



IN THE SUPREME COURT OF THE STATE OF NEVADA

ASSURED DEVELOPMENT, INC, A
NEVADA CORPORATION,
Appellant,
vs.
NEVADA STATE CONTRACTORS
BOARD,
Respondent.

No. 90169

*ORDER AFFIRMING IN PART,
REVERSING IN PART AND REMANDING*

This is an appeal from a district court order denying a petition for judicial review challenging an administrative ruling by the Nevada State Contractors Board. Eighth Judicial District Court, Clark County; Veronica Barisich, Judge.

Appellant Assured Development, Inc. (Assured) was a contractor that got into a dispute with one of its subcontractors, A3 Builders (A3), over \$32,000 in unpaid work. A3 filed two complaints with respondent Nevada State Contractors Board (NSCB). NSCB served the complaints on Assured, and Assured appears to have filed a pre-hearing motion with NSCB, but Assured did not appear at the June 14, 2023, administrative hearing.

At that hearing, the Administrative Law Judge (ALJ) referenced NAC 624.7283(1), which provides that failure to appear at a hearing may be deemed a waiver of the right to present evidence:

The failure of a party to appear at a hearing shall be deemed a waiver of the party's right to present evidence at a hearing of the Board. After presentation to the Board or its designee of an offer of proof that the absent party was given proper notice, and upon a determination by the Board or

its designee that proper notice was given to the absent party, the Board or its designee may hear evidence without the participation of the absent party and may make its decision based on the admitted evidence.

The ALJ found that NSCB provided Assured with proper notice under NAC 624.7283. Consequently, the ALJ allowed A3 to present its evidence and then awarded A3 the disputed \$32,000. The AL J's decision also imposed six separate \$1,000 fines on Assured for six violations of NRS Chapter 624. The ALJ's decision further suspended Assured's contractor's license until Assured paid A3 the \$32,000.

Assured petitioned for judicial review. The district court denied the petition, reasoning that NSCB had made a prima facie showing that Assured owed the \$32,000 for A3's work and that the \$6,000 in fines were justified, such that absent any contrary evidence, there were no grounds to grant judicial review. Assured now appeals. It contends: (1) NSCB violated Assured's due process rights by conducting an improper investigation and refusing to cooperate with Assured to postpone the hearing date; (2) under *Bivins Construction v. State Contractors ' Board*, 107 Nev. 281, 809 P.2d 1268 (1991), NSCB lacked authority to award the \$32,000 in damages because those damages involved a private contractual dispute between Assured and A3; and (3) NSCB improperly imposed the \$6,000 in fines because Assured had previously voluntarily surrendered its contractor 's license.

"On appeal from a district court order denying a petition for judicial review, this court reviews an appeals officer's decision in the same manner that the district court reviews the decision." *City of Reno v. Yturbide*, 135 Nev. 113, 115, 440 P.3d 32, 34-35 (2019). Here, all three of Assured's arguments implicate issues of law, which we review de novo. *Id.*



Assured's first argument is that its due process rights were violated for two alternative reasons: (a) NSCB conducted an "improper investigation" or (b) NSCB "den[ied Assured] a hearing." *Cf. Dutchess Bus. Servs., Inc. v. Nev. State Bd. of Pharmacy*, 124 Nev. 701, 711, 191 P.3d 1159, 1166 (2008) ("Administrative bodies must follow their established procedural guidelines and give notice to the defending party of the issues on which decision will turn and . . . the factual material on which the agency relies for decision so that he may rebut it." (internal quotation marks and footnotes omitted)). We conclude that both arguments lack merit. *See Sullivan v. Lincoln Cnty. Water Dist.*, 140 Nev., Adv. Op. 4, 542 P.3d 411, 425 (2024) (observing that we review *de novo* an allegation that a party's due process rights were violated).

Assured's first due-process argument regarding an "improper investigation" appears to hinge on NSCB's violation of its own Policies and Procedures regarding how long NSCB had to complete its investigation and the punctuality with which NSCB needed to apprise Assured of its investigation. Assured cites to page 21 of its appellate appendix for support, but that page has no clear relevance to Assured's arguments regarding an "improper investigation." Nor has our independent review of the record revealed any documentation suggesting that Assured asked for dismissal of NSCB's investigation based on NSCB's alleged violation of its Policies and Procedures. *Cf. Edwards v. Emperor's Garden Rest.*, 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006) (observing that it is a party's responsibility to present cogent arguments supported by salient authority); NRAP 28(a)(10) (requiring an appellant's brief to provide an argument section identifying the district court's alleged errors).



Assured's second due-process argument regarding "denying of a hearing" appears to hinge on NSCB allegedly ignoring Assured's request to continue the June 14, 2023, hearing. But Assured does not identify anything in the record indicating that it made such a request, much less that any such request was considered and denied. More importantly, however, Assured does not dispute the ALJ's finding that NSCB complied with NAC 624.7283(1)'s provision that a hearing can be held without a complaining party's attendance when the complaining party decides not to appear at the hearing. In other words, Assured cannot complain of a due process violation when it was aware of the hearing date and simply decided not to attend, regardless of whether it wanted a continuance. *Cf. Sullivan*, 140 Nev., Adv. Op. 4, 542 P.3d at 425 ("Procedural due process requires that parties receive notice and *an opportunity* to be heard." (emphasis added) (citation modified)).

Assured's next argument is based on *Bivins Construction v. State Contractor's Board*, 107 Nev. 281, 809 P.2d 1268 (1991). According to Assured, *Bivins* prohibited NSCB from awarding A3 \$32,000 in damages because those damages involved a private contractual dispute between Assured and A3, as opposed to any alleged violations of NRS or NAC Chapters 624. NSCB contends that Assured waived this argument by failing to raise it at the administrative level. We disagree, as Assured could not have anticipated NSCB exceeding its statutory authority in imposing a damages award. *See Bivins*, 107 Nev. at 284, 809 P.2d at 1270 (citing NRS 624.300(1) for the proposition that NSCB "does not have the authority to impose damages upon parties subject to its licensing authority"). We further disagree with NSCB's argument that *Bivins* is inapplicable based solely on Assured's failure to present evidence at the administrative



hearing. *Cf. Liu v. Christopher Homes, LLC*, 130 Nev. 147, 151, 321 P.3d 875, 877 (2014) (reviewing de novo the interpretation of this court’s previous dispositions). Because NSCB exceeded its statutory authority in awarding A3 \$32,000 in damages, the district court should have granted Assured’s petition for judicial review in that respect. *See* NRS 233B.135(3) (recognizing that judicial review is warranted when “the final decision of the agency is . . . [i]n excess of the statutory authority of the agency”). Accordingly, we reverse the district court’s order insofar as it upheld the \$32,000 damages award.

Assured finally appears to argue that NSCB improperly imposed \$6,000 in fines when Assured had already voluntarily surrendered its contractor’s license. According to Assured, once it surrendered its license, NSCB no longer had authority to impose fines based on Assured’s pre-surrender violations of NRS/NAC Chapter 624. We are not persuaded. First, Assured’s March 1, 2023, “Request to Voluntarily Surrender a License” is just that—a “request.” Assured points to no authority indicating that a contractor’s request to surrender its own license is automatically effective without NSCB’s consideration of that request. *See Edwards*, 122 Nev. at 330 n.38, 130 P.3d at 1288 n.38. And even if such authority existed, we would question the public-policy implications of a contractor being able to avoid regulatory accountability by unilaterally surrendering its license. *See Tam v. Eighth Jud. Dist. Ct.*, 131 Nev. 792, 800, 358 P.3d 234, 240 (2015) (recognizing that statutes should be interpreted in a manner that is consistent with “reason and public policy” (citation modified)). In short, we reject Assured’s argument that the \$6,000 in fines were invalid merely because Assured attempted to surrender its contractor’s license before



NSCB could hold a hearing on Assured's alleged misconduct that occurred while it was licensed. Consistent with the foregoing, we

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



Herndon, C.J.



Bell, J.



Cadish, J.

cc: Hon. Veronica Barisich, District Judge
Persi J. Mishel, Settlement Judge
Schwab Law Firm PLLC
Hayes Wakayama Juan
Eighth District Court Clerk

