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Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A24-0716**

In the Matter of the Real Estate Salesperson License of Cheryl L. Pumper, No. 40421136.

**Filed June 2, 2025
Affirmed
Cochran, Judge**

Minnesota Department of Commerce
File No. 71-1005-38872

Cheryl Pumper, Stillwater, Minnesota (pro se relator)

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

Considered and decided by Larson, Presiding Judge; Cochran, Judge; and Slieter,
Judge.

NONPRECEDENTIAL OPINION

COCHRAN, Judge

Relator argues that respondent-commissioner's decision to censure and suspend her real estate license is not supported by substantial evidence and is the result of arbitrary or capricious decision-making. We affirm.

FACTS

Relator Cheryl L. Pumper became a licensed real estate salesperson in 2015 and since then has held several different real estate salesperson licenses issued by respondent Minnesota Department of Commerce. In 2022, the department informed Pumper that it

was “investigating [her] responses to questions on [her] applications” for real estate licensure. Before discussing the details of the investigation and the resulting disciplinary action against her license, we first discuss the regulatory framework for real estate licensure in Minnesota.

Regulatory Framework

Minnesota Statutes sections 82.55 to 82.89 (2024) contain regulations for real estate brokers and salespersons. A “real estate salesperson” is “one who acts on behalf of a real estate broker in performing any act authorized by . . . chapter [82] to be performed by the broker.” Minn. Stat. § 82.55, subd. 20. A “real estate broker” is a person who “directly or indirectly lists, sells, exchanges, buys or rents, manages, or offers or attempts to negotiate a sale, option, exchange, purchase or rental of an interest or estate in real estate, or advertises or holds out as engaged in these activities.” Minn. Stat. § 82.55, subd. 19(a).

Chapter 82 provides for the licensing of salespersons and brokers by the department. Minn. Stat. §§ 82.58-.63. “A salesperson must be licensed to act on behalf of a licensed broker and may not be licensed to act on behalf of more than one broker in this state during the same period of time.” Minn. Stat. § 82.63, subd. 4. “When a salesperson terminates activity on behalf of a broker, the salesperson’s license shall be ineffective.” *Id.*, subd. 6. The salesperson may then apply for the transfer of their license to another broker or file an application for a new license. *Id.*

Applicants for salesperson licensure “shall make an application in the format prescribed by the commissioner [of commerce].” Minn. Stat. § 82.58, subd. 2(a); *see also* Minn. Stat. § 82.55, subd. 5 (defining “commissioner” as the commissioner of commerce).

The application must include “the applicant’s legal name, age, residence address, and the name and place of business of the real estate broker on whose behalf the salesperson is to be acting” and “such further information as the commissioner deems appropriate to administer the provisions and further the purposes of . . . chapter [82].” Minn. Stat. § 82.58, subd. 2(c)-(d).

In general, the commissioner can investigate violations of “any law, rule, or order related to the duties and responsibilities entrusted to the commissioner.” Minn. Stat. § 45.027, subd. 1(1) (2024). The commissioner’s duties and responsibilities include the administration of chapter 82. Minn. Stat. § 45.011, subds. 1, 4 (2024). Salesperson licensees are required to comply with the commissioner’s “requests for information, documents, or other requests.” Minn. Stat. § 45.027, subd. 1a (2024).

The commissioner may take action against a real estate licensee, including suspending or censuring the licensee, when the licensee “has provided false, misleading, or incomplete information to the commissioner” or has engaged in “an act or practice” that demonstrates that the licensee is “untrustworthy, financially irresponsible, or otherwise incompetent or unqualified to act under the authority or license granted by the commissioner.” Minn. Stat. § 45.027, subd. 7(a)(3)-(4) (2024); *see also* Minn. Stat. § 82.82, subd. 1(a), (f). Before acting against a licensee, the commissioner must “issue an order requiring [the] licensee . . . to show cause why the license should not be revoked or suspended, or the licensee censured.” Minn. Stat. § 45.027, subd. 7(b)(1) (2024). The order must also provide a licensee the opportunity to request a contested-case hearing. *Id.*

Investigation and Hearing

The department's 2022 investigation concerned Pumper's initial license application in 2015 and four subsequent applications that she made with three different brokers between 2015 and 2021. The investigation focused on whether Pumper falsely represented in each application that she did not have any money judgments against her. After informing Pumper of the investigation, the department collected information from Pumper and other sources that showed Pumper had at least seven unsatisfied civil judgments against her for overdue monies since 2012.

In November 2022, the department ordered Pumper to show cause why her license should not be suspended and censured for "fraudulent, dishonest, and deceptive practices by making material misstatements in five license applications" and engaging "in acts and practices demonstrating that she is untrustworthy, financially irresponsible, or otherwise incompetent or unqualified to act under the authority or license granted by the commissioner." Pumper requested a hearing to contest the order.

A contested-case hearing was held before an administrative law judge (ALJ). The department appeared by counsel and Pumper represented herself. During the hearing, the ALJ heard testimony from the department's investigator and Pumper. The investigator testified that Pumper provided false information on her applications and was uncooperative during the investigation. Pumper testified that brokers who she worked for, not Pumper, were responsible for the answers on her applications. Pumper also asserted that the application question about money judgments concerned only business-related judgments, and so she was not required to disclose judgments based on personal debt in the application.

The ALJ received 60 exhibits offered by the department, which included Pumper's licensing applications, records related to the judgments against Pumper, and emails between Pumper and the investigator. Pumper did not offer any exhibits or call any witnesses other than herself.

ALJ's Recommendation and Commissioner's Final Order

Following the hearing, the ALJ filed the Findings of Fact, Conclusions of Law, and Recommendation (the report) in which she recommended that the commissioner impose the sanctions contemplated in the order to show cause. Based on the evidence at the contested-case hearing, the ALJ concluded that the department showed that Pumper provided "false, misleading, and incomplete information on five license applications" when she denied on each application that she had any judgments rendered against her.

In support of that conclusion, the ALJ found the following facts. Pumper submitted five applications for salesperson licensure between 2015 and 2021 through four different brokers, and the department approved each application. Each application included this question: "Has any judgment been rendered *against you* or any business in which you are or were an owner, partner, officer, director, or member or manager of limited liability company, for overdue monies[,] or [h]ave you ever been subject to a bankruptcy proceeding?" (Emphasis added.) Pumper answered "no" to the question on each of her five applications.

In 2022, a department investigator discovered, through publicly available information, that there were seven outstanding judgments against Pumper related to her personal credit-card debt. The date of entry for the judgments ranged from 2012 through

2021, meaning that Pumper had outstanding judgments against her at the time she completed each license application.

After notifying Pumper of the investigation, the investigator requested that Pumper confirm that the judgments were indeed against her, provide a “written plan for resolving the judgments,” and explain why she responded “no” to the question about judgments on her applications. In the following weeks, Pumper and the investigator exchanged dozens of emails, in which Pumper never directly answered the investigator’s inquiries. Eventually, Pumper provided the information requested by the investigator. Pumper admitted that the judgments “appeared to have been issued against her.” Regarding her applications, Pumper asserted that brokers had submitted them on her behalf and that she therefore never misrepresented anything. Pumper also contended that judgments for personal-credit-card debt could not be used to disqualify an applicant for real-estate licensure.

After receiving Pumper’s response, the investigator contacted three of Pumper’s former brokers. The first broker explained that “the salesperson entered information themselves into a computer set up to show that person’s application.” The first broker told the investigator that “if false answers were submitted, it was based on information [Pumper] provided.” The second broker stated that his firm’s standard practice for salesperson-license applications was to hold “closed-door session[s]” between a managing broker and the applicant, where both the managing broker and applicant sat in front of identical screens displaying the application. The managing broker then read the questions aloud and typed the applicant’s answers into the application. Through the mirrored screens,

the applicant could read through the responses as the broker input them. The third broker told the investigator that he had “no negative responses from [Pumper]” and that he “didn’t put anything incorrect on her application.”

In the report, the ALJ specifically found Pumper’s testimony that she never answered any of the application questions herself because the license applications were submitted by her brokers to be not credible. The ALJ noted that the applications included fields for salesperson-specific information like Pumper’s social security number, date of birth, and home address. The ALJ also relied on evidence from the investigator relating to the practices of the brokers with whom Pumper submitted applications including that the standard practice of two of the brokers was to have the applicant enter the information themselves or to have the broker enter the information after reading the questions and obtaining responses from the applicant. Based on this evidence, the ALJ determined that Pumper “was responsible for the information in her licensing application.”

The ALJ also rejected Pumper’s argument “that the [d]epartment does not have authority to discipline her license due to judgments for personal credit card debt.” The ALJ noted that Pumper’s outstanding judgments spoke to legitimate concerns about whether she was “financially responsible,” which the department could consider when taking actions against licensees. *See* Minn. Stat. §§ 45.027, subd. 7(a)(4), 82.82, subd. 1(f). The ALJ therefore determined that the department established that Pumper engaged in practices warranting action against her license.

The commissioner, through a delegated decision-maker, adopted the ALJ’s findings of fact and conclusions of law in their entirety in a written order. Based on the ALJ’s

findings of fact and conclusions of law, the commissioner ordered Pumper’s license to be censured and suspended for 45 days or until Pumper provides satisfactory proof that her outstanding judgments have been satisfied, whichever is longer. The commissioner explained the reasons for the decision in a memorandum attached to the order.

This certiorari appeal follows.

DECISION

On review of a final agency decision in a contested case, we may affirm the decision or remand for further proceedings. Minn. Stat. § 14.69 (2024). We may also reverse or modify the decision, but only “if the substantial rights of the petitioners may have been prejudiced.” *Id.* Review of the decision is limited to whether the decision was: (a) unconstitutional; (b) in excess of the agency’s statutory authority or jurisdiction; (c) the result of unlawful procedure; (d) affected by legal error; (e) unsupported by substantial evidence; or (f) arbitrary or capricious. *Id.* “The relator has the burden of proof when appealing an agency decision.” *In re Excelsior Energy, Inc.*, 782 N.W.2d 282, 289 (Minn. App. 2010). The decision of an administrative agency is presumptively correct. *Anoka County v. L. Enft Lab. Servs., Inc.*, 3 N.W.3d 586, 591 (Minn. 2024).

Pumper challenges the commissioner’s decision to censure and suspend her license. Pumper asserts that she “did not misrepresent any information” on the license applications submitted to the department by brokers on her behalf. Pumper also contends that the commissioner’s decision was “unprecedented” and based on an “unlawful motive” because

“personal credit card debt is not grounds for actions against [her] license.” We address her arguments in turn.¹

I. The commissioner’s decision is supported by substantial evidence.

Pumper first asserts that there is no evidence that she made any misrepresentation on her license applications. We construe Pumper’s argument to be that substantial evidence does not support the commissioner’s decision to impose discipline on her current license based on answers that she provided for license applications submitted to the department. *See* Minn. Stat. § 14.69(e). The department counters that the record “amply supports the conclusion that Pumper provided false information on all five license applications.” We conclude that substantial evidence supports the commissioner’s decision.

“[S]ubstantial evidence is relevant evidence that a reasonable mind might accept as adequate to support a conclusion, and more than a scintilla, some, or any evidence.” *In re NorthMet Project Permit to Mine Application*, 959 N.W.2d 731, 749 (Minn. 2021) (quotations omitted). To determine whether an agency decision is supported by substantial evidence, we assess “whether the agency has adequately explained how it derived its conclusion and whether that conclusion is reasonable on the basis of the record.” *Id.*

¹ Pumper also asserts that the department failed to provide her with information that she requested during the investigation. This assertion is unsupported by argument, law, or citation to the record. And Pumper points to no specific piece of information that she was denied access to during the investigation. Nor does she explain how she was prejudiced. As such, this argument is forfeited. *See Schoepke v. Alexander Smith & Sons Carpet Co.*, 187 N.W.2d 133, 135 (Minn. 1971) (“An assignment of error based on mere assertion and not supported by any argument or authorities in appellant’s brief is waived and will not be considered on appeal unless prejudicial error is obvious on mere inspection.”).

(quotation omitted). “If an agency engaged in reasoned decision-making, a reviewing court will affirm, even though it may have reached a different conclusion than the agency.” *Pomrenke v. Comm’r of Commerce*, 677 N.W.2d 85, 94 (Minn. App. 2004), *rev. denied* (Minn. May 26, 2004). “The agency’s factual findings must be viewed in the light most favorable to the agency’s decision and shall not be reversed if the evidence reasonably sustains them.” *Bd. Ord., Kells (BWSR) v. City of Rochester*, 597 N.W.2d 332, 336 (Minn. App. 1999). Lastly, we defer to an ALJ’s credibility determinations. *State by Cooper v. Moorhead State Univ.*, 455 N.W.2d 79, 83 (Minn. App. 1990).

In the order suspending and censuring Pumper’s salesperson license, the commissioner agreed with the ALJ that the record supports suspension and censure of Pumper’s license. In reaching this conclusion, the commissioner adopted the ALJ’s findings of fact. Those factual findings include that Pumper responded “No” on each of her five license applications to the question of whether she had any money judgments rendered against her. The findings also include that public records show Pumper had judgments against her for personal debts at the time she submitted each of her applications. And, in a memorandum attached to the order, the commissioner emphasized that the record reflects that Pumper “was the source of the information provided in the applications.” The commissioner also determined that “[t]he record clearly establishes that the inaccurate answers on five license applications show that [Pumper] has engaged in fraudulent, dishonest, and deceptive practices under Minnesota statutes.” And the commissioner concluded that the record “establishes that . . . [Pumper] is untrustworthy, financially

irresponsible, or otherwise incompetent and/or unqualified to act under the license.” As a result, the commissioner decided to discipline Pumper’s license.

We conclude that the commissioner’s decision is supported by substantial evidence. First, the commissioner adequately explained the reasons for the decision. Second, there is ample evidence in the record to support the determination that Pumper provided false information on her five license applications. That evidence includes the investigator’s testimony that applicants are typically involved in the application process and that it would be “inappropriate” for a broker to submit an application on behalf of a salesperson “without ever getting information from the salesperson.” The record also contains evidence of the practices of brokers who submitted applications for Pumper. Three brokers who worked with Pumper told the investigator that Pumper provided the information contained in her applications directly to them. The investigator also testified that she “found the brokers to be more reliable” than Pumper regarding application procedure. In all, this evidence provides a reasonable basis for the commissioner’s decision. *See In re NorthMet*, 959 N.W.2d at 749 (providing the substantial-evidence standard).

The only evidence supporting Pumper’s position is her own testimony. But both the ALJ and commissioner credited the investigator’s testimony over Pumper’s testimony, and we must defer to the agency’s credibility determinations. *See Cooper*, 455 N.W.2d at 83. We therefore conclude that the commissioner’s decision to discipline Pumper’s license is supported by substantial evidence.

II. The commissioner's decision is not arbitrary or capricious.

Next, Pumper asserts that the “action against her was unprecedented,” seemingly because “[p]ersonal credit card debt is not grounds for actions against [her] license.” We construe Pumper’s argument to be that the commissioner’s decision was arbitrary or capricious. *See* Minn. Stat. § 14.69(f). A decision is arbitrary or capricious if the agency “relied on factors not intended by the legislature,” “entirely failed to consider an important aspect of the problem,” or “offered an explanation that runs counter to the evidence.” *In re Rev. of 2005 Ann. Automatic Adjustment of Charges*, 768 N.W.2d 112, 118 (Minn. 2009) (quotations omitted). An agency’s decision is also arbitrary or capricious “if it represents the agency’s will and not its judgment” or it “is so implausible that it could not be explained as a difference in view or the result of the agency’s expertise.” *Id.* (quotation omitted).

To the extent that Pumper argues the commissioner’s decision is arbitrary or capricious because it was “unprecedented,” her argument is unavailing. Pumper asserts that both the investigator and the commissioner’s attorney admitted that the action against Pumper was unprecedented. But we discern no such concession in the record. The investigator merely testified that she could not recall investigating another licensee based on undisclosed personal credit-card debt but added that she is “not the only investigator that handles these types of investigations.” The department also cites several administrative orders that involved discipline against a real estate salesperson licensee for unsatisfied personal judgments. *See, e.g., In re Real Est. License of Jokhoo*, No. 7-1005-

21089-2, 2010 WL 5574243, at *1, 9-10 (Dec. 8, 2010).² Accordingly, there is no factual or legal support for Pumper’s assertion that this investigation was “unprecedented.” And, even if the investigation was “unprecedented,” that fact alone does not lead to the conclusion that the commissioner’s decision was arbitrary or capricious. *See In re Rev. of 2005 Ann. Automatic Adjustment of Charges*, 768 N.W.2d at 118 (providing bases for determining an agency decision to be arbitrary or capricious, none of which are that the decision was unprecedented).

Pumper’s assertion that a licensee’s personal credit-card debt is not a valid basis for disciplining a licensee is similarly unpersuasive. As noted above, the question on the license application reads as follows: “Has any judgment been rendered *against you* or any business in which you are or were an owner, partner, officer, director, or member or manager of limited liability company, for overdue monies[,] or [h]ave you ever been subject to a bankruptcy proceeding?” (Emphasis added.) This question required Pumper to disclose judgments against her personally because it asks the applicant about any judgment “against you.” The commissioner has the authority to ask this question of license applicants. *See* Minn. Stat. § 82.58, subd. 2(d). And the commissioner may take action against a licensee who “has engaged in an act or practice, *whether or not the act or practice directly involves the business for which the person is licensed or authorized*, which

² While not binding authority, this administrative order demonstrates that, contrary to Pumper’s assertion, actions against real-estate licensees for unsatisfied personal judgments are not “unprecedented.”

demonstrates that the applicant or licensee is . . . financially irresponsible.” Minn. Stat. § 45.027, subd. 7(a)(4) (emphasis added).

In addition, as the investigator testified, “[i]t is imperative that real estate licensees . . . can show the public that they are financially responsible.” It is common knowledge that real estate salespeople play an important role in one of the most critical financial decisions of many people’s lives—buying a home. It is neither arbitrary nor capricious for the commissioner to hold Pumper to a necessary standard of financial responsibility and honesty in her role as a real estate salesperson.

In conclusion, the commissioner’s decision to discipline Pumper by suspending and censuring her license is supported by substantial evidence and not arbitrary or capricious.

Affirmed.