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Home Warranty Adm'r v. State Dep't of Bus., 137 Nev. Adv. Op. 5 (March 4, 2021)

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SERVICE CONTRACT: STATUTORY INTERPRETATION

Summary

The Nevada Supreme Court reversed a lower court's decision in part to clarify the language of NRS 690C.150 to define "provider" in a sale service contract to be an obligor in the contracts, as stated by NRS 690C.070. In the current case, the seller was not an obligor; thus, the seller was not a provider and was not required to hold a certificate of registration. The Court remanded the case in part due to the hearing officer's misinterpretation of the statute. Additionally, the Court held that the hearing officer deprived the appellant's due process rights by ruling on unnoticed allegations without factual support in the original and amended complaint.

Background

The dispute stemmed from consumer complaints alleged against Choice Home Warranty (CHW). CHW markets and sells contracts for Home Warranty Administrator of Nevada, Inc. (HWAN), in which HWAN is the obligor. The respondent, the State of Nevada Department of Business and Insurance, Division of Insurance (the Division), investigated CHW and ultimately filed a complaint against HWAN, dba CHW, alleging that HWAN (1) made false entries by answering "no" to a question in several certificates-of-registration (COR) renewal application asking whether HWAN or any new officers had been fined in other states since its previous application, (2) conducted business in an unsuitable manner, and (3) failed to make records available to the Division.

The hearing officer concluded that HWAN failed to make records available but that the Division could not prove the false-entry or unsuitable-manner allegations. The hearing officer found that, while CHW was fined in the past, HWAN's answer "no" was not a false entry, and HWAN had not conducted business in an unsuitable manner based on consumer complaints. However, the hearing officer concluded HWAN *had* made false entries and *had* conducted business in an unsuitable manner on separate factual bases not raised in the original or amended complaint.

First, the hearing officer found that HWAN made false entries by leaving the pre-populated "self" answer to question in the COR renewal application asking for the applicant's administrator when CHW was in fact HWAN's administrator. Additionally, she found that HWAN used an unapproved form contract in 2015 that HWAN did not disclose in that year's application. Thus, the hearing officer concluded that HWAN had conducted business in an unsuitable manner by using CHW as an administrator, based on her interpretation of NRS 690C.150. None of these violations found were alleged in the original or amended complaints.

HWAN petitioned for judicial review at the district court, arguing that the hearing officer deprived it of due process and that she misinterpreted NRS 690C.150. The district affirmed on the due process and statutory-interpretation grounds and reversed on other grounds. HWAN appealed to the Nevada Supreme Court.

¹ By Wendy Antebi.

Discussion

Hearing officer's interpretation is not within the language of the statutes

The Nevada Supreme Court first agreed with the appellant that the hearing officers misinterpreted the language of NRS 690C.150. NRS 690C.150 provides that “[a] provider shall not issue, sell or offer for sale services contracts in this state unless the provider has been issued a certificate of registration.”² However, the hearing officer never found that CHW was a provider, or even addressed the meaning of “provider.” She also found CHW Group in violation of NRS 690C.150 for engaging in a business of service contract without a license. This interpretation is not within the language of the statute cited.

Furthermore, the hearing officer's interpretation disregarded NRS 690C.070, which defines a “provider” as “a person who is obligated to a holder pursuant to the terms of a service contract,” i.e., an obligor.³

The statutes are unambiguous

The Nevada Supreme Court agreed with HWAN's argument that NRS 690C.150, in conjunction with NRS 690C.070's definition of “provider,” are unambiguous and plainly requires only an obligor to be licensed – not the entity that merely sells the contract. Additionally, the legislative history supports this plain-meaning interpretation.

CHW was not an obligor, so it was not a “provider”

HWAN asserted that it is the only entity that must hold a COR because it is the obligor in the contract. The Court agrees and holds that the hearing officer erred in her decision of finding HWAN to have conducted business in an unsuitable manner.

The hearing officer deprived HWAN of due process by ruling that it committed unnoticed violations

HWAN further argued that the hearing officer deprived it of due process by making rulings on violations without factual bases in the complaint. The Division admitted that the unnoticed violations were “supported” by different facts” than the noticed allegations.

The United States and Nevada Constitutions proscribe deprivation “of life liberty, or property, without due process of law.”⁴ Although “proceedings before administrative agencies may be subject to more relaxed procedural and evidentiary rule, due process guarantees of fundamental fairness still apply.”⁵ “Administrative bodies must... give notice to defending party of ‘the issues on which decision will turn and ... the factual material on which the agency relies for decision so that [the defendant] may rebut it.’”⁶

The hearing officer concluded that HWAN did not make false entries on its COR renewal application. Additionally, she concluded that there was insufficient evidence to prove the unsuitable-manner allegation. However, the hearing officer did conclude that HWAN violated statutes and regulations on an issue that was not alleged in the original nor amended complaints.

² NEV. REV. STAT. § 690C.150 (2019).

³ NEV. REV. STAT. § 690C.070 (2019).

⁴ U.S. CONST. amend. XIV, § 1; NEV. CONST. art. 1, § 8(2).

⁵ *Dutchess Bus. Servs., Inc. v. Nev. State Bd. of Pharmacy*, 124 Nev. 701, 711, 191 P.3d 1034, 1166 (2008) (footnote omitted).

⁶ *Id.* (footnote omitted) (quoting *Bowman Transp., Inc. v. Arkansas-Best Freight Sys., Inc.*, 419 U.S. 281, 288–89 n.4 (1974)).

The Court held that the hearing officer deprived HWAN of due process by ruling that it committed the unnoticed violations. The Division did not provide the factual material for those allegations in the amended complaint. The Court determined that HWAN was not “sufficiently apprised of the nature of the proceedings,” and that the unnoticed violations were an “unfair surprise.”⁷

The hearing officer’s failure-to-make-records-available ruling was not clearly erroneous

HWAN also argued that there is no evidence it received and disregarded requests for information. The Division provided substantial evidence to support the hearing officer’s ruling that HWAN received the requests. The Division also requested a subpoena, which provides further evidence of HWAN being “uncooperative” and “unresponsive.”

The Court affirms this portion of the lower court’s decision and holds that the hearing officer was not clearly erroneous.

Conclusion

The Nevada Supreme Court affirmed in part and reversed in part the district court’s judicial review of a Nevada Division Insurance’s hearing conclusion. The Court reversed the lower court and held that the hearing officer misinterpreted the statute governing the service contract. Under NRS 690C.150, a “provider” is not simply an entity that issues, sells, or offers for sale service contracts, but also the obligor in those contracts, as plainly defined by NRS 690C.070. Additionally, the hearing officer deprived HWAN of due process by ruling on allegations that HWAN was insufficiently apprised of. The Court affirmed the lower court’s ruling that substantial evidence supported the failure-to-make-records-available allegation.

⁷ *Id.* at 712, 191 P.3d at 1167.