coleman, agreed that using the unimpaired value, as Brunson did, was acceptable here.

Finally, the Commission failed to consider various issues related to the credibility of assignment results for appraisal reports intended for litigation. The intended use of Brunson’s report was to determine whether the price paid for an NRS Chapter 116 foreclosed property was reasonable. And regardless of whether an analysis of the unimpaired value would render the report more credible, the evidence at the hearing suggests that the impaired value, alone, was sufficient for purposes of Brunson’s scope of work. Thus, we conclude that substantial evidence does not support the Commission’s scope of work finding, as Brunson’s assignment results were supported by relevant evidence and logic, as measured by its intended use, and Brunson fully disclosed the scope of work in the report.

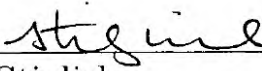
As to the remaining alleged violations, the Commission found that Brunson violated USPAP Standards Rules 1-1(c), 1-4(c), 1-6(b), and 2-


2(a)(viii), primarily because it found that Brunson's report lacked income or cost valuation methods and he did not explain why those methods were not used. We conclude that there is not substantial evidence to support the Commission's findings as to these violations. Although Brunson used only the impaired value, substantial evidence does not support a finding that in doing so Brunson rendered his "appraisal services in a careless or negligent manner," as required for a violation of USPAP Standards Rule 1-1(c). USPAP at U-16. And for the same reason, substantial evidence does not support a finding that Brunson violated USPAP Standards Rule 1-4(c), which applies "[w]hen an income approach *is necessary* for credible assignment results." *Id.* at U-19 (emphasis added). Substantial evidence also does not support a violation under USPAP Standards Rule 1-6(b), which does not require an appraiser to reconcile approaches, methods, and techniques that were not used as part of the assignment, at least where, as here, there is substantial evidence that the impaired value approach alone was sufficient to develop credible assignment results. *See id.* at U-20, 21. Finally, the comment to USPAP Standards Rule 2-2(a)(viii) explicitly contemplates that "[t]he amount of detail will vary with the significance of the information to the appraisal." *Id.* at U-23. Brunson's report stated that neither the income nor the cost valuation approaches were necessary to develop credible assignment results and that the sales comparison approach he utilized was the most reasonable methodology for the assignment. Given the text of the rule and the evidence adduced at the hearing, the Commission clearly erred in determining that Brunson violated Rule 2-2(a)(viii).


In sum, we cannot conclude that substantial evidence supports the Commission's determination that Brunson violated any of the USPAP

Rules. Because the Commission's findings as to the violations lack the requisite support, there is no basis on which the Commission could fine Brunson or sanction him with attorney fees. See *Frederic & Barbara Rosenberg Living Tr. v. MacDonald Highlands Realty, LLC*, 134 Nev. 570, 579-80, 427 P.3d 104, 112 (2018) (concluding an award of attorney fees and costs must necessarily be reversed when the underlying decision upon which the award was based is reversed). The district court therefore erred in denying Brunson's petition for judicial review. Accordingly, we

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


_____, C.J.
Stiglich


_____, J.
Lee


_____, J.
Bell

cc: Hon. Eric Johnson, District Judge
Janet Trost, Settlement Judge
Lipson Neilson P.C.
Attorney General/Carson City
Attorney General/Las Vegas
Eighth District Court Clerk