IN THE SUPREME COURT OF THE STATE OF NEVADA

JOHN HURRY, AN INDIVIDUAL, Appellant, vs. STATE OF NEVADA DEPARTMENT OF BUSINESS & INDUSTRY FINANCIAL INSTITUTIONS DIVISION, AN ADMINISTRATIVE AGENCY OF THE STATE OF NEVADA, Respondent.	No. 90347

ORDER OF AFFIRMANCE

This is an appeal from a district court order denying a petition for judicial review. Ninth Judicial District Court, Douglas County; Nathan Tod Young, Judge.

Appellant John Hurry applied for a license to operate a retail trust company with respondent Financial Institutions Division (FID) of the Nevada Department of Business & Industry. FID sent Hurry a notice letter citing deficiencies in his application. In the letter, FID noted that the Financial Industry Regulatory Authority (FINRA) had investigated two companies Hurry had been involved with, Alpine Securities (Alpine) and Scottsdale Capital (Scottsdale). Hurry did not amend his application, instead replying by letter that his application was not deficient. FID again denied Hurry's application. In addition to the grounds listed in the original letter, the denial order included additional FINRA violations, faulted Hurry for not disclosing these additional violations, and determined that the proposed directors lacked the good character required for a license.

Hurry requested a hearing to contest FID's denial order. An administrative law judge (ALJ) conducted the hearing. The ALJ affirmed FID's denial of Hurry's application on two grounds. First, the ALJ found that

Hurry had failed to prove by clear and convincing evidence that he had the requisite character to receive a license. Second, the ALJ found by a preponderance of the evidence that the proposed directors collectively lacked sufficient experience. Both grounds independently supported denying the license application.

Hurry petitioned for judicial review of the ALJ's order, claiming that the ALJ used the incorrect standard of proof, FID violated Hurry's due process rights, and FID's decision was unsupported by substantial evidence and was arbitrary and capricious. We address each argument in turn.

The ALJ applied the proper standard of proof

Hurry contends that the ALJ used an improper standard of proof when reviewing his application under NRS 669.160. Hurry argues that it should have examined whether Hurry had met his burden in showing his good character under the "preponderance of the evidence" standard instead of the "clear and convincing evidence" standard.

We review statutory interpretation de novo. *Williams v. State, Dep't of Corr.*, 133 Nev. 594, 596, 402 P.3d 1260, 1262 (2017). Beginning with the plain text of the statute, *Kassebaum v. State, Dep't of Corr.*, 139 Nev. 311, 314, 535 P.3d 651, 655 (2023), "words that have a technical or special meaning are presumed to carry their technical or special meaning," *Savage v. Pierson*, 123 Nev. 86, 94, 157 P.3d 697, 702 (2007).

Before FID licenses an individual to register and operate a trust company, it investigates whether the company's proposed directors and officers "[h]ave a good reputation for honesty, trustworthiness and integrity and display competence to transact the business of a trust company in a manner which safeguards the interests of the general public." NRS 669.160(1)(a)(1). Each applicant has the burden of proving these characteristics by "satisfactory proof." *Id.* This court has equated satisfactory proof with "clear and convincing evidence." *In re Discipline of Drakulich*, 111 Nev. 1556, 1566, 908 P.2d 709, 715 (1995); *see also Gilman v. Nev. State Bd. of Veterinary Med. Exam'rs*, 120 Nev. 263, 274, 89 P.3d 1000, 1007 (2004) (equating the two standards of proof in an administrative context), *disapproved of on other grounds by Nassiri v. Chiropractic Physicians' Bd.*, 130 Nev. 245, 327 P.3d 487 (2014).[1]

Here, the ALJ examined whether Hurry had presented satisfactory proof of his good character. In determining whether Hurry had met his burden, it equated satisfactory proof with clear and convincing evidence and found that Hurry had not done so. The ALJ's actions are in line with our jurisprudence, and we discern no error in its application of the clear and convincing evidence standard.

Hurry further argues that because the ALJ used the preponderance of the evidence standard when reviewing his application under NRS 669.085, it should have used the same standard when addressing NRS 669.160. If a statute does not specify a standard of proof, the default standard of proof for agency adjudications is the preponderance of the evidence. NRS 233B.121(9); NRS 233B.125. NRS 669.085 does not contain any standard of proof, so that default standard applies. In contrast, NRS 669.160(1)(a)(1) requires "satisfactory proof," which, as explained, is equivalent to the clear and

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[1]Hurry asserts that *Gilman* is not good law because it was overturned by both *Nassiri* and subsequent legislative action. He is incorrect on both counts. *Nassiri* only overruled *Gilman* to the extent it conflated standards of review with standards of proof. 130 Nev. at 250-51, 327 P.3d at 491. And the legislature's amendment of the relevant statute in *Gilman* only reaffirms our conclusion: rather than redefining "satisfactory proof," the legislature replaced it in the statute with "preponderance of the evidence." 2003 Nev. Stat., ch. 229, § 11, at 1227. This shows only that it desired a lower standard of proof for agency matters before the State Board of Veterinary Medical Examiners, not that it redefined "satisfactory proof."

convincing standard. Accordingly, we conclude that the ALJ applied the proper standard of proof when reviewing Hurry's application.

FID did not violate Hurry's due process rights

Hurry next argues that FID violated his due process rights. He contends that he did not receive sufficient notice and an opportunity to be heard because FID listed more grounds for dismissal in its denial order than in its initial notice letter.[2]

We review procedural due process claims de novo. *Sw. Gas Corp. v. Pub. Utils. Comm'n of Nev.*, 138 Nev. 37, 45, 504 P.3d 503, 511 (2022). Due process is required before deprivation of life, liberty, or property, U.S. Const. amend. XIV, § 1; Nev. Const. art. 1, § 8(2), including via agency actions, *Hernandez v. Bennett-Haron*, 128 Nev. 580, 587, 287 P.3d 305, 310-11 (2012). Agencies must notice the petitioning party of the decisive issues and factual material so that they may rebut it at a hearing. *Dutchess Bus. Servs., Inc. v. Nev. State Bd. of Pharmacy*, 124 Nev. 701, 711, 191 P.3d 1159, 1166 (2008). If an agency changes its justifications for its actions during the pendency of proceedings, then "the opposing party must have the opportunity to present argument under the new theory of violation." *Regency Air, LLC v. Dickson*, 3 F.4th 1157, 1162 (9th Cir. 2021) (citation modified).

Here, FID's initial notice letter listed five issues with Hurry's application: (1) Hurry was involved with an ongoing legal matter with FINRA,

[2]Hurry also raises three other alleged due process violations but first raised these claims in the reply brief following the petition for judicial review. NRS 233B.133(5), which outlines the briefing schedule for a petition for judicial review, incorporates NRAP 28. NRAP 28(c), in turn, does not permit parties to raise new arguments in reply briefs. *Khoury v. Seastrand*, 132 Nev. 520, 530 n.2, 377 P.3d 81, 88 n.2 (2016). Hurry did not timely raise these issues below and thus forfeited them, and we accordingly decline to consider them. *Old Aztec Mine, Inc. v. Brown*, 97 Nev. 49, 52, 623 P.2d 981, 983 (1981).

(2) Hurry was involved in the expulsion of Alpine from FINRA, (3) Hurry was under investigation by FINRA, (4) Hurry failed to comply with a temporary cease and desist order from FINRA, and (5) one director had no experience managing retail trusts. FID's denial order listed the same five issues but also included several new grounds for denial: Hurry's lack of trust company experience, Hurry's failure to disclose his FINRA registration, the other FINRA cases involving Alpine and Scottsdale, a lack of board members with sufficient good character, and documentary failures. The ALJ's hearing and final order were confined to the grounds listed in FID's denial order.

We conclude that FID did not violate Hurry's due process rights. Although FID raised new grounds in its denial order, Hurry was nonetheless given notice of those grounds and an opportunity to be heard in opposition at the ALJ's hearing. We accordingly discern no error.

The ALJ possessed substantial evidence to justify its decision

Hurry further contends that the ALJ's final order was not supported by substantial evidence. Hurry argues that the ALJ inappropriately relied on evidence from FINRA's investigations.

We will only overturn an agency's factual "findings if they are not supported by substantial evidence." *Elizondo v. Hood Mach., Inc.*, 129 Nev. 780, 784, 312 P.3d 479, 482 (2013) (citation modified). "Substantial evidence exists if a reasonable person could find the evidence adequate to support the agency's conclusion . . . ." *Law Offs. of Barry Levinson, P.C. v. Milko*, 124 Nev. 355, 362, 184 P.3d 378, 384 (2008). In accordance with NRS 669.160(1)(a)(1), an applicant must provide FID with "satisfactory proof" that the potential directors, officers, or managers "[h]ave a good reputation for honesty, trustworthiness and integrity and display competence to transact the business of a trust company in a manner which safeguards the interests of the general public." As discussed above, satisfactory proof is equated with clear and convincing evidence. Thus, we examine whether substantial evidence supported the ALJ's finding that Hurry did not present clear and convincing evidence of his good reputation for honesty.

Here, one of the FINRA investigations provided evidence that Hurry indirectly owned Alpine through trusts that he managed and that the sole director of Alpine "reported directly to" Hurry. FINRA found that Alpine had violated numerous financial rules and expelled it, imposing "a permanent cease and desist order" on Alpine's trading. Faced with diminishing business, Alpine "introduced a new $5,000 monthly account fee, increased from the firm's prior $100 annual account fee." Alpine simultaneously implemented a new online account system that customers found difficult to utilize and closed its physical office, leaving email as the "only option for communicating with the firm." The result of the fee increase and customer inaccessibility was that Alpine took customer funds without their authorization to cover the $5,000 monthly fee in contravention of FINRA rules.[3] FINRA found "that many key decisions resulting in the misconduct at issue here came from John Hurry" and credited the misuse of customer funds to "the gross mismanagement of the firm and blind adherence to [the] misguided policies established by . . . John Hurry."

The ALJ credited these findings in its order. The ALJ further found that Hurry had failed to disclose this FINRA investigation—or others—on his application. Question 7.B of the FID application asks if the applicant had "been directly or indirectly connected with any organization"

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[3]FINRA also found that the $5,000 fee was unreasonable and "applied in a discriminatory manner," Alpine employed unfair prices and commissions, Alpine engaged in unauthorized trading, and Alpine "executed one unauthorized capital withdrawal."

that had been subject to "administrative or enforcement action." Hurry answered "yes" and explained: "Trust Application in Nevada." Hurry failed to list the FINRA actions against Alpine and Scottsdale.

We conclude that substantial evidence supported the ALJ's decision. Although affirmance is warranted because Hurry failed to show good character, as was his burden, the record further supports this outcome. The ALJ credited FINRA's findings that Hurry had used his position as owner of Alpine in ways that were incompatible with the public trust, namely systematically converting customers' resources. There was nothing improper about the ALJ so finding. Nor was there any error in the ALJ's findings that Hurry failed to adequately disclose FINRA's actions against Alpine and Scottsdale. The gravity of Hurry's malfeasance in Alpine and the extent to which it affected his customers, coupled with his failure to provide any cogent rebuttal or evidence of his good character, merit affirming the ALJ's order.[4]

Hurry argues that a federal court issued a temporary restraining order, making the FINRA findings unreliable. *See Alpine Sec. Corp. v. Fin. Indus. Regul. Auth.*, 121 F.4th 1314, 1325 (D.C. Cir. 2024), *cert. denied*, ___ U.S. ___, 145 S. Ct. 2751 (2025). Preliminarily, we note that this opinion post-dates the ALJ's order and thus should not be considered. NRS 233B.135(1)(b) (stating that judicial review must be confined to the record). Moreover, we conclude that the merits of the federal lawsuit do not affect the ALJ's factual findings. After FINRA sanctioned Alpine, Alpine challenged the constitutionality of the organization and its actions. *Alpine*, 121 F.4th at 1323-

[4]We therefore decline to address FINRA's other findings in this case or in other proceedings against Alpine or Scottsdale. And given our determination that the ALJ had substantial evidence to deny Hurry's application under NRS 669.160, we decline to address whether denial under NRS 669.085 was warranted as well.

24. The federal circuit court held that Alpine had showed a likelihood of success on the merits that FINRA's expulsion powers violated the nondelegation doctrine, so it issued a temporary restraining order to prevent FINRA from expelling Alpine. *Id.* at 1319. The court, however, expressly held "that nothing in this opinion resolves Alpine's claims on the merits." *Id.* at 1337. We conclude that these federal proceedings do not detract FINRA's factual findings or the ALJ's crediting of those findings and that substantial evidence supported the ALJ's order.

Accordingly, we

ORDER the judgment of the district court AFFIRMED.

Stiglich, J.

Cadish, J.

Lee, J.

cc: Hon. Nathan Tod Young, District Judge
David Wasick, Settlement Judge
Hutchison & Steffen, LLC/Reno
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