

**STATE OF MINNESOTA
IN COURT OF APPEALS
A19-1170**

In the Matter of the Administrative Order Issued to
Moses Wazwaz, Individually, Allstate Construction, Inc.,
and A & K Construction Services, Inc.

**Filed April 6, 2020
Affirmed
Slieter, Judge**

Department of Labor and Industry
File No. 82-1902-35248

Thomas J. Radio, Felhaber Larson, Minneapolis, Minnesota (for relators Moses Wazwaz, Allstate Construction, Inc., and A & K Construction Services, Inc.)

Keith Ellison, Attorney General, Christopher M. Kaisershot, Assistant Attorney General, St. Paul, Minnesota (for respondent Minnesota Department of Labor and Industry)

Considered and decided by Johnson, Presiding Judge; Bjorkman, Judge; and Slieter, Judge.

S Y L L A B U S

A person who holds out as a residential building contractor and who does not meet any of the exemptions from licensure set forth in Minn. Stat. § 326B.805, subd. 6 (2018), must comply with the license requirements of Minn. Stat. §§ 326B.801-.885 (2018 & Supp. 2019), even if the person, or the person's business entity, is part of a joint venture with a person or entity that holds a license.

OPINION

SLIETER, Judge

Relators Moses Wazwaz, Allstate Construction, Inc. (ACI), and A & K Construction Services, Inc., appeal from an order issued by the commissioner of the department of labor and industry. Relators assert that the commissioner erred by determining that they were required to possess a license as a residential building contractor (RBC) despite relators' operation of a joint venture with a company that possessed an RBC license. Because relators failed to comply with the licensing requirements pursuant to Minn. Stat. §§ 326B.801-.885, we affirm.

FACTS¹

In 2016, the Minnesota Department of Labor and Industry investigated Wazwaz and ACI, a corporation registered with the Minnesota Secretary of State of which Wazwaz is the chief executive officer, regarding allegations that the two were performing residential repair work without proper licensure. In May 2017, Wazwaz and ACI stipulated to violating the law as alleged and agreed not to act or hold out as an RBC, residential remodeler, or residential roofer as a condition of a stayed \$7,000 penalty.

Wazwaz then sought to combine with a licensed RBC. In June 2017, Wazwaz began discussions with N.M. and K.M., equal co-owners of a business we refer to as ABC. ABC possessed an RBC license. Wazwaz discussed forming a new company with ABC ultimately identified as A & K to be named for the purpose of performing storm-damage

¹ At oral argument, relators conceded that they do not challenge the commissioner's factual findings.

repairs. N.M., K.M.'s spouse, refused to allow her qualifying credentials to be used to obtain a license for A & K. Despite N.M.'s refusal, K.M. orally agreed with Wazwaz to use ABC's license to obtain permits to perform storm-damage repairs apparently via the new entity, A & K.

Wazwaz then took steps to formulate the new business

On June 30, 2017, Wazwaz filed with the Minnesota Secretary of State articles of incorporation for A & K. Wazwaz previously signed such a form jointly with K.M., but the form that Wazwaz submitted to the secretary of state was signed only by Wazwaz and represented that Wazwaz was the sole owner of A & K. Wazwaz registered A & K as a business name. Wazwaz also opened a bank account for A & K with K.M., but later Wazwaz removed K.M. from the account without ABC's knowledge or consent.²

N.M. drafted a joint venture agreement between ACI and ABC. Although N.M. drafted the agreement in July, the parties backdated the execution of the document to June 11, 2017. Wazwaz signed the joint venture agreement on behalf of ACI, and K.M. signed on behalf of ABC.

The joint venture agreement identified its purpose to "acquire signed agreements for storm damage repair" and "perform the work from the signed agreement." Both companies agreed to work "together to produce sales and execute the storm damage repair that is necessary for each client," and "[a]ll decisions must be made in agreement by both parties." All profits from the joint venture were to be split equally between ACI and ABC.

² ABC's owners did not learn about their inability to access the bank account until October or November 2017.

An additional term of the joint venture agreement stated: “This agreement is intended to be a joint venture between the above listed companies.”

Problems eventually arose within A & K

The owners of ABC quickly grew dissatisfied with Wazwaz. Over the course of the summer and fall of 2017, relators acted or held out as qualified licensed contractors to perform storm-damage repairs. A & K entered into more than 50 contracts with homeowners to complete storm-damage repairs. Notably, A & K was not a party to the joint venture agreement between ACI and ABC.

Eventually A & K fell apart

On September 4, 2017, ABC served a notice of termination of the joint venture agreement on Wazwaz. ABC subsequently attempted to inform its customers that its license would not be used for work of A & K or ACI. ABC learned that many of the customers had signed new contracts with ACI or wanted relators to complete their contracted work.

Regulatory action soon followed

In the fall of 2017, the department received homeowner complaints involving all of the relators. Based on these reports, the department began an investigation. During its investigation, the department requested information from relators. Wazwaz responded to the department with minimal documents and referred the department to ABC.

On May 11, 2018, the department issued a notice and order that identified numerous violations, four of which involved relators. The violations included: (1) relators did not hold proper licensure but held out as licensed; (2) relators engaged in fraudulent, deceptive,

or dishonest practices; (3) Wazwaz and ACI violated a prior consent order by holding out as licensed contractors; and (4) relators provided incomplete information to the department. The department imposed a \$17,000 penalty, which consisted of the \$7,000 penalty previously stayed against Wazwaz and ACI, and imposition of an additional \$10,000 penalty jointly against relators.

A contested case hearing was held before an administrative-law judge (ALJ). The ALJ made findings and issued a recommendation to affirm the administrative order. The commissioner made modifications to the ALJ's findings and then adopted the ALJ's recommendation to impose the penalties. Relators appealed by writ of *certiorari*.

ISSUE

Did the commissioner properly conclude that relators were not licensed despite engaging in a purported joint venture with a business holding a qualifying license?

ANALYSIS

Standard of Review for Agency Decision

An administrative agency's decision enjoys a presumption of correctness. *In re Cities of Annandale and Maple Lake NPDES/SDS Permit Issuance*, 731 N.W.2d 502, 513 (Minn. 2007). Appellate courts review an agency's final decision in a contested case pursuant to the Minnesota Administrative Procedure Act (MAPA), Minn. Stat. §§ 14.001-.69 (2018). *Eneh v. Minn. Dep't of Health*, 906 N.W.2d 611, 613 (Minn. App. 2019). We may reverse an agency's decision

if the substantial rights of the petitioners may have been prejudiced because the administrative finding, inference, conclusion, or decisions are:

(a) in violation of constitutional provisions; or

- (b) in excess of the statutory authority or jurisdiction of the agency; or
- (c) made upon unlawful procedure; or
- (d) affected by other error of law; or
- (e) unsupported by substantial evidence in view of the entire record as submitted; or
- (f) arbitrary or capricious

Minn. Stat. § 14.69.

“With respect to factual findings made by the agency in its judicial capacity, if the record contains substantial evidence supporting a factual finding, the agency’s decision must be affirmed.” *In re Excelsior Energy, Inc.*, 782 N.W.2d 282, 290 (Minn. App. 2010) (quotation omitted). “[Appellate courts] defer to an agency’s conclusions regarding conflicts in testimony, the weight given to expert testimony and the inferences to be drawn from testimony.” *See In re Excess Surplus Status of Blue Cross & Blue Shield of Minn.*, 624 N.W.2d 264, 278 (Minn. 2001). “Substantial evidence is defined as (1) such relevant evidence as a reasonable mind might accept as adequate to support a conclusion; (2) more than a scintilla of evidence; (3) more than some evidence; (4) more than any evidence; or (5) the evidence considered in its entirety.” *Cannon v. Minneapolis Police Dep’t*, 783 N.W.2d 182, 189 (Minn. App. 2010) (quotation omitted).

Although we presume correctness in the agency’s decision, “[appellate courts] may reverse an agency decision if the decision was affected by an error of law.” *See N. States Power Co. v. Minn. Pub. Utils. Comm’n*, 344 N.W.2d 374, 377 (Minn. 1984). “[Appellate courts] retain the authority to review de novo errors of law which arise when an agency decision is based upon the meaning of words in a statute.” *See In re Denial of Eller Media Co.’s Applications for Outdoor Advert. Device Permits*, 664 N.W.2d 1, 7 (Minn. 2003); cf.

Arvig Tel. Co. v. Nw. Bell Tel. Co., 270 N.W.2d 111, 114 (Minn. 1978) (“The manner in which the agency has construed a statute may be entitled to some weight, however, where (1) the statutory language is technical in nature, and (2) the agency’s interpretation is one of long-standing application.”).

Relators argue that they were not required to possess an RBC license in this circumstance because they were operating a joint venture with ABC, a business which possessed a valid RBC license. This issue is one of statutory interpretation.

Residential Contractor Licensing Statute

The legislature empowered the commissioner to have responsibility “relating to residential contractors, residential remodelers, residential roofers, manufactured home installers, and the contractor’s recovery fund.” Minn. Stat. § 326B.02, subd. 1 (2018); *see also* Minn. Stat. § 326B.802, subds. 7, 11, 12, 14 (defining residential building contractor, residential remodeler, residential roofer, and manufactured home installer). These responsibilities are provided in Minn. Stat. §§ 326B.801-.885.

A person performing work as an RBC, residential remodeler, or residential roofer must be licensed by the commissioner. Minn. Stat. § 326B.805, subd. 1. Except as provided by the statute’s exemptions, “no person required to be licensed by subdivision 1 may act or hold themselves out as a residential building contractor, residential remodeler, residential roofer, or manufactured home installer for compensation without a license issued by the commissioner.” *Id.*, subd. 3.

The commissioner is authorized to enforce the licensing provisions. *See* Minn. Stat. § 326B.082, subd. 1 (2018) (“The commissioner may enforce all applicable law under this

section.”). In particular, “[t]he commissioner may issue a notice of violation to any person who the commissioner determines has committed a violation of the applicable law.” *Id.*, subd. 6(a) (Supp. 2019). Further, the commissioner is permitted to issue an administrative order imposing “a monetary penalty of up to \$10,000 for each violation of applicable law committed by the person.” *Id.*, subd. 7(a) (2018).

Application of Statute to Commissioner’s Findings

Relators argue they are not required to separately possess an RBC license because of their joint venture with ABC. Relators argue in the alternative they qualify for the following two exemptions:

The license requirement does not apply to:

(1) an employee of a licensee performing work for the licensee;

. . . .

(3) an owner of residential real estate who builds or improves any structure on residential real estate, if the building or improving is performed by the owner’s bona fide employees or by individual owners personally. This exemption does not apply to an owner who constructs or improves property for purposes of speculation if the building or improving is performed by the owner’s bona fide employees or by individual owners personally. A residential building contractor or residential remodeler will be presumed to be building or improving for purposes of speculation if the contractor or remodeler constructs or improves more than one property within any 24-month period[.]

Minn. Stat. § 326B.805, subd. 6.

“The interpretation of a statute is a question of law that [appellate courts] review de novo.” *See Cocchiarella v. Driggs*, 884 N.W.2d 621, 624 (Minn. 2016). “The goal of all statutory interpretation is to determine legislative intent. Every law shall be construed, if

possible, to give effect to all its provisions.” *Jackson v. Comm’r of Human Servs.*, 933 N.W.2d 408, 414 (Minn. 2019) (quotation and citation omitted). “If the meaning of a statute is unambiguous, [appellate courts] interpret the statute’s text according to its plain language.” *See Brua v. Minn. Joint Underwriting Ass’n*, 778 N.W.2d 294, 300 (Minn. 2010).

Relators acknowledge that the work they performed requires an RBC license, but relators argue that their creation of a joint venture with ABC, which does possess an RBC license, supports a conclusion that they complied with the licensure requirements in Minn. Stat. § 326B.805. Alternatively, relators contend that they meet two exemptions to the RBC licensure requirements. The plain language of the statute compels our disagreement.

As a preliminary point—which is critical to our analysis—we need not determine whether, as a matter of law, relators successfully created a joint venture. This is true for three reasons. First, and most notably, whether relators successfully created a joint venture is not an essential determination when considering whether they violated the licensing statute and whether the commissioner’s order properly concluded that such a violation occurred. Relators’ behavior of acting and holding out as being licensed is the issue before us. Second, a joint venture is not listed among the ten statutorily created exemptions to the license requirements. *See* Minn. Stat. § 326B.805, subd. 6. Third, whether a joint venture exists is more typically considered in the context of whether it is necessary to impute negligence among those involved in a joint venture whom otherwise have no legal relationship. *Beehner v. Cragun Corp.*, 636 N.W.2d 821, 832 (Minn. App. 2001) (“[T]he joint venture or joint enterprise doctrine [applies] when [it is] necessary to impute

negligence between two entities that otherwise have no legal relationship.” (quotation omitted)), *review denied* (Minn. Feb. 28, 2002). This case does not involve imputing negligence to the relators but instead it is strictly a matter of licensure requirements and whether the commissioner properly concluded that relators failed to meet these requirements.

The commissioner found that relators “were not licensed in any capacity” when engaging in work that required licensure pursuant to Minn. Stat. § 326B.805, and yet still contracted with homeowners to perform this type of work. Relators’ assertion that their joint venture with ABC, as a matter of law, results in their compliance with the licensure requirements of Minn. Stat. § 326B.805, lacks merit. As we have explained, completing such work via a joint venture is not among the list provided by the legislature as exemptions from licensure, *see* Minn. Stat. § 326B.805, subd. 6, and we cannot add words into the statute such as an exemption, *see Christiansen v. Univ. of Minn. Bd. of Regents*, 733 N.W.2d 156, 159 (Minn. App. 2007) (“[T]his court cannot add to a statute what the legislature has either purposefully omitted or inadvertently overlooked.”), *review denied* (Minn. Aug. 21, 2007).

Despite the purported creation of a joint venture, the commissioner found that neither Wazwaz, ACI, nor A & K possessed a license while acting or holding out as an RBC. In particular, the commissioner found that Wazwaz negotiated and entered into contracts with homeowners and that he used the ACI name on many of the contracts. Also, the commissioner noted that the customers believed Wazwaz was the primary person responsible for their projects rather than ABC. Moreover, the commissioner explained that

Wazwaz registered A & K as a business using ACI's address, identified only himself as the owner of A & K, and listed his own name and email on contracts. Wazwaz controlled the A & K bank account, filed actions when homeowners failed to pay, and signed those claims as head of the company. The commissioner found that these actions established that relators were acting as licensed contractors. Although Wazwaz relies on his own testimony that he never held himself out as an RBC, the commissioner found him not credible. We defer to credibility determinations made at a contested hearing. *See In re License of Thompson*, 935 N.W.2d 147, 156 (Minn. App. 2019), *review denied* (Minn. Dec. 17, 2019).

Relators alternatively claim they fit two of the statute's exemptions. Specifically, relators contend that they were: (1) a *bona fide* employee of an owner of real estate performing work; and (2) an employee of a licensee performing work for a licensee. *See* Minn. Stat. § 326B.805, subd. 6(1), (3). The commissioner concluded that relators failed to meet these exemptions. We agree.

First, relators do not establish they were *bona fide* employees of an owner of the real estate performing work. Relators entered into contracts with homeowners to perform work following storm damage. Rather than creating an employee-employer relationship, relators were independent contractors operating under a part of a contractual obligation to perform work. Accordingly, relators fail to qualify under the *bona-fide*-employee exception.³

³ Relators also rely on Minn. Stat. § 181.723 (2018) as a basis for their argument that they were *bona fide* employees of the homeowners. This provision is inapplicable based on its

Next, relators rely upon the testimony of Wazwaz during the contested hearing to argue the presence of an employee-employer relationship with ABC exemption to the licensure requirements. As noted above, the commissioner found Wazwaz not credible, and we will defer to that determination. *Thompson*, 935 N.W.2d at 156.

Therefore, relators fail to show that they meet an exemption to the licensure requirements, pursuant to Minn. Stat. § 326B.805, subd. 6(1), (3).

D E C I S I O N

A person who holds out as being licensed to perform work without a license, as required by Minn. Stat. § 326B.805, and who did not otherwise qualify for an exemption from licensure set forth in Minn. Stat. § 326B.805, subd. 6, is not in compliance with the statute despite the creation of a joint venture. Therefore, the commissioner did not exceed her statutory authority by imposing penalties based on the statutory language and the facts of this case. We affirm the commissioner's order imposing penalties against the relators for violating the licensure requirements.

Affirmed.

plain language that it applies “for purposes of chapters 176, 177, 181A, 182, and 268.” Minn. Stat. § 181.723, subd. 3.