2019 IL App (1st) 181498-U

No. 1-18-1498

Order filed May 28, 2019

Second Division

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

ROBERT SHER, Plaintiff-Appellant, v. DIVISION OF REAL ESTATE OF THE ILLINOIS, DEPARTMENT OF FINANCIAL AND PROFESSIONAL REGULATION; and KREG ALLISON, Director of the Division. Defendants-Appellees.	)	Appeal from the Circuit Court Of Cook County, Illinois, County Department, Chancery Division No. 16 CH 15179 Honorable Diane J. Larsen, Judge, presiding.

PRESIDING JUSTICE MASON delivered the judgment of the court.
Justices Pucinski and Hyman concurred in the judgment.

ORDER

¶ 1 *Held*: Department properly proceeded with formal administrative hearing despite the failure of plaintiff's counsel to appear; evidence supported findings that plaintiff violated numerous provisions of the Real Estate License Act and its implementing regulations; discipline imposed by Department was not excessive.

¶ 2 Robert Sher appeals an order of the circuit court of Cook County affirming a decision of the Illinois Department of Financial and Professional Regulation that sanctioned him for

violations of the Real Estate License Act (225 ILCS 454/1-1, *et seq.* (West 2012)) and its regulations. We likewise affirm.

¶ 3 The Department first brought an administrative complaint against Sher, a licensed leasing agent, in July 2013. In addition to Sher, the Department's complaint named Sher's employer, Shaw Real Estate Group, and Anne Shaw, a licensed managing real estate broker and attorney. Jack Shaw, a licensed real estate broker who is Sher's father-in-law and Anne Shaw's father, was later added as a respondent. As described in more detail below, the Department charged respondents with violations of the Act and its implementing regulations in connection with services rendered to individuals seeking rental units.

¶ 4 As their initial response to the complaint, respondents requested a "pre-hearing conference." In their motion, respondents sought, without filing an answer, to persuade the Department that their "unique business model" was not subject to regulation under the Act and argued that the facts alleged in the Department's complaint were untrue. Instead, respondents were ordered to file a motion to dismiss, answer the complaint, or be held in default. Respondents then moved to dismiss, setting forth arguments raised in the motion for a pre-hearing conference. No briefing schedule was set on the motion. Separately, in a letter on Shaw Real Estate Group stationery, Sher complained to the Department that one of its investigators was treating him unfairly.

¶ 5 When the Department filed a 27-count amended administrative complaint in December 2013, respondents again moved to dismiss, a pleading that was verified by Sher. Although Jack Shaw had represented that he could not respond to certain of the investigator's requests for information regarding clients because of the sensitive nature of the information clients provided on their applications, the motion to dismiss attached client applications containing social security

and driver's license numbers, as well as the client's financial information.[1] On May 8, 2014, the motion to dismiss was denied. Respondents thereafter answered and the parties engaged in discovery.

¶ 6 In September 2015, the Department filed a second amended administrative complaint charging respondents in 31 counts with various violations related to services rendered to clients and respondents' conduct in refusing to cooperate in the Department's investigation. The matter did not go to formal hearing until March 2016.

¶ 7 During the pendency of the administrative proceedings, respondents collectively were represented at various times by three different lawyers: Shaw Legal Services (of which respondent Anne Shaw, and Justina De Grado and Caryn Shaw[2], two attorneys who appeared on respondents' behalf, are or were members), Robert Orman, and Myron Mackoff. Shaw Legal Services represented respondents throughout the proceedings; Orman and Mackoff appeared in succession as additional counsel for respondents.

¶ 8 All of the attorneys who appeared for respondents sought and obtained multiple extensions of time. The matter was initially set for formal hearing on November 12, 2014. Orman appeared as additional counsel for all respondents on September 29, 2014. At Orman's request, the hearing date was stricken and after multiple continuances and orders for respondents to tender discovery, Orman withdrew on March 15, 2015. A short time later, after the Department had filed a motion for discovery sanctions against respondents, Mackoff sought leave to appear for all respondents. The case was continued on multiple occasions and, as noted,

[1] By separate order, we have directed the parties to remove this information from the public record.

[2] The record does not reflect the relationship between Caryn Shaw and the Shaw respondents, but we assume it exists.

the Department filed its second amended complaint in September 2015. A further discovery order was entered on December 1, 2015, and on the same date, the matter was set for formal hearing to commence on March 30, 2016. Mackoff moved to withdraw for all respondents except Anne Shaw on March 22, 2016, eight days before the formal hearing. Mackoff's motion to withdraw attached his own affidavit that averred that the remaining respondents, including Sher, "no longer wanted the law firm of Richardson & Mackoff to represent them."

¶ 9 At the formal hearing, Sher was the only respondent who appeared. Mackoff, who had negotiated a consent decree between the Department and Anne Shaw, showed up to hand Sher the file of discovery.[3] Mackoff also informed the ALJ that Orman, who had previously withdrawn, was going to appear for Jack Shaw, but was delayed at another hearing. When Orman arrived, he informed the ALJ that he had intended to appear for Jack Shaw, but "forgot" that he had previously appeared for all respondents and so his appearance on behalf of only one of them would create a conflict. ("I was a little slow. I forget about it.") After Orman informed the ALJ that he was not prepared to try the case in any event, the ALJ noted that Shaw Legal Services had been counsel of record for all respondents throughout the proceedings and asked Orman whether he wanted to contact the firm. Orman informed the ALJ that De Grado had left the firm, the firm was still in existence, but he had no "good contact number." Orman claimed he was "finding out for the first time" that Shaw Legal Services had not appeared and since he could not appear for Jack Shaw, "if it's your decision to go forward, so be it." Neither Orman nor Mackoff remained for the hearing.

[3] Pursuant to the consent decree, Anne Shaw's managing broker license was reprimanded due to her failure to supervise the activities of Sher and Jack Shaw and she agreed to cooperate with the Department and to testify, if necessary, regarding the activities of Sher and her father. The Department did not call her as a witness at the hearing.

¶ 10 At the outset of the hearing, the ALJ questioned Sher about the failure of Shaw Legal Services to appear. Sher confirmed that the firm was aware of the hearing date and it was his "understanding" the firm would not be appearing. The ALJ then explained how the hearing would proceed, including the presentation of opening statements, evidence, and closing arguments. The ALJ also explained that the Department had the burden to prove the allegations of its complaint by clear and convincing evidence. The ALJ then asked Sher if he had any questions about the process, to which Sher responded, "It sounds clear. Thank you." Before the hearing commenced, the ALJ asked Sher if he wanted to make one more attempt to contact Shaw Legal Services. Sher responded, "No, we can proceed." Sher never asked—either at the outset of or during the hearing—that it be postponed or adjourned without concluding due to his lack of representation.

¶ 11 The Department presented the testimony of four witnesses: two investigators and two former clients of Shaw Real Estate Group. Shaw Real Estate Group advertised on the internet as a service to locate rental units for individuals with "barriers to tenancy", including poor credit, past evictions, bankruptcies, or criminal histories. Although Shaw Real Estate Group maintained that its "unique business model" was not a "rental leasing service" regulated by the Department, the ALJ rejected this contention as do we. See 68 Ill. Admin. Code 1450.785(a)(1) (2016) (defining rental finding service as any business that finds, attempts to find, or offers to find, for any person who pays a fee, a rental unit not owned or leased by the business). An individual who contacted Shaw Real Estate Group would fill out an application and ultimately sign an agreement to pay for the firm's services. Fees charged to clients ranged from $880 to $1,380, and included an amount designated as the first month's rent for the unit Shaw Real Estate Group undertook to locate. Sher signed the majority of the agreements on behalf of Shaw Real Estate Group and

personally dealt with many of the firm's clients. Sher told both clients and the Department's investigators that he was the "manager" or the "managing broker" of Shaw Real Estate Group, although his leasing agent's license did not permit him to act as a manager or managing broker of the firm.

¶ 12 The agreements failed to include many disclosures required under the regulations, including (i) a statement requiring a refund of all fees paid if the contract between the client and Shaw Real Estate Group was null and void for any reason, (ii) the name, address, and telephone number of the owner or the owner's agent for each rental unit, (iii) a description of each unit, the utilities in the unit, and which utilities are included in the rent, and (iv) the occupancy date and term of the lease. See 60 Ill. Admin. Code, 1450.785(b)(6), (b)(8)-(9), (c)(1)-(2), and (c)(5)-(7) (2016). Further, although the fee schedule provided to Shaw Real Estate Group's clients described a "100% refundable maximum rental service fee," the investigators testified to many complaints regarding respondents' failure to locate suitable apartments or refund fees collected, including amounts designated as the first month's rent for rental units that Shaw Real Estate Group, through Sher, never provided.

¶ 13 The two former clients who appeared at the hearing testified that they dealt with Shaw Real Estate Group primarily through Sher. In one instance, the client told Sher she was looking for an apartment in Chicago's Rogers Park neighborhood, which would be convenient to her work and her children's schools, but the only unit Sher directed her to was in the Englewood neighborhood on Chicago's south side. When she complained to Sher and asked for her $1300 fee back, Sher refused a refund and insulted her. The other former client orally told Sher in her

application interview she had a past eviction and her husband had a criminal record.[4] Although that information was not disclosed on the application the client signed and questions about evictions and criminal background were marked "No," the firm continued to render services to this client despite a provision of the contract that allowed the firm to discontinue services if the client failed to disclose unfavorable information. Even after the firm obtained a credit report showing the unfavorable information, Sher told this client to drive around and attempt to locate properties herself. When she eventually located an apartment through another rental service, Jack Shaw refused her request for a refund.

¶ 14 Over the course of the hearing, Sher cross-examined the Department's witnesses. Among other things, the ALJ explained to Sher how to lay a foundation for a document, what were proper bases for objections, and why the way he framed certain questions on cross-examination was improper. Sher declined to present any witnesses or other evidence after the Department rested. Although advised of his ability to do so by the ALJ, he also declined to be sworn and present an oral summary of his position in lieu of formal direct examination. Because Sher did not testify, he was not subject to cross-examination by the Department's counsel.

¶ 15 Sher presented closing argument in which he contended he was being unfairly "singled out" for conduct committed by other members of Shaw Real Estate Group. Despite his agreement that the hearing should go forward, including declining the ALJ's invitation to contact his lawyers, Sher argued,

[4] An attorney for respondents told one of the Department's investigators that Shaw Real Estate Group, with the clients' consent, videotaped client interviews. Despite discovery requests from the Department, those videotapes were never produced.

> "I was unprepared to be at this hearing, not that my preparation would matter much. I didn't have access to records. I didn't receive discovery reports until yesterday morning, when I began to try to defend myself, and I don't know the formal procedure.
>
> Counsel of record wasn't here to represent me, and had I known it was important for me to be on the witness stand, I would have done so, because I have nothing to hide. I don't mind answering questions."

Sher then proceeded to attempt to testify in closing argument, including making representations about Jack Shaw's health issues, the number of clients Sher successfully located apartments for, and his lack of authority to issue refunds to clients of Shaw Real Estate Group.

¶ 16 The ALJ issued his report and recommendation on July 8, 2016. As it relates to Sher, the report discussed each charge and found that the Department had established certain charges by clear and convincing evidence and that, as to other charges, the Department had either failed to submit any evidence or the evidence it did introduce was insufficient.[5] The ALJ found that Sher was an operator of a rental finding service given that he signed contracts with clients, decided their requests for a refund, was in charge of the firm when the licensed managing broker was not available, and answered questions on behalf of Shaw Real Estate Group during the Department's investigation. As an operator, the ALJ found that Sher was obligated to comply with regulations regarding what information must be supplied to clients and that the agreements entered into evidence failed to include most of the required disclosures. As a licensee, Sher was also obligated to act in a client's best interests and avoid unprofessional conduct, and the evidence

[5] As to a count alleging that Sher had refused a refund to one of Shaw Real Estate Group's clients, the ALJ clearly gave Sher the benefit of the doubt given that the firm did not refund the client's fees paid in November 2012 until after the Department had commenced the administrative proceedings in July 2013.

supported the conclusion that Sher's conduct in refusing client requests for refunds of fees when no suitable units were located violated these obligations. Based on the serious and repeated nature of Sher's conduct in relation to the charges deemed proven, the ALJ recommended (i) indefinite suspension of Sher's real estate leasing agent license for a minimum of 18 months, (ii) a fine of $5,000, and (iii) denial of Sher's pending application for licensure as a real estate broker.

¶ 17 The Department's Disciplinary Board issued its findings of fact and conclusions of law adopting the ALJ's recommendations on August 16, 2016. Sher, represented by new counsel, filed a motion for rehearing, largely focusing on his lack of representation at the hearing, but also contending that the Department's evidence was insufficient to prove the charges against him and the discipline imposed was excessive. Sher's motion for rehearing was denied on November 15, 2016.

¶ 18 Sher sought administrative review in the circuit court. The trial court affirmed the Department's findings of fact and conclusions of law regarding Sher's violations of the Act and failure to cooperate in the investigation, but ordered a limited remand to consider whether the sanctions imposed were excessive compared to those imposed on Anne Shaw pursuant to the Consent Decree. On remand, the ALJ issued a second report and recommendation to the Board finding that the sanctions were appropriate. The Board adopted the report and recommendations and later denied Sher's motion for rehearing. When the case again came before the trial court after remand, the sanctions against Sher were affirmed. Sher timely appealed.

¶ 19 In administrative review cases, we review the decision of the administrative agency, not the determination of the circuit court. *Exelon Corp. v. Department of Revenue*, 234 Ill. 2d 266, 272 (2009); *Ford Motor Co. & Affiliates v. Department of Revenue*, 2019 IL App (1st) 172663, ¶

40. "[T]he applicable standard of review depends upon whether the question presented is one of fact, one of law, or a mixed question of fact and law." *Cinkus v. Village of Stickney Municipal Officers Electoral Board,* 228 Ill. 2d 200, 210 (2008); see also *Engle v. Department of Financial and Professional Regulation*, 2018 IL App (1st) 162602, ¶ 29.

¶ 20 An administrative agency's findings of fact are deemed to be *prima facie* correct. 735 ILCS 5/3-110 (West 2016). A reviewing court should not substitute its judgment or reweigh the evidence in reviewing an agency's factual findings. *Cinkus*, 228 Ill. 2d at 210. Those findings will be reversed only if they are contrary to the manifest weight of the evidence. *Id.; Ford Motor Co*., 2019 IL App (1st) 172663, ¶ 42. A factual determination is against the manifest weight of the evidence only if the opposite conclusion is clearly evident. *Id.* Claimed errors in the admission of evidence at the administrative level are reviewed for an abuse of discretion. *Matos v. Cook County Sheriff's Merit Board*, 401 Ill. App. 3d 536, 541 (2010).

¶ 21 An agency's conclusions of law are reviewed *de novo*. *Ford Motor Co.*, 2019 IL App (1st) 172663, ¶ 41.

¶ 22 If the issue presented involves a mixed question of law and fact, then we review the agency's decision to determine whether it is "clearly erroneous." *Cerone v. State*, 2012 IL App (1st) 110214, ¶ 13. Mixed questions of law and fact involve "questions in which historical facts are admitted or established, the rule of law is undisputed, and the issue is whether the facts satisfy the statutory standard, or to put it another way, whether the rule of law as applied to the established facts is or is not violated." *Id.* ¶ 12 (quoting *Cinkus*, 228 Ill. 2d at 211) (internal quotations omitted); *Exelon Corp.* 234 Ill. 2d at 273. An administrative decision is clearly erroneous only when the reviewing court is left with "the definite and firm conviction" that a mistake has been committed. *Exelon Corp*., 234 Ill. 2d at 273.

¶ 23 We first note that Sher's brief fails to comply with Illinois Supreme Court Rule 341 (eff. Nov. 1, 2017) in several important respects. Although one of Sher's arguments on appeal is that the Director's decision is contrary to the manifest weight of the evidence, nowhere in his brief does he bother to summarize the testimony and other evidence presented at the two-day formal hearing. Sher also contends that the administrative hearing conducted in the absence of his counsel violated his due process rights, but Sher's opening brief fails to cite a single case in support of that argument. Further, in one paragraph and without citation of authority, Sher argues that we should reject the ALJ's specific determination that each of the Department's witnesses was credible as well as the findings of fact based on their testimony. These are blatant and substantial violations of the rule.

¶ 24 Rule 341 obligates an appellant to include in the opening brief a statement of "the facts necessary to an understanding of the case." Ill. Sup. Ct. R. 341(h)(6). Without an accurate and fair summary of the evidence presented at the hearing, it is impossible for Sher to sustain his burden to show that the Director's findings and conclusions are contrary to the manifest weight of that evidence. Although Sher attempts to amplify his discussion of the evidence in his reply brief, this is itself improper. Ill. Sup. Ct. Rule 341(j) (reply briefs limited to argument replying to those presented in appellee's brief).

¶ 25 A point not argued or supported by citation to authority also fails to satisfy the requirements of Supreme Court Rule 341(h)(7); *Vancura v. Katris*, 238 Ill. 2d 352, 370 (2010) ("Both argument and citation to relevant authority are required. An issue that is merely listed or included in a vague allegation of error is not 'argued' and will not satisfy the requirements of the rule.") Failure to develop an argument results in forfeiture of the issue on appeal. *Id.*; see also *Kic v. Bianucci*, 2011 IL App (1st) 100622, ¶ 23. "[M]ere contentions without argument or

citation to authority do not merit consideration on appeal. [Citation.] Contentions supported by some argument but by absolutely no authority do not meet the requirements of Supreme Court Rule 341(e)(7). [Citation.]" *People v. McCarthy*, 213 Ill. App. 3d 873, 884 (1991). Sher's failure to cite any authority in support of (i) his due process claim and (ii) his argument that the ALJ's credibility determinations should be disregarded contravenes one of the most fundamental requirements of the rule.

¶ 26 Our "rules of procedure for appellate briefs are rules, not mere suggestions." *Longo Realty v. Menard, Inc.*, 2016 IL App (1st) 151231, ¶ 18. Accordingly, Rule 341's mandate detailing the format and content of appellate briefs is compulsory. *Rosestone Investments, LLC v. Garner*, 2013 IL App (1st) 123422, ¶ 18. Courts are entitled to briefs addressing clearly defined issues supported by pertinent authority and cohesive arguments. *Marzouki v. Nagar-Marzouki*, 2014 IL App (1st) 132841, ¶ 12. While forfeiture is a limitation on the parties and not the court's ability to consider an issue (*Pedersen v. Village of Hoffman Estates*, 2014 IL App (1st) 123402, ¶ 44), where a party's failure to comply with the rule inhibits our review, the forfeiture will not be overlooked (*Rosestone Investments*, 2013 IL App (1st) 123422, ¶ 18).

¶ 27 With respect to Sher's challenge to the ALJ's credibility determinations, we deem this issue forfeited. Even though (i) the Department's brief pointed out the lack of any meaningful summary of the evidence in Sher's opening brief and (ii) Sher attempted, albeit improperly, to address some of the facts in his reply brief, he nevertheless fails to cite a single relevant authority allowing us to second-guess credibility determinations made at the administrative level. We summarily decline to further consider Sher's challenge to the ALJ's credibility determinations as he has forfeited it.

¶ 28 Further, to the extent that any of the other issues Sher raises on appeal depend on re-

evaluating the credibility of the Department's witnesses, we reject those arguments as well. In particular, Sher claims the Department did not establish that he held himself out to clients and the Department's investigators as the manager or managing broker of Shaw Real Estate Group. But that is exactly what the witnesses testified to, so we will not further consider that issue. Sher also contends that he had no authority to issue refunds to clients because he did not control the bank accounts of Shaw Real Estate Group. But several of the firm's clients recounted that when they asked Sher for a refund, he refused without ever indicating that he needed to consult with anyone else. Thus, whether Sher was a signatory of the firm's bank accounts is beside the point and, in any event, the ALJ's findings on this issue depend on his assessment of the credibility of the witnesses who testified at the formal hearing.

¶ 29 Sher's brief on appeal also includes what can only be described as a "laundry list" of claimed errors, most without citation of authority and without evidentiary support in the record. For example, many of Sher's claims are premised on what he "understood" about, among other things, (i) the hearing, (ii) the other respondents' intent to appear, (iii) discovery that had been conducted, and (iv) legal terminology. But our review of the record reveals nothing that supports those assertions. We have considered all of Sher's claims of error and, to the extent they are not specifically discussed in this order, they are not worth mention.

¶ 30 As noted, one of Sher's primary arguments is that his due process rights were violated when the administrative hearing proceeded after his attorney failed to appear. We review this legal issue *de novo*.

¶ 31 In the context of administrative proceedings, due process requires "the opportunity to be heard, the right to cross-examine adverse witnesses," and an impartial factfinder. *Abrahamson v. Ill. Dept. of Prof'l Regulation*, 153 Ill. 2d 76, 95 (1992). Although Sher frames the issue as the

denial of his right to be represented by counsel, under the regulations, a party "may be represented by an attorney" or "may appear on his own behalf." 68 Ill. Admin. Code 1110.90(a), (c) (2016). Based on our review of the record, we conclude that Sher elected to represent himself, presumably so that he could raise the issue of his lack of representation in the event of an adverse outcome.

¶ 32 Much of Sher's argument focuses on his attorney's conduct in negotiating a consent decree on behalf of Anne Shaw, which he claims created a conflict in the ability of Shaw Legal Services and Mackoff to continue representing all respondents. But nothing prevented one respondent from settling with the Department prior to the formal hearing and the potential conflict arose only from Anne Shaw's agreement to "truthfully and fully cooperate" with the Department, including testifying under oath at the hearing, which she was never called on to do. Furthermore, as the Department notes, whether a conflict existed and the extent to which it was disclosed to Sher are issues between Sher and his lawyers, and do not affect the legal sufficiency of the hearing he was afforded.

¶ 33 Sher also claims, without evidentiary support, that he never authorized the filing of an answer to the Department's complaint (which was, through counsel, filed on behalf of all respondents), and was unaware that the other respondents and his lawyers planned not to show up for the hearing. But again, the Department and the ALJ were entitled to rely on the fact that the various lawyers who appeared on respondents' behalf were acting with their knowledge and consent. If those lawyers failed to consult with Sher, that fact would properly be a topic of a complaint against the lawyers, not the Department. Moreover, the record shows that Sher, far from expressing surprise at his lawyers' failure to appear, informed the ALJ that it was his "understanding" that they would not be appearing. On this point, it is important that Mackoff's

affidavit in support of his motion to withdraw did not state that he was withdrawing because of a conflict, but because respondents, including Sher, no longer desired representation by his firm. A client who fires a lawyer shortly before trial (particularly one that has already been continued several times) cannot credibly assert a due process violation as a result of the fact that he was required to proceed without a lawyer. Never requesting a continuance, Sher told the ALJ he understood the explanation of how the hearing would proceed and he declined the opportunity to even call his lawyers before testimony commenced. This is not the conduct of an individual who was ambushed or bullied into proceeding at an administrative hearing without counsel; rather, it is the conduct of a party who had successfully delayed the formal hearing for years, knew that no further continuances would be forthcoming, and decided to create an issue by appearing without counsel. We categorically reject Sher's due process argument.

¶ 34 Sher also contends that the Department improperly considered hearsay when it allowed the investigators to testify to their conversations with Shaw Real Estate Group clients who did not testify at the hearing. Citing only the general provision of the Administrative Code that "hearsay is not admissible" (68 Ill. Admin. Code 1110.220(b) (2016)), Sher does not respond to the Department's citation of other language in that same provision allowing the admission of evidence not falling within any other hearsay exception when "it has circumstantial guarantees of trustworthiness, and if the probative value of the [evidence] outweighs any prejudice resulting from an inability to cross-examine the declarant." *Id.* The investigators—who separately interviewed various former clients as well as Sher, among others—recounted a consistent, repeated, and longstanding series of dealings between Sher and Shaw Real Estate Group's clients. Repeated complaints by former clients to the investigators of the same course of conduct allegedly engaged in by Sher are undeniably probative and, given their consistency, carry with

them a circumstantial guarantee of trustworthiness. Given the deferential abuse of discretion standard that applies to claimed errors in the admission of evidence, this argument provides no basis for reversal.

¶ 35 Several of Sher's arguments relate to his employment status at Sher Real Estate Group and his claimed lack of authority to respond to the Department's requests for production of records or control the content of Sher Real Estate Group's internet advertisements or its contracts with clients. These are mixed questions of law and fact to which the clearly erroneous standard of review applies. Again, nowhere in his brief does Sher discuss the evidence at the hearing or provide any citation of authority for his contentions. And apart from this obvious violation of Rule 341, the evidence established that Sher held himself out as the manager or managing broker of the firm (positions he did not hold and that his license did not permit him to hold), signed many of the contracts on the firm's behalf, and responded to requests for information from the investigators. He also verified pleadings filed in the administrative proceedings. Since, as a licensed leasing agent, Sher was chargeable with knowledge of the Act's requirements for contracts involving rental finding services, he is properly responsible for (i) statements in the firm's advertisements to the effect that it would be able to locate units despite past evictions, criminal histories and the like, and (ii) inducing clients to sign contracts that did not conform to the Act's requirements. After reviewing the record and considering Sher's contentions, we are not left with "the definite and firm conviction that a mistake has been made" (*Exelon Corp.*, 234 Ill. 2d at 273) and so find no grounds to reverse.

¶ 36 Sher contends that the Department was obligated to produce expert testimony to prove the charges against him. But the cases he cites for this proposition deal with patient care decisions made by medical professionals. In that context, we have recognized that when an

administrative agency makes factual determinations involving technical concepts unique to its expertise, expert testimony, rather than the agency's special knowledge, should support those findings. See *Smith v. Dept. of Registration & Education*, 412 Ill. 332, 346-47 (1952) (record in proceedings to revoke medical license contained insufficient evidence regarding the efficacy of treatment doctor recommended to patients or doctor's alleged false statements regarding that treatment); *Obasi v. Dept. of Prof'l Regulation*, 266 Ill. App. 3d 693, 700-01 (1994) (doctor's decision to discharge patient following medical procedure); *Farney v. Anderson*, 56 Ill. App. 3d 677, 678 (1978) (doctor's decision to dispense medication); see also *Chase v. Dep't of Prof'l Regulation*, 242 Ill. App. 3d 279, 288-89 (1993) (requiring expert testimony when agency's conclusions depended on analysis of architectural plans containing claimed safety violations and amount of time necessary for architect's adequate review of those plans). But there is nothing specialized or technical about the requirements of the Act or Sher's conduct in dealing with clients seeking apartments, so the Department was not required to present expert testimony to establish those violations.

¶ 37 Finally, Sher challenges as excessive the indefinite suspension of his leasing agent license, the denial of his application for a real estate broker's license, and the imposition of a $5,000 fine.

¶ 38 At the outset, we note that without a summary of the evidence at the administrative hearing, our rejection of Sher's challenge to the discipline imposed by the agency is virtually a foregone conclusion. An agency's selection of appropriate discipline is discretionary and highly dependent upon evidence adduced at a formal hearing. If the question on appeal concerns the sanction imposed by the agency, we do not review the sanction to determine whether it is "too severe." We will not reverse an agency's choice of sanction on the ground that the court "

'would decide upon a more lenient sanction'" if it were "'to determine initially what discipline would be appropriate'" or "'would conclude in view of the mitigating circumstances *** that a different penalty would be more appropriate.'" *Launias v. Board of Fire and Police Commissioners*, 151 Ill. 2d 419, 435 (1992) (quoting *Sutton v. Civil Service Comm'n*, 91 Ill. 2d 404, 411 (1982)). Rather, the sanction imposed by the agency is reviewed for an abuse of discretion and will be reversed only if it is arbitrary and capricious or if the sanction is overly harsh in view of mitigating circumstances. *Kazmi v. Dept. of Fin. & Prof'l Regulation*, 2014 IL App (1st) 130959, ¶ 21; *Southern Illinois Asphalt Co. v. Pollution Control Board*, 60 Ill. 2d 204, 207 (1975); *Citrano v. Department of Registration & Education*, 90 Ill. App. 3d 937, 939 (1980).

¶ 39 While we do not elect to deem Sher's challenge to the discipline imposed by the Department forfeited, we nevertheless easily reject it.

¶ 40 Sher generally contends the ALJ failed to weigh the aggravating and mitigating factors correctly. The relevant statute (20 ILCS 2105/2105-130(b), (c) (West 2012)), lists nine aggravating factors and six mitigating factors to be considered in imposing discipline on a licensee. The only factor, aggravating or mitigating, that Sher's brief discusses, "for example," is his "lack of contrition." But the ALJ's decision, which the Department adopted, discussed multiple aggravating factors and it is not apparent that Sher's lack of contrition was weighed more heavily than any other factor. Further, Sher's argument, as so many of his arguments do, relies on facts not in the record. Sher argues that he "has taken remedial actions in that he resigned from the company, began working for a reputable agency, and has undergone significant education and training to better understand the standards of the real estate profession." None of this evidence is contained in the record and we will, accordingly, not consider the argument further.

¶ 41 Sher contends his lengthy suspension, large fine, and the denial of his pending application for a real estate broker's license are disproportionate to the nature of his offenses. We disagree. Sher engaged in a repeated course of conduct directed at a vulnerable population. Taking substantial fees from members of the public least able to afford them and failing to provide the services promised violate the most fundamental tenets of human decency, not to mention the basic standards to be expected of any licensed professional. And Sher articulates no reason why the Department, having found that he violated his obligations as a licensed leasing agent, should have further entertained his application to be licensed as a real estate broker. Finally, the Department disciplined Jack Shaw and Shaw Real Estate Group much more harshly, fining them each $18,000 and indefinitely suspending their licenses for three years. In comparison, Sher's discipline was correspondingly less harsh and clearly appropriate. Accordingly, we reject Sher's challenge to the discipline imposed.

¶ 42 We note that throughout the pendency of this matter in the circuit court and on appeal, Sher has had the benefit of a stay of the suspension of his real estate leasing agent license. Based on our consideration of the briefs and the record, we vacate, effective as of the date of this order, the August 1, 2018 order granting Sher's motion for a stay pending appeal.

¶ 43 Department's decision affirmed; stay vacated.