

*Attorney General v. NOS*, 120 Nev. Adv. Op. 11, 84 P.3d 1052  
(Nev. 2004)<sup>1</sup>

**PROCEDURE FOR PRELIMINARY INJUNCTIONS—STANDARD  
FOR OBTAINING A PRELIMINARY INJUNCTION IN A  
STATUTORY ENFORCEMENT ACTION**

**Summary**

Appeal from the First Judicial District Court’s denial of a preliminary injunction brought by Office of Attorney General, Bureau of Consumer Protection (BCP) against a telecommunications provider for allegedly engaging in deceptive trade practices due to procedural deficiencies in the pleadings supporting the motion.

**Disposition**

Affirmed on different grounds. The BCP did not have any factual support for the preliminary injunction in the record. BCP’s motion was defective because they failed to demonstrate a reasonable likelihood that the statutory conditions authorizing injunctive relief exist. However, BCP could amend its pleadings and filing a new motion for injunctive relief. BCP was not required to show irreparable injury or inadequate legal remedy to obtain injunctive relief.

**Factual and Procedural History**

Based on numerous customer complaints filed against telecommunications providers NOS Communications Inc. and Affinity Networks Inc. (collectively, NOS) the BCP determined that NOS was engaging in deceptive trade practices in violation of NRS 598.0963(3).<sup>2</sup> However, before the BCP could file an enforcement action pursuant to NRS 589.0963, NOS filed a preemptive complaint for declaratory judgment and injunctive relief against the BCP. NOS sought a declaration that it was not engaging in deceptive trade practices.

After filing an answer, but before filing its own claim or a counterclaim, the BCP filed a motion for a preliminary injunction pursuant to NRS 589.0693 for allegedly engaging in deceptive trade practices. Judge Michael R. Griffin of the First Judicial District Court denied BCP’s preliminary injunction motion holding that a preexisting Nevada Public Utility Commission rulemaking workshop was an adequate remedy at law.

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<sup>1</sup> By Christopher W. Carson

<sup>2</sup> NRS 598.0963(3) (2004) provides that:

[W]hen the attorney general has reason to believe that a person has engaged in or is engaging in a deceptive trade practice, the attorney general may bring an action in the name of the State of Nevada against that person to obtain a temporary restraining order, a preliminary or permanent injunction, or other appropriate relief.

## Discussion

Upon appeal the Nevada Supreme Court first recognized that the district court has discretion in deciding whether to grant a preliminary injunction.<sup>3</sup> The court also cited case law that supports a reversal of a denial of a preliminary injunction only where the district court abused its discretion or based its decision on an erroneous legal standard or on clearly erroneous findings of fact.<sup>4</sup>

The court held that the district court was correct in not issuing the preliminary injunction, but did so not based on the district court's holding but rather procedural deficiencies in the BCP's motion.<sup>5</sup> Under *Hotel Riviera, Inc. v. Torres*,<sup>6</sup> the court could have upheld the district court's ruling, even if it reached the wrong grounds, so long as it reached correct result. However, the court went further to address the merits of the district court's ruling to clarify the jurisprudence in this area.

The court agreed with BCP's argument that *Nevada Real Estate Commission v. Ressel*<sup>7</sup> supports the presumption of irreparable injury in a statutory enforcement action. NOS argued that the traditional standard of requiring a showing of irreparable injury before issuing injunctive relief was the proper remedy.

In *Ressel*, the court held that proof of irreparable harm was not needed since the state's policy was declared by statute. By allowing a government agency to seek injunctive relief, the sole conditions for the issuance of such an injunction are those set out in the act itself.<sup>8</sup>

The court went on to support its holding by looking to other jurisdictions that do not require a showing of irreparable harm in statutory enforcement actions before a preliminary injunction will issue.<sup>9</sup> For example, in *Ackerman v. Tri-City Geriatric & Health Care*<sup>10</sup> the court concluded that a statutory action granting a government agent the right to sue for injunctive relief is wholly different than equitable action for injunctive relief.<sup>11</sup>

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<sup>3</sup> Nevada Escrow Service, Inc. v. Crockett, 91 Nev. 201, 202-03 (1975).

<sup>4</sup> U.S. v. Nutri-cology, Inc., 982 F.2d 394, 397 (9th Cir. 1992).

<sup>5</sup> Because the BCP did not assert an affirmative claim for injunctive relief in its answer or through a counterclaim and attached no affidavits containing admissible statements or admissible documents to the motion the motion for preliminary injunction was procedurally defective.

<sup>6</sup> 97 Nev. 399, 403 (1981).

<sup>7</sup> 72 Nev. 79 (1956)

<sup>8</sup> *Id.* at 80-81.

<sup>9</sup> See U.S. v. Odessa Union Warehouse Co-op, 833 F.2d 172, 175 (noting the difference between the standard needed for granting an injunction when a governmental entity is involved as opposed to two private litigants) see also Vill. Of Riverdale v. Allied Waste Transp., 334 Ill.App.3d 224, 267 (2002) (presuming harm to the public at large from statutory violation enough to support granting of injunction).

<sup>10</sup> 55 N.E.2d 145 (Ohio 1978)

<sup>11</sup> *Id.* at 148-49.

The court held that the district court went too far in holding that the utility commission workshop was an adequate remedy at law. The court held that once the governmental agency makes a showing of admissible evidence of a statutory violation (here a deceptive trade practice) the injunction should issue. Because the BCP failed to adequately support its motion for the preliminary injunction the district court was correct in denying it.

### **Conclusion**

While the outcome in this case remains the same, the court essentially grants for the appellants in this matter. By establishing that irreparable harm is presumed when a preliminary injunction occurs in a statutory enforcement action, the court practically invites the BCP to amend its motion and file a new injunction. As long as the BCP can present *any* admissible evidence showing a deceptive trade practice the injunction will automatically issue and preclude NOS from engaging in the alleged deceptive trade practices.