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FOR PUBLICATION

IN THE SUPERIOR COURT
OF THE
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

PREMIER INSURANCE CO., INC., **Petitioner,** **vs.** **CNMI DEPARTMENT OF LABOR,** **Respondent.**	**Civil Action No. 09-0323** **ORDER AFFIRMING THE SECRETARY OF LABOR'S ORDER ON APPEAL**

I. INTRODUCTION

THIS MATTER was taken under advisement by the Court on September 23, 2010. The parties agreed to waive oral arguments in the case. Michael W. Dotts, Esq. represents Petitioner Premier Insurance Co., Inc. and James W. Taylor, Esq. represents Respondent CNMI Department of Labor. The parties have submitted briefing regarding the Petition for Review challenging the Secretary of Labor's Order on Appeal dated July 31, 2009. After considering the written arguments of the parties the Court **AFFIRMS** the Order on Appeal.

II. SYNOPSIS[1]

Complainants Rommel C. Isidro and Ryan C. Isidro ("the Isidros") brought labor complaints against Angel's International School of Dance (Angels) for unpaid wages and expenses under their duly approved labor contracts. When the Isidro's labor cases were filed in 2004 the Department of Labor ("DOL") notified Petitioner of a potential claim because Petitioner had issued two bonds covering the employment of the Isidros. The initial 2004 notice was personally served on Petitioner and included information regarding the claim and putting Petitioner on notice that it should follow the labor proceedings.

On March 16, 2007, a hearing was held by an Administrative Hearing Officer ("AHO") of the DOL for the labor case between the Isidros and Angels. Notice for the hearing was published for two successive weeks in an English-language newspaper of general circulation in the Commonwealth. In response to the published notice, both the Isidros and Angels appeared for the hearing. Petitioner did not attend the hearing. On the same day, the DOL issued administrative orders on both labor cases awarding unpaid wages, unpaid meal allowance, and un-reimbursed medical expenses.

Angels subsequently failed to pay the award, and therefore, the Isidros registered their bond claims with the DOL. The DOL then issued a notice of claim to Petitioner with a demand for payment on the bond. Petitioner disputed this and a hearing was held regarding the bonding on May 14, 2009 with Petitioner in attendance. The hearing resulted in two Bonding Orders issuing from the DOL whereby the DOL ordered Petitioner to cover the back wages and medical expenses for each employee.[2]

On May 27, 2009, Petitioner filed an appeal to the Administrative Orders with the Secretary of Labor ("SOL"). The SOL affirmed the DOL's Administrative Order through its July 31, 2009 Order on Appeal.

On August 12, 2009, Petitioner timely filed a Petition for Judicial review before this Court.

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[1] The facts are taken from the SOL's March 31, 2009 Order on Appeal and are not in dispute for this Review.

[2] Petitioner filed detailed objections to the Bonding Orders which were received prior to the final Order of the DOL.

III. ISSUE FOR REVIEW

1. Whether the DOL's notice of the March 16, 2007 hearing by publication violates the law or the due process rights of Petitioner.

IV. STANDARD OF REVIEW

The standard of review the Superior Court must apply when reviewing agency actions within the Administrative Procedure Act ("APA") is set forth in 1 CMC § 9112(f).[3] *Camacho v. Northern Marianas Retirement Fund*, 1 NMI 362 (1990). Section 9112(f) requires a reviewing court to decide all relevant questions of law, interpret constitutional and statutory provisions, and determine the meaning or applicability of an agency action. *Tenorio v. Superior Ct.*, 1 NMI 1 (1989).

The standard of review for an appeal alleging an arbitrary and capricious action is similar to the abuse of discretion standard. *In re Blankenship*, 3 NMI 209 ¶ 16 (1992). "A court will review an action or decision alleged to be arbitrary and capricious to determine whether the action was reasonable and based on information sufficient to support the decision at the time it was made." *Id.*

Factual determinations from administrative hearings are reviewed under the substantial evidence standard of review. 1 CMC § 9112(f)(2)(v); *see Limon v. Camacho*, 1996 MP 18 ¶ 22; *Barte v. Saipan Ice, Inc.*, 1997 MP 17. In applying the substantial evidence standard, a court must determine whether agency action was reasonable based on the information before the agency, however, the reviewing court is to uphold the agency determination even if supported by something less than the weight of evidence if the agency's conclusions are reasonable. *In re Hafadai Beach Hotel Extension*, 4 NMI 37, 44 (1993).

Issues of law arising from administrative hearings are reviewed *de novo*. *Tenorio v. Superior Court*, 1 NMI 4, 9 (1989).

In making the determination, the court is confined to "the record or those parts of it cited by a party." 1 CMC § 9112(f)(2)(vi); *see also* 3 CMC § 4949(2) ("Judicial review shall be confined to the record"). What constitutes the record on review is laid out in 1 CMC § 9109(j).

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[3] The APA is found in 1 CMC §§ 9110 *et seq.*

In judicial review of agency action, a petitioner seeking an order setting aside an agency decision bears the burden of proof. *In re Hafadai Beach Hotel Extension*, 4 NMI at 45.

V. DISCUSSION

A. Notice Given to The Petitioner Was Not Improper

Petitioner claims that because notice of the March 16, 2007 hearing was given by publication in a local newspaper the notice violated 1 § CMC 9109(a)(1) which requires that "[p]ersons entitled to notice of an agency hearing shall be timely informed of: The time, place, and nature of the hearing. . . ." As a result, Petitioner claims its due process rights have been violated.

"In an administrative proceeding where a person's life, liberty, or property is at stake, Article I, § 5 of the Commonwealth Constitution requires, at a minimum, that the person be accorded meaningful notice and a meaningful opportunity to a hearing, appropriate to the nature of the case." *In Office of the Attorney General v. Deala*, 3 NMI 110, 116 (1992); *see also* 1 § CMC 9108(a) ("[A]ll parties shall be afforded an opportunity for a hearing after reasonable notice."). Claims stemming from unpaid wages in an employment case are a property interest for the purposes of due process. *See Office of the AG v. Rivera*, 3 NMI 436, 445 (1993).

Specifically with regards to notice:

> Service of process for any notice of any kind required for any proceeding conducted by the Administrative Hearing Office may be by personal service, by first class mail, postage prepaid, to the foreign national worker at the address supplied with the complaint or any written update provided to the Department, and to the employer at the address supplied with the application for the approved employment contract or any written update provided to the Department, ***or by publication in any English-language newspaper of general circulation in the Commonwealth, at the discretion of the Administrative Hearing Office.***

3 CMC § 4945 (emphasis added).

Publication in an English-language newspaper of general circulation in the Commonwealth meets the express notice requirements set forth in 3 CMC § 4945.

Petitioner argues the notice given was constitutionally deficient citing *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306 (1950). (Petitioners Reply Brief at 5-6.) *Mullane*, however,

allows for a reasonableness standard of notice that is "reasonably certain to inform those affected." *Id.* at 315. Similarly, 3 CMC Section 4945 allows for the discretion of the AHO in giving notice publication.

Here, Petitioner was given "specific, personally-served notice" upon the initial filing of the claim in 2004. (SOL's Order on Appeal at 3.) This notice "provided [Petitioner] with information about the claim that had been filed and put [Petitioner] on notice that it should follow this proceeding at the [DOL] if it wished to do so." (SOL's Order on Appeal at 2.) When the case came for hearing in 2007, notice was further published "twice, once in each of two successive weeks, in an English-language newspaper of general circulation in the Commonwealth." *Id.*

The SOL in its Order on Appeal found that the DOL was justified in using published notice with respect to the details of the hearing, stating:

> Once [Petitioner] was on notice that specific claims had been filed against an employer bonded by it, [Petitioner] had an obligation to check newspaper notices published with respect to the times and dates of the hearings on those claims. The [DOL's] efforts to clean up old labor cases were widely publicized in the press and the notices with respect to hearings were prominently featured in the newspapers where they were published. [Petitioner] was free to ignore published notices or to fail to check theses notices for cases for which it had already received notice of claims. Notice by publication in a newspaper of general circulation is permitted in every jurisdiction, particularly under circumstances such as existed in 2007 where the Commonwealth was affording many hearings in long-delayed cases under conditions of severe budget constraints. The Commonwealth is not required to use an extensive method of accomplishing notice when a more efficient and effective method of giving notice is available. Both the employer and the workers appeared for the hearing in response to the published notice. [Petitioner's] could have done likewise. The argument about the form of notice is particularly unpersuasive in the case of a sophisticated corporation, served by counsel, experienced in claims and litigation, that had ready access to the information it needed to protect its interests.

The Court finds that because personal service was effected upon Petitioner putting it on notice of the claim and advising it to follow the case, the subsequent published notice was not deficient. According to 3 CMC § 4945, service by publication is allowed at the discretion of the AHO. For the reasons cited above from the Order on Appeal of the SOL, the Court finds the subsequent notice by publication was reasonable and within the AHO's discretion to effect such notice upon Petitioner.

Because of the prior personal notice served in 2004, and Petitioner's sophistication and expertise, Petitioner knew or should have known of the hearing date.[4]

B. Petitioner Has Not Properly Alleged Resulting Prejudice

The doctrine of harmless error is applicable to review of administrative decisions. *See Camacho v. Northern Marianas Retirement Fund*, 1 NMI 362, 376 (1990); *In re San Nicolas*, 1 NMI 329 (1990). It is always incumbent upon an aggrieved party to demonstrate the prejudicial effect of procedural irregularities in administrative proceedings. *Camacho*, 1 NMI at 376. In *Camacho*, the court found that the appellant had not demonstrated any prejudice to him by the procedural errors alleged of the administrative body and thus found the doctrine of harmless error prevented appellants recovery. *Id.*

Though the Court finds notice was not improper here, the Court notes that Petitioner has not alleged prejudice in not attending the March 16, 2007 hearing regarding the initial labor dispute between the Isidros and Angels. Petitioner was given a hearing on May 13, 2009 by the DOL once its liability was triggered by the default of Angels in paying the award for the original labor case brought by the Isidros. Petitioner was afforded a full opportunity to defend its claims and assert its position regarding the bonding issue at the May 14, 2009 hearing. Petitioner further appealed the matter to the SOL. Thus, Petitioner was "accorded meaningful notice and a meaningful opportunity to a hearing, appropriate to the nature of the case." *See Deala*, 3 NMI at 116 (1992); 1 § CMC 9108(a).

VI. CONCLUSION

For the foregoing reasons, the Court hereby **AFFIRMS** the Secretary of Labor's Order on Appeal.

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[4] The March 16, 2007 hearing at issue was a labor dispute between the Isidros and Angels and while Petitioner did hold an employment bond in relation to the parties, its rights were not directly at issue at that hearing. At that point in time the bond could not be enforced until there was a default by Angels to trigger Petitioner's liability.

SO ORDERED this 18th day of November, 2011.

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DAVID A. WISEMAN, Associate Judge