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Minn. Stat. § 480A.08, subd. 3 (2012).*

**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A13-1056**

Wayne B. Holstad, PLC, et al.,  
Appellants,

vs.

Commissioner,  
Department of Commerce,  
Respondent.

**Filed March 3, 2014  
Affirmed  
Johnson, Judge**

Ramsey County District Court  
File No. 62-CV-13-531

Frederic W. Knaak, Holstad & Knaak, PLC, St. Paul, Minnesota (for appellants)

Lori Swanson, Attorney General, Michael J. Tostengard, Assistant Attorney General, St. Paul, Minnesota (for respondent)

Considered and decided by Johnson, Presiding Judge; Rodenberg, Judge; and Klaphake, Judge.\*

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\*Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

## UNPUBLISHED OPINION

**JOHNSON**, Judge

The department of commerce initiated an administrative-enforcement action against Wayne B. Holstad and Northwest Title Agency, Inc. (NWTa) for, among other things, engaging in unlicensed real-estate-closing activities. While the administrative-enforcement action was pending before an administrative law judge, Holstad and NWTa commenced a civil action in Ramsey County District Court to enjoin the administrative-enforcement action and to obtain declaratory relief. The district court dismissed the case for lack of subject-matter jurisdiction because Holstad and NWTa had failed to exhaust their administrative remedies. We affirm.

### FACTS

Holstad is an attorney who is licensed to practice law in Minnesota. NWTa is a Minnesota corporation that is wholly owned by Holstad and was licensed by the department of commerce as a title-insurance producer.

In December 2011, the department received information suggesting that Holstad and NWTa had engaged in unlicensed real-estate-closing activities in violation of section 82.641 of the Minnesota Statutes. In September 2012, the department commenced an administrative-enforcement action against Holstad and NWTa pursuant to chapter 14 of the Minnesota Statutes. The department issued a statement of charges consisting of eighteen counts and summarily suspended Holstad's insurance-producer license and NWTa's agency license pending a final determination of the administrative-enforcement

action. *See* Minn. Stat. § 45.027, subd. 7(b) (2012). The case was venued at the Office of Administrative Hearings (OAH) and assigned to an administrative law judge (ALJ).

In October 2012, Holstad and NWTa filed a motion with OAH to dismiss some of the eighteen counts. They argued that the charge of unlicensed real-estate-closing activities should be dismissed with respect to Holstad because he is an attorney and, thus, is exempt from the applicable licensing requirements. They also argued that the same charge should be dismissed with respect to NWTa because an attorney-owned corporation receives the benefit of the same exemption. In December 2012, the ALJ granted the motion with respect to Holstad but denied the motion with respect to NWTa after concluding that NWTa is a separate entity that may not rely on Holstad's attorney license for an exemption from the licensing requirements. The ALJ scheduled a contested-case hearing.

In January 2013, before the contested-case hearing occurred, Holstad and NWTa commenced this action against the department in the district court. Their complaint sought to enjoin the department from pursuing its administrative-enforcement action and sought a declaratory judgment to the effect that the department's closing-license requirements do not apply to an attorney-owned corporation. The department promptly moved to dismiss for lack of subject-matter jurisdiction. *See* Minn. R. Civ. P. 12.02(a). The department argued, among other things, that Holstad and NWTa had failed to exhaust their administrative remedies because the administrative-enforcement action had not yet been concluded. In May 2013, the district court granted the department's motion to dismiss on that ground. Holstad and NWTa appeal.

## DECISION

Appellants argue that the district court erred by granting the department's motion to dismiss their civil action for lack of subject-matter jurisdiction. Appellants contend that they need not exhaust their administrative remedies because the department has no authority to resolve the legal issue whether an attorney-owned corporation is exempt from the department's requirements concerning real-estate-closing licenses. This court applies a *de novo* standard of review to a district court ruling concerning subject-matter jurisdiction. *Williams v. Smith*, 820 N.W.2d 807, 813 (Minn. 2012).

As a general rule, a party to an administrative proceeding may obtain judicial review of an administrative-enforcement action only after pursuing and exhausting all administrative remedies. *City of Richfield v. Local No. 1215, Int'l Ass'n of Fire Fighters*, 276 N.W.2d 42, 51 (Minn. 1979); *Northwest Airlines, Inc. v. Metropolitan Airports Comm'n*, 672 N.W.2d 379, 381 (Minn. App. 2003), *review denied* (Minn. Feb. 25, 2004). The exhaustion-of-administrative-remedies doctrine protects the autonomy of administrative agencies and promotes judicial efficiency. *Northwest Airlines*, 672 N.W.2d at 381. Moreover, the development of a record during an administrative process "facilitates judicial review and may also reduce the need to resort to judicial review." *Id.* at 382. But exhaustion of administrative remedies is not required if it would be futile, *id.*, or if the person subject to the administrative action can show "that the pursuit and exhaustion of such administrative remedy will cause imminent and irreparable harm," *Garavalia v. City of Stillwater*, 283 Minn. 335, 347, 168 N.W.2d 336, 345 (1969); *see*

also *Uckun v. Minnesota State Bd. of Med. Practice*, 733 N.W.2d 778, 785-86 (Minn. App. 2007).

In this case, appellants do not dispute that they have not exhausted their administrative remedies. Appellants also do not argue that exhaustion of administrative remedies would be futile or that the absence of an injunction would cause them imminent and irreparable harm. *See Northwest Airlines*, 672 N.W.2d at 382; *Garavalia*, 283 Minn. at 347, 168 N.W.2d at 345. Rather, appellants argue simply that the department does not have the authority to decide a legal issue that is raised by their defense to the administrative-enforcement action. But appellants fail to cite any authority for the exception they seek. Furthermore, they fail to explain why their defense is different from any of the defenses that have been subjected to the exhaustion requirement in prior cases. Thus, the district court did not err by granting the department's motion to dismiss for lack of subject-matter jurisdiction.

We note that Holstad and NWTa may seek judicial review of the ALJ's final decision pursuant to the Minnesota Administrative Procedures Act. *See* Minn. Stat. §§ 14.63-.69 (2012). In such a proceeding, they may argue that the agency's decision was "in excess of the statutory authority or jurisdiction of the agency." *See* Minn. Stat. § 14.69(b). We further note that Holstad and NWTa appear to have such a matter pending before this court in case number A13-1643.

**Affirmed.**