

IN THE  
**ARIZONA COURT OF APPEALS**  
DIVISION ONE

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ARIZONA DEPARTMENT OF TRANSPORTATION, *Appellant*,

*v.*

ARIZONA MOTOR VEHICLE, LLC, and SONIA RASCON  
DOMINQUEZ, *Appellees*.

No. 1 CA-CV 22-0376  
FILED 3-28-2023

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Appeal from the Superior Court in Maricopa County  
No. LC2021-000030-001  
The Honorable Daniel J. Kiley, Judge (Retired)

**REVERSED AND REMANDED**

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COUNSEL

Arizona Attorney General's Office, Phoenix  
By Gwyndolynn Gentry  
*Counsel for Appellant*

Perez Law Group, PLLC, Glendale  
By Cristina Perez Hesano  
*Counsel for Appellees*

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**OPINION**

Judge Michael S. Catlett delivered the opinion of the Court, in which  
Presiding Judge Paul J. McMurdie and Judge Michael J. Brown joined.

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C A T L E T T, Judge:

¶1 The Arizona Department of Motor Vehicles (“ADOT”) and Arizona Motor Vehicle, LLC (“AMV”) entered a “Third Party Authorization Agreement” (“Agreement”). After ADOT concluded AMV breached the Agreement, ADOT gave notice of its intent to cancel. ADOT also requested an administrative hearing to allow AMV to show cause why the Agreement should not be canceled. *See* A.R.S. § 28-5108(E). During the hearing, an Administrative Law Judge (“ALJ”) asked ADOT’s representative whether a lesser sanction—suspension or probation—was an option. ADOT’s representative said, “no.” The ALJ found AMV had not shown sufficient cause to avoid cancellation.

¶2 AMV appealed. The superior court reversed the ALJ’s decision, concluding that “[a] hearing at which the adjudicator has no choice but to rubber-stamp a predetermined sanction hardly constitutes a meaningful opportunity to be heard.” The superior court also determined ADOT breached the Agreement by choosing the sanction.

¶3 We reverse the superior court’s decision and remand with instructions to enter judgment for ADOT. The Agreement and the law allow ADOT to determine whether to cancel a third-party agreement. If ADOT seeks cancellation, the aggrieved party has an opportunity before an ALJ to show cause why cancellation is inappropriate. ADOT followed that process here. We do not view the ALJ giving ADOT an opportunity to impose a lesser sanction—which ADOT declined—as inconsistent with due process, A.R.S. § 28-5108(E), or the Agreement.

**FACTS AND PROCEDURAL BACKGROUND**

¶4 In 2018, AMV and ADOT formed the Agreement authorizing AMV to perform certain duties, such as issuing motor vehicle registrations and conducting inspections. While performing those duties, AMV collected funds from the public. The Agreement required AMV to make those funds available to ADOT one business day later.

¶5 AMV repeatedly breached that requirement—nine times in one-year AMV failed to timely transmit funds. So ADOT issued a cease-and-desist order, instructing AMV “to immediately cease and desist from violating Section 5.5.” AMV’s issues continued. After discovering six additional untimely funds transfers, ADOT issued AMV another cease-and-desist order. This time, however, ADOT instructed AMV “to immediately cease and desist from engaging in any and all activities as an

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authorized third party.” ADOT also sent AMV a notice of intent to cancel the Agreement, and ADOT informed AMV that, pursuant to A.R.S. § 28-5108(E), ADOT had requested a hearing with ADOT’s Executive Hearing Office (“Hearing Office”).

¶6 In response, AMV’s owner emailed the Hearing Office requesting an expedited hearing. The assigned ALJ granted the request and set an in-person hearing. Just days before the hearing, AMV’s owner emailed the Hearing Office again, stating she was ill. She requested to send a company representative for AMV and inquired about accommodations. The ALJ agreed, making the hearing telephonic and allowing AMV to have a different representative appear.

¶7 At the hearing, AMV’s Operations Manager, David Ayala, testified. Eleanor Perry testified for ADOT. Neither party had counsel. After confirming AMV did not want a continuance, the ALJ found Mr. Ayala could testify for AMV. Mr. Ayala admitted AMV had breached the Agreement by failing to make timely payments, but blamed AMV’s bank for the delays. Mr. Ayala also explained that AMV unsuccessfully attempted to secure a line of credit to prevent future noncompliance.

¶8 Mr. Ayala then requested AMV be given “another chance to ensure that we can secure a line of credit where we can be able to ensure that this [does] not happen.” The ALJ turned to ADOT’s representative and asked, “Ms. Perry, is suspension or probation at all an option in this case?” She replied, “No, Your honor.”

¶9 Post-hearing, the ALJ found AMV breached Section 5.5 of the Agreement and failed to show cause why cancellation should not occur. The ALJ canceled the Agreement effective January 1, 2021.

¶10 AMV appealed to the superior court. AMV moved to supplement the record with new evidence—namely, a declaration from AMV’s owner, a certified check evidencing AMV had sufficient funds in its bank account to prevent future violations, and evidence of a line of credit AMV obtained to ensure future compliance. ADOT objected, but the superior court granted the motion.

¶11 AMV requested reversal, arguing ADOT and the ALJ violated AMV’s due process rights, and the evidence did not support cancellation. After rejecting most of AMV’s due process arguments, the superior court determined ADOT deprived AMV of a fair and impartial hearing because AMV did not have a meaningful opportunity to be heard regarding the sanction. The court concluded the ALJ’s question about whether a lesser

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sanction was an option, and ADOT's response that it was not, showed ADOT and the ALJ "shared the view that [ADOT] was authorized to dictate the sanction that would be imposed at the conclusion of the Hearing." The court concluded that "[a] hearing at which the adjudicator has no choice but to rubber-stamp a predetermined sanction hardly constitutes a meaningful opportunity to be heard."

¶12 The superior court also found ADOT breached Section 10.4.8 of the Agreement because ADOT, instead of the ALJ, chose cancellation as the sanction. The court vacated the ALJ's order and dismissed the case with prejudice. ADOT timely appealed. We have jurisdiction under A.R.S. § 12-120.21.

**DISCUSSION**

¶13 AMV first argues the superior court correctly concluded ADOT and the ALJ violated AMV's due process rights and ADOT breached the Agreement. AMV then argues substantial evidence does not support the ALJ's decision. We address (and reject) the arguments in the same order.

**I. Due Process**

¶14 The Fourteenth Amendment's Due Process Clause, which is binding on the states, "imposes constraints on governmental decisions which deprive individuals of 'liberty' or 'property[.]'" *State ex rel. Dep't of Econ. Sec. v. Torres*, 245 Ariz. 554, 560 ¶ 23 (App. 2018). Due process requires "notice and an opportunity to be heard in a meaningful manner and at a meaningful time," including about the sanction imposed. *Wassef v. Ariz. State Bd. of Dental Exam'rs*, 242 Ariz. 90, 93 ¶ 12 (App. 2017). We review constitutional questions, including compliance with due process, *de novo*. *Carlson v. Ariz. State Pers. Bd.*, 214 Ariz. 426, 430 ¶ 13 (App. 2007).

¶15 AMV argues ADOT chose cancellation and forced that sanction on the ALJ, depriving AMV of a meaningful opportunity to be heard. ADOT does not dispute that, in general, AMV had due process rights when it came to cancellation of the Agreement (we assume so too). ADOT instead argues AMV did not have a due process right to have the ALJ independently determine which of various sanctions to impose. As ADOT views the matter, both A.R.S. § 28-5108(E) and the Agreement allowed ADOT to choose cancellation. And ADOT then provided sufficient due process by informing AMV of its intent to cancel and by giving AMV an opportunity to oppose cancellation before an ALJ.

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¶16 We agree with ADOT—our review of the record has not unearthed a due process violation. If ADOT had forced the ALJ to uphold cancellation, vacating the ALJ’s decision may be necessary. But neither the applicable legal structure, nor the ALJ’s order, nor the hearing transcript support that ADOT overstepped here.

¶17 Starting with the applicable legal structure, Arizona law requires ADOT to adopt rules for the “[e]nforcement of the provisions of the laws the director administers or enforces.” A.R.S. § 28-366. ADOT’s Director shall “[d]elegate functions, duties or powers as the director deems necessary to carry out the efficient operation of the department.” A.R.S. § 28-363(A)(4). Pursuant to this authority, ADOT established the Hearing Office and rules governing its administration. *See* A.A.C. R17-1-501 *et. seq.* Those rules require an ALJ to “[c]onduct fair and impartial hearings;” “[i]ssue a written decision, including finds of fact and conclusions of law, based on the record;” and “[s]ustain an agency action supported by the record, state and administrative law.” A.A.C. R17-1-505(A).

¶18 The statute authorizing ADOT to hold administrative proceedings dictates the ALJ’s role in individual cases. Here, A.R.S. § 28-5108(E) addresses cancellation or suspension of a third-party authorization or certification. If ADOT concludes a valid ground for cancellation exists and decides to cancel, ADOT is required to “give written notice to the third party . . . to appear at a hearing . . . to show cause why the [agreement] should not be . . . cancelled.” A.R.S. § 28-5108(E).

¶19 The Agreement between ADOT and AMV reflects the same process. Section 8.7 provides that if AMV “fails to comply with the terms of this Agreement . . . ADOT MVD reserves the right to take any Corrective Action it deems necessary and appropriate, including the Suspension or Cancellation of [AMV’s] authorization.” Section 10.3 warns that “the decision on what level of appropriate discipline to impose remains with the ADOT MVD Director . . . based on” several factors. Section 10.4.8 explains cancellation is “normally effective only when ordered by an Administrative Law Judge following [AMV] being given an opportunity for a hearing.” Therefore, three sources—statutes, rules, and the Agreement—set forth the respective roles of ADOT and the ALJ.

¶20 On the issue of the applicable sanction, once a breach occurs, ADOT—not the third party or the ALJ—chooses in the first instance the sanction it thinks appropriate. If ADOT chooses cancellation, an ALJ holds a hearing and takes evidence. If the third party does not show cause why the evidence does not support ADOT’s choice, the ALJ imposes

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cancellation. *See* A.A.C. R17-1-505 (The ALJ must “[s]ustain an agency action supported by the record, state and administrative law.”). AMV cannot claim surprise that ADOT could choose cancellation or that the ALJ would then determine *only* whether good cause supports that choice, when both the law and the Agreement set forth that process. And AMV has not established that the method for cancelling a third-party authorization otherwise violates due process.

¶21 Moreover, all involved here followed the applicable procedures. After discovering nine breaches, ADOT instructed AMV to stop breaching the Agreement. After discovering six more breaches (fifteen in total), ADOT notified AMV about cancellation and initiated proceedings through the Hearing Office, which assigned an ALJ. AMV requested expedited proceedings; the ALJ obliged. The ALJ permitted AMV to send its chosen representative to the hearing, and the ALJ allowed him to testify. The ALJ issued a written ruling explaining how he arrived at his conclusions and gave notice that his decision was appealable.

¶22 The ALJ’s written ruling demonstrates he objectively understood his central role – to determine whether AMV could show cause why the agreement should not be canceled. The ALJ explained therein that “[t]he purpose of the hearing was [to] afford [AMV] an opportunity to present any and all evidence to show cause why the authorization should not be cancelled.” The ALJ later concluded that “[AMV] failed to show cause why the [Agreement] should not be canceled.” The ALJ’s ruling does not support that he believed he should – much less that he was required to – rubber stamp ADOT’s chosen sanction.

¶23 AMV believes the hearing exchange between the ALJ and ADOT’s representative about lesser sanctions shows the ALJ thought his hands were tied. But AMV places too much weight on the exchange. The ALJ’s question came after AMV’s representative requested “another chance to ensure that we can secure a line of credit where we can be able to ensure that this [does] not happen.” The ALJ was likely only attempting to facilitate that request with his corresponding question about a lesser sanction. Regardless, the exchange does not overcome the presumption the ALJ was fair and unbiased and knew the applicable law. *See Berenter v. Gallinger*, 173 Ariz. 75, 82 (App. 1992) (“Administrative officers are presumed to be fair. . . .”); *Martin v. Super. Ct.*, 135 Ariz. 258, 260 (1983) (same); A.A.C. R17-1-505(A). Although ADOT cannot dictate the outcome of the show-cause hearing, AMV has not shown that happened.

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¶24 Relying on *Horne v. Polk*, 242 Ariz. 226 (2017), AMV next asserts ADOT violated due process because “ADOT initiates the charge, claims the authority to choose the sanction it wishes to impose, makes the final determination, and participates in the prosecution of the case.” In *Horne*, our Supreme Court held that an agency is permitted to “investigate, prosecute, and adjudicate cases” with the agency head supervising the agency staff who are involved, but an agency violates due process when a single official carries out all three functions—investigation, prosecution, and adjudication. 242 Ariz. at 230 ¶ 14; *see also id.* at 231 ¶ 16 (“Due process will be satisfied if the agency head who serves as the ultimate adjudicator does not also serve in an advocacy role in the agency proceedings.”).

¶25 ADOT did not impermissibly carry out all three functions. To be sure, an ADOT employee initiated the investigation, prosecuted the case before the ALJ, and requested cancellation. But it was the ALJ who made the ultimate determination that AMV repeatedly breached the Agreement and had not shown cause to avoid cancellation. This structure did not violate AMV’s due process rights. *See Legacy Found. Action Fund v. Citizen Clean Elections Comm’n*, \_\_\_ Ariz. \_\_\_, No. CV 22-0041, 2023 WL 2320296, \*8 ¶ 37 (March 2, 2023) (“The Commission could have avoided this [due process violation] by having only Commission employees serve in the prosecutorial role and confining the commissioners’ role to be the ultimate decisionmaker.”); *Any Charity Unlimited, L.L.C. v. Ariz. Dep’t of Transp.*, No. CV 14-0789, 2016 WL 2909386, \*4 ¶¶ 14–15 (Ariz. Ct. App. May 19, 2016) (rejecting a due process argument similar to AMV’s).

¶26 AMV argues ADOT and the ALJ violated its due process rights in several other ways, including by not continuing the hearing after AMV’s owner became ill. We agree with the superior court that AMV either invited or waived any other alleged violations. *See State v. Hursey*, 176 Ariz. 330, 332 (1993) (“A defendant who participates in or contributes to error cannot later complain of it.”); *Neal v. City of Kingman*, 169 Ariz. 133, 136 (1991) (“Failure to raise an issue at an administrative hearing that the administrative tribunal is competent to hear waives that issue.”).

## II. Breach of Contract

¶27 AMV next argues ADOT breached the Agreement by imposing cancellation as the only sanction. ADOT denies it breached the Agreement, arguing it was permitted to choose which sanction to impose. ADOT acknowledges that if it chooses cancellation, an ALJ must hold a show-cause hearing and independently decide whether the evidence supports the agency’s choice. But ADOT does not read the Agreement as

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giving the ALJ authority to choose, in the first instance, from among available sanctions.

¶28 “Contract interpretation is a question of law we review *de novo*.” *Dunn v. FastMed Urgent Care PC*, 245 Ariz. 35, 38 ¶ 10 (App. 2018). When interpreting a contract, we look to apply the plain meaning of the words in the context of the whole contract. *Id.*; see *Emps. Mut. Cas. Co. v. DGG & CAR, Inc.*, 218 Ariz. 262, 267 ¶ 24 (2008) (“When the provisions of the contract are plain and unambiguous upon their face . . . the court will not pervert or do violence to the language used. . .”). Here, the plain meaning of the Agreement’s language resolves the dispute.

¶29 Section 8.7 of the Agreement states:

If the Company or any person acting on its behalf fails to comply with the terms of this Agreement, or with any applicable law or other mandate as stated above, ADOT MVD reserves the right to take any Corrective Action it deems necessary and appropriate, including the Suspension or Cancellation of the Company’s authorization(s) and/or individual employee certifications under the applicable provision of A.R.S. Title 28, Chapter 13, Article 1 and Title 41, Chapter 6 Article 6, and/or the potential termination or non-renewal of this agreement.

¶30 Section 10 of the Agreement describes the sanctions ADOT may impose if AMV breaches the Agreement, including a verbal warning, a letter of concern, probation, suspension, or cancellation. Section 10.4.8 of the Agreement describes the cancellation process as follows:

A Cancellation is a formal disciplinary action resulting in the potential termination of the Company’s Third Party Authorization Agreement in its entirety. A Cancellation is normally effective only when ordered by an Administrative Law Judge following the Company and/or individual certificate-holder being given an opportunity for a hearing. The Cancellation of Third Party authorizations or certifications, as well as the applicable hearing and appeal processes, are covered in A.R.S. § 28-5108.

¶31 The Agreement thus grants ADOT authority to choose which sanction to impose following a breach. The Agreement does not provide the ALJ authority to choose, in the first instance, from among the list of corrective actions. Instead, if AMV breaches the Agreement, ADOT



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chooses the sanction. If ADOT chooses cancellation, a hearing follows. During the hearing, an ALJ impartially considers the evidence and, if the breaching party does not show cause to avoid cancellation, cancels the Agreement. As explained, ADOT followed that procedure here.

### III. Substantial Evidence

¶32 AMV argues substantial evidence does not support the ALJ's decision. We are required to reverse agency action if it "is contrary to law, is not supported by substantial evidence, is arbitrary and capricious or is an abuse of discretion." A.R.S. § 12-910(F); *Carlson*, 214 Ariz. at 430 ¶ 13. Whether substantial evidence supports an agency decision is a question of law we review *de novo*. *Batty v. Ariz. Med. Bd.*, 253 Ariz. 151, \_\_\_ ¶ 23 (App. 2022). We similarly review the superior court's judgment *de novo*, independently reviewing the administrative record. *Wassef*, 242 Ariz. at 92-93 ¶ 11. "Substantial evidence exists if the record supports the decision, even if the record would also support a different conclusion." *Id.* at 93 ¶ 11.

¶33 AMV argues ADOT failed to establish AMV breached Section 5.5. AMV focuses on the inability of ADOT's representative to answer questions regarding ADOT's banking procedures. For a few reasons, that inability does not undercut the ALJ's decision. To begin, the superior court correctly concluded that AMV, by failing to raise the issue with the ALJ, waived any argument ADOT failed to comply with contractual procedures. *Neal*, 169 Ariz. at 136 ("Failure to raise an issue at an administrative hearing that the administrative tribunal is competent to hear waives that issue."). As the superior court put it, "[AMV] never asserted that [ADOT] had failed to establish its own compliance with its obligations under the Agreement."

¶34 Even so, there is substantial evidence AMV breached the Agreement. At the hearing, ADOT offered both cease and desist orders into evidence, and those orders outlined AMV's fifteen breaches. Most importantly, AMV concedes it breached the Agreement. AMV, for example, admits to us that it "violated the terms of the Agreement on 9 occasions in a one-year period and on 6 occasions during a 3-week period."

¶35 AMV also argues later-admitted evidence showed AMV cured "all remaining material questions presented at the hearing." This later evidence includes proof AMV obtained a line of credit one month after the ALJ hearing. Even considering the new evidence, AMV has not shown the ALJ's decision was lacking substantial evidence. Neither the Agreement nor A.R.S. § 28-5108 provide the right to prevent cancellation *after* a breach by demonstrating that subsequent developments have

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rendered additional future breaches more unlikely. Instead, the statute and the Agreement grant ADOT discretion to seek cancellation of the Agreement after a breach, regardless of later remedial evidence.

¶36 We also reject AMV's argument that cancellation was disproportionate. An agency may impose a penalty within the range provided by the agency's governing statute. *Holcomb v. Ariz. Dep't of Real Est.*, 247 Ariz. 439, 446 ¶ 26 (App. 2019). A.R.S. § 28-5108 authorizes ADOT to cancel a third-party agreement under appropriate circumstances. Because AMV repeatedly breached the Agreement, those circumstances existed here, and cancellation was not disproportionate.

¶37 The ALJ canceled the Agreement after finding AMV committed fifteen breaches and failed to show cause why the agreement should not be canceled. Substantial evidence supports that decision.

**ATTORNEY'S FEES**

¶38 AMV requests an attorney's fees award under A.R.S. §§ 12-341.01, 12-348, 41-1007, and 41-1092.12. Because AMV is not the prevailing or successful party on appeal, we deny AMV's request.

**CONCLUSION**

¶39 We hold that neither ADOT nor the ALJ violated AMV's due process rights, ADOT did not breach the Agreement, and substantial evidence supports the ALJ's decision. We reverse the superior court's judgment vacating the ALJ's December 18, 2020, Decision and Order and remand for entry of judgment in ADOT's favor.



AMY M. WOOD • Clerk of the Court  
FILED: AA