

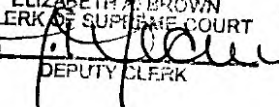
IN THE SUPREME COURT OF THE STATE OF NEVADA

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 OFFICIAL
ADMINISTRATOR OF THE REAL
ESTATE DIVISION,
Respondents.

No. 85478

FILED

OCT 12 2023

ELIZABETH M. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF REVERSAL AND REMAND

This appeal challenges a district court order granting in part a petition for judicial review of a final administrative determination by the Nevada Commission of Real Estate Appraisers (the Commission), and a subsequent motion for clarification and/or reconsideration. Eighth Judicial District Court, Clark County; David M. Jones, 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). In the underlying matter, non-party Craig Jiu authored an appraisal report for litigation purposes, in which Jiu served as an expert. Brunson provided significant help with the report, including

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

by designing and performing a survey of real estate agents, and by authoring a damages analysis report with the intended purpose of “negotiation.” Following an anonymous complaint, the NRED filed a formal complaint against Brunson alleging various violations of the Uniform Standards of Professional Appraisal Practice (USPAP).² Following an administrative hearing, the Commission found that Brunson committed seven violations. As a result, the Commission fined Brunson over \$7000; suspended his appraiser’s license for 1 year; revoked Brunson’s ability to teach USPAP courses, as Brunson had been a certified USPAP instructor for many years; and ordered Brunson to complete 60 hours of appraisal-based courses within 1 year. Brunson petitioned the district court for judicial review, and the district court remanded on one of the violations. On remand, that violation was removed, but the Commission’s order was otherwise left intact. Brunson then filed a motion to clarify or reconsider the order granting in part his petition for judicial review, which was denied, and this appeal followed.

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 a final 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

²The Commission has adopted the USPAP. NAC 645C.400.

evidence.” *Id.* at 362, 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.* at 362, 184 P.3d at 384.

Brunson argues that the Commission improperly relied on individuals whom the NRED acknowledged might be biased against Brunson. We agree. A fair trial by a fair tribunal is a basic requirement of due process, and this rule applies to administrative agencies. *Home Warranty Adm’r of Nev., Inc. v. Dep’t of Bus. & Indus., Div. of Ins.*, 137 Nev. 43, 48, 481 P.3d 1242, 1248 (2021); *Mosley v. Nev. Comm’n on Judicial Discipline*, 117 Nev. 371, 377-78, 22 P.3d 655, 659 (2001). A licensing board thus has a “responsibility to provide a licensee, not only with a neutral and impartial proceeding but also a proceeding which *appears* neutral and impartial.” *Bowen v. State ex rel. Oklahoma Real Est. Appraiser Bd.*, 270 P.3d 133, 137-38 (Okla. 2011). Factors that may be relevant to whether a proceeding was impartial include whether the “board’s decision is based solely on the review and testimony of a competitor of the person being disciplined,” whether the competitor witness is located “in the same geographic area as the [person being disciplined],” and whether the competitor witness is “likely to be economically impacted by the Board’s decision regarding the [person being disciplined].” *Id.* at 139.


Here, the record reflects that the Commission relied almost exclusively on testimony from one of Brunson’s competitors and a rebuttal report in the underlying litigation that was authored by another competitor. The basis for the complaint before the Commission was Brunson’s involvement in litigation between the Frederic and Barbara Rosenberg Living Trust (the Rosenberg Trust) and Bank of America. Brunson’s

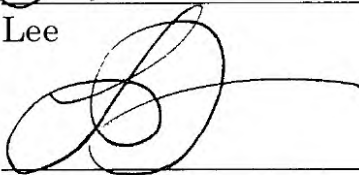
partner, Craig Jiu, authored a real estate damages analysis and served as an expert witness for the Rosenberg Trust in that litigation and Brunson authored a report for negotiation purposes. The opposing party, Bank of America, retained two experts, Matthew Lubaway and Scott Dugan, to provide rebuttal reports. At the disciplinary hearing, the Commission relied on Lubaway's testimony from that litigation and Dugan's rebuttal report in concluding that Brunson committed the alleged USPAP violations, finding that testimony and report critical on the issues of whether Brunson's damages analysis survey was supported by traditional transaction or market data, and whether Brunson acted in a careless or negligent manner in conducting the survey. Indeed, the Commission's reliance on Lubaway and Dugan went toward the "heart" of the matter—whether Brunson's work was credible and reliable.

Based on the totality of the record, the Commission's findings relied heavily, if not solely on the review and testimony of Brunson's competitors and opposing parties in a litigation matter. The record further suggests that Lubaway and Dugan are from the same geographic area as Brunson, as they have provided opposing expert testimony in several of Brunson's previous cases, including in the very litigation that gave rise to NRED's complaint against Brunson, which remained active at the time of the hearings before the Commission. And because a decision by the Commission against Brunson would remove one of Lubaway's and Dugan's competitors, both were set to benefit economically from the Commission's decision against Brunson. Thus, we conclude that the Commission failed to provide Brunson with a neutral and impartial proceeding. We therefore

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: Chief Judge, The Eighth Judicial District Court
Department 29, Eighth Judicial District Court
Janet Trost, Settlement Judge
Lipson Neilson P.C.
Attorney General/Carson City
Attorney General/Las Vegas
Eighth District Court Clerk