

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

GILBERTO HERNANDEZ; AND  
TEMPTATIONS II, LICENSE NO. S-  
13956,  
Appellants,  
vs.  
NEVADA STATE BOARD OF  
COSMETOLOGY,  
Respondent.

No. 70799

**FILED**

NOV 20 2017

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY S. Yelley  
DEPUTY CLERK

*ORDER OF AFFIRMANCE*

Gilberto Hernandez and Temptations II appeal a district court order denying a petition for review. Eighth Judicial District Court, Clark County; Michael Villani, Judge.

Gilberto Hernandez, appellant, owned a skin and nail salon called Temptations II, co-appellant (collectively, "Hernandez").<sup>1</sup> After an undercover vice officer arrested a woman working at Temptations for soliciting a sexual act during a massage, respondent Nevada State Board of Cosmetology (Board) investigated the salon. The Board filed a complaint and notice of hearing against Hernandez and Temptations, alleging eight different grounds for discipline. Following a hearing, the Board concluded that seven of the eight allegations were supported by evidence presented at the hearing. The Board revoked Temptations' cosmetology license for three years and imposed a \$2,000 fine for each infraction, pursuant to NRS

---

<sup>1</sup>We do not recount the facts except as necessary to our disposition.

644.430(2).<sup>2</sup> The Board also ordered that Temptations pay \$2,000 in costs, pursuant to NRS 622.400. Hernandez filed for a petition for judicial review of the Board's decision, which the district court denied. Hernandez timely appealed, arguing that the district court erred because the Board abused its discretion in imposing arbitrary, capricious, and disproportionate penalties.

A district court can grant a petition of judicial review to set aside an administrative decision if the decision is in violation of constitutional or statutory provisions; constitutes an excess of agency authority; was decided using "unlawful procedure"; contains errors of law; is clearly erroneous in view of substantial evidence in the record; or is arbitrary, capricious, or characterized by an abuse of discretion. NRS 233B.135(3). When reviewing the decision, the district court cannot substitute its judgment for the agency's in how to weigh evidence in factual matters. *Id.*

When reviewing an administrative decision on appeal, this court's role is identical to that of the district court. *Sec'y of State v. Tretiak*, 117 Nev. 299, 305, 22 P.3d 1134, 1137-38 (2001). Thus, this court will affirm a denial for judicial review if the agency decision is not arbitrary and capricious and an abuse of discretion and there is substantial evidence in the record to support the agency's decision. *Id.* Substantial evidence is defined as evidence that "a reasonable mind might accept as adequate to support a conclusion." *Id.* at 305, 22 P.3d 1138 (internal quotation marks omitted).

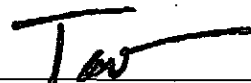
---

<sup>2</sup>Although the statute was amended in 2015 and again in 2017, the Board's action and all relevant litigation on this case occurred prior to those amendments. Thus, the 2014 version of the statute applies here.

A review of the record reveals that the Board's decision was supported by substantial evidence, including testimony by one witnesses that criminal activity had occurred, and another who testified that criminal activity likely continued to occur. Moreover, there was additional evidence and testimony to support the Board's imposition of penalties based on other infractions of various provisions of NRS Chapter 644. Thus, because we do not reweigh the evidence on appeal, NRS 233B.135(3), we cannot conclude the Board's decision was arbitrary or capricious, and we

ORDER the judgment of the district court AFFIRMED.<sup>3</sup>

  
Silver, C.J.

  
Tao, J.

  
Gibbons, J.

---

<sup>3</sup>We have carefully considered Hernandez's arguments that *Sec'y of State v. Tretiak*, 117 Nev. 299, 22 P.3d 1134 (2001), and NRS 233B.135 require a review of the proportionality of administrative penalties as a whole on appeal, but we conclude they lack merit. Moreover, we disagree that Hernandez's lack of disciplinary history or the lack of evidence that Hernandez is not remorseful undermines the Board's imposition of discipline under NRS 644.430. Finally, we decline to consider Hernandez's "golden rule" argument because it is not cogently argued. *See Edwards v. Emperor's Garden Rest.*, 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006).

cc: Hon. Michael Villani, District Judge  
Kathleen M. Paustian, Settlement Judge  
Kirk T. Kennedy  
Attorney General/Carson City  
Eighth District Court Clerk