SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-2045-21

STATE OF NEW JERSEY
DEPARTMENT OF
COMMUNITY AFFAIRS,

Petitioner-Respondent,

v.

HOSSEIN AMERI,

Respondent-Appellant.

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Submitted February 6, 2023 – Decided February 27, 2023

Before Judges Haas and Gooden Brown.

On appeal from the New Jersey Department of Community Affairs, Docket No. 200200.

Ameri and Associates, LLC, attorneys for appellant (Nima Ameri, on the briefs).

Matthew J. Platkin, Attorney General, attorney for respondent (Sookie Bae-Park, Assistant Attorney General, of counsel; Steven M. Gleeson, Deputy Attorney General, on the brief).

PER CURIAM

Hossein Ameri appeals from a February 1, 2022 determination of the Department of Community Affairs (DCA), rejecting as untimely his request for an administrative hearing. Ameri sought a hearing to challenge a "Notice of Statutory Violation and Order to Pay Penalty" issued November 12, 2021, which alleged that Ameri had failed to comply with prior orders requiring him to correct various building violations at his multiple dwelling property in Paterson. We affirm.

Ameri's three-unit multiple dwelling was inspected by the DCA's Bureau of Housing Inspection (Bureau) on October 21, 2019. On October 29, 2019, the DCA issued an inspection report and order setting forth several violations of the Hotel and Multiple Dwelling Law, N.J.S.A. 55:13A-1 to -31, and assessed Ameri an inspection fee. The report and order required the violations to be corrected by December 28, 2019.

The Bureau re-inspected the premises on November 9, 2021, and determined that some of the violations set forth in its October 2019 report and order had not been abated. In addition, the inspection fee and associated penalty for non-payment had not been paid. Consequently, on November 12, 2021, the Bureau issued a "Notice of Statutory Violation and Order to Pay Penalty" to

Ameri for his failure to comply with the October 2019 report and order. The notice provided, in pertinent part:

> YOU MAY CONTEST THESE ORDERS at an administrative hearing. Request must be made in writing within [fifteen] days of receipt of these ORDERS and must set forth in detail each issue, factual, legal, or procedural, intended to be raised. Any issue not so raised shall be deemed waived. . . . Requests may be emailed . . . , faxed . . . or mailed to [the] Division of Codes and Standards.

In a letter dated December 14, 2021, and postmarked January 18, 2022, Ameri requested a hearing to challenge the November 12, 2021 notice. In his letter, Ameri stated that he did not receive the notice until November 26, 2021. By letter dated February 1, 2022, the DCA denied Ameri's "application for an administrative hearing" because it was not "filed within the . . . time period established by law." The DCA explained that the "pertinent statute and administrative law provides that application for such hearing must be filed with the Commissioner within [fifteen] days of the receipt by the applicant . . . of the Notice of Orders." Because Ameri's request was not received until January 18, 2022, well beyond the fifteen-day deadline, the DCA determined that it was untimely. This appeal followed.

On appeal, Ameri reiterates he never received the notice "until November 26, 2021, even though the Notice/Order was dated November 12, 2021." Ameri

attributes DCA's delayed receipt of the request for a hearing to "the unreliability of the mail," as well as to the fact that he is "in his early [eighties]" and "dealing with health[-]related issues at the time." He asserts that under the circumstances, the agency's decision was "arbitrary, unreasonable and capricious."[1]

We begin our analysis with the established principle that judicial review of an administrative agency decision is limited. In re Stallworth, 208 N.J. 182, 194 (2011). "Deference is appropriate because of the 'expertise and superior knowledge' of agencies in their specialized fields . . . ." In re License Issued to Zahl, 186 N.J. 341, 353 (2006) (quoting Greenwood v. State Police Training Ctr., 127 N.J. 500, 513 (1992)). Therefore, we will not reverse an agency's decision ""unless there is a clear showing that it is arbitrary, capricious, or unreasonable, or that it lacks fair support in the record."" J.K. v. N.J. State Parole Bd., 247 N.J. 120, 135 (2021) (quoting Saccone v. Bd. of Trs. of the Police & Firemen's Ret. Sys., 219 N.J. 369, 380 (2014)).

[1] In his reply brief, Ameri argues for the first time that he "was not afforded procedural due process." However, "[r]aising an issue for the first time in a reply brief is improper," Borough of Berlin v. Remington & Vernick Eng'rs, 337 N.J. Super. 590, 596 (App. Div. 2001), and we therefore decline to consider the argument.

In determining whether the agency's decision is arbitrary, capricious, or unreasonable, we must examine:

> (1) whether the agency's decision offends the State or Federal Constitution;
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> (2) whether the agency's action violates express or implied legislative policies;
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> (3) whether the record contains substantial evidence to support the findings on which the agency based its action; and
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> (4) whether in applying the legislative policies to the facts, the agency clearly erred in reaching a conclusion that could not reasonably have been made on a showing of the relevant factors.
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> [In re Taylor, 158 N.J. 644, 656 (1999) (quoting Brady v. Bd. of Rev., 152 N.J. 197, 211 (1997)).]

"The burden of proving that an agency action is arbitrary, capricious, or unreasonable is on the challenger." Parsells v. Bd. of Educ., 472 N.J. Super. 369, 376 (App. Div. 2022). Furthermore, while we will not ""substitute [our] own judgment for the agency's,"" we are "in no way bound by [an] agency's interpretation of a statute or its determination of a strictly legal issue." Allstars Auto Grp., Inc. v. N.J. Motor Vehicle Comm'n, 234 N.J. 150, 158 (2018) (second alteration in original) (first quoting Stallworth, 208 N.J. at 194; and then quoting

Dep't of Child. & Fams., Div. of Youth & Fam. Servs. v. T.B., 207 N.J. 294, 302 (2011)).

In rendering its decision, the DCA relied on N.J.S.A. 55:13A-18, which provides, in pertinent part, that a person aggrieved by any action or ruling of the DCA is "entitled to a hearing" and that

> [t]he application for such hearing must be filed with the commissioner within [fifteen] days of the receipt by the applicant . . . of notice of the . . . order or notice complained of. No such hearing shall be held except upon [fifteen-]days' written notice to all interested parties.
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> [N.J.S.A. 55:13A-18.]

We have previously acknowledged that the DCA is "without authority to entertain a request for a hearing not submitted in accord with the time period established by the statute." State, Dep't of Cmty. Affs. v. Wertheimer, 177 N.J. Super. 595, 599 (App. Div. 1980).

Applying these principles, we conclude that the DCA's decision is supported by sufficient credible evidence in the record. Indeed, Ameri does not dispute that his request for a hearing was untimely. Instead, he asserts that the delay was "minimal." However, "considering the proofs as a whole," we are satisfied that the agency's decision was neither arbitrary, capricious, nor unreasonable. Burris v. Police Dep't, 338 N.J. Super. 493, 496 (App. Div. 2001).

Affirmed.

I hereby certify that the foregoing
is a true copy of the original on
file in my office.

CLERK OF THE APPELLATE DIVISION