MINNESOTA STATE LAW LIBRARY

NO. A11-1942

State of Minnesota
In Court of Appeals

In the Matter of: Jensen Field Relocation Claims

Jensen Field, Inc.,
Clay Adams, et al.,

Relators,

v.

Board of Regents of the University of Minnesota,

Respondent.

RESPONDENT'S BRIEF

MARK B. ROTENBERG
General Counsel
JENNIFER L. FRISCH (#257928)
Associate General Counsel
University of Minnesota
360 McNamara Alumni Center
200 Oak Street S.E.
Minneapolis, MN 55455-2006
(612) 624-4100

Attorneys for Respondent

Kirk A. Schnitker (#235611)
Jon W. Morphew (#287301)
SCHNITKER LAW OFFICE, P.A.
1330 – 81st Avenue N.E.
Spring Lake Park, MN 55432
(763) 252-0114

Attorneys for Relators

2011 – BACHMAN LEGAL PRINTING – FAX (612) 337-8053 – PHONE (612) 339-9518 or 1-800-715-3582

TABLE OF CONTENTS

TABLE OF AUTHORITIES iii

STATEMENT OF ISSUES 1

STATEMENT OF THE CASE 3

STATEMENT OF FACTS 5

STANDARD OF REVIEW 18

ARGUMENT 19

I. Claimants Are Not Displaced Persons Under the URA 21

A. Claimants' right to occupy the subject property ended upon expiration of the lease. 21

B. The Court should defer to the factual findings of the Hearing Officer that Claimants were not displaced because of a federally funded project. 28

II. The Hearing Officer Properly Considered The Substantive Claim For Relocation Benefits. 31

A. The Hearing Officer did not commit error of law in determining entitlement to benefits. 31

B. Claimants are not entitled to relocation advisory services or claims assistance. 32

III. Claimants Failed To Satisfy Their Burden To Establish A Claim For Relocation Benefits. 37

IV. Claimants' Procedural Challenges Lack Merit. 42

A. Minnesota Statutes do not apply to this case. 42

B. Claimants consented to the proceeding before the University's Hearing Officer. 43

C. Claimants received ample due process. 47

CONCLUSION.....48

Certificate Of Brief Length.....49

TABLE OF AUTHORITIES

Federal Cases

Alexander v. United States Department of Housing and Urban Development,
441 U.S. 39 (1979) 23

Bishop v. Tice,
622 F.2d 349 (8th Cir. 1980) 47

Carr v. Liberty Life Assurance Co.,
390 Fed. Appx. 694 (9th Cir. 2010) 44

Creason v. City of Washington,
435 F.3d 820 (8th Cir. 2006) 47

Dugger v. City of Missoula,
676 F. Supp. 209 (D. Mont. 1987) 24

Isham v. Pierce,
694 F.2d 1196 (C.A. Cal. 1982) 23

Kroger Co. v. Reg'l Airport Auth. of Louisville and Jefferson County,
286 F.3d 382 (6th Cir. 2002) 39

Messer v. Virgin Islands Urban Renewal Bd.,
623 F.2d 303 (3d Cir. 1980) 22

Moorer v. Dep't of Hous. & Urban Dev.,
561 F.2d 175 (8th Cir. 1977) 22

Parrish v. Mallinger,
133 F.3d 612 (8th Cir. 1998) 47

U.S. v. Petty Motor Co.,
327 U.S. 372 (1946) 1, 21

Minnesota Cases

Anderson v. County of Lyon,
784 N.W.2d 77 (Minn. Ct. App. 2010) 19

Application for Relocation Benefits of Sokol v. Metro. Airports Comm'n,
No. C9-02-1284, 2003 WL 943856 (Minn. Ct. App. Mar. 11, 2003) 18, 44

Application of Relocation Benefits of Wilkins Pontiac, Inc.,
530 N.W.2d 571 (Minn. Ct. App. 1995) 2, 3, 46

Fargo Electronics, Inc. v. State, Dept. of Transp.,
No. C1-92-1244, 1992 WL 383449 (Minn. Ct. App. Dec. 29, 1992) 46

Graham v. Special Sch. Dist. No. 1,
472 N.W.2d 114 (Minn. 1991) 3, 45, 46

Hartford v. Univ. of Minn.,
494 N.W.2d 903 (Minn. Ct. App. 1993) 45

In re Appeal of Chelloy, Inc.,
No. C6-02-884, 2002 WL 31752270 (Minn. Ct. App. Dec. 10, 2002) 40, 48

In re Application for Relocation Benefits by Mistelske,
No. A06-1429, 2007 WL 1747105 (Minn. Ct. App. June 19, 2007) 2, 38

In re Excess Surplus Status of Blue Cross & Blue Shield of Minn.,
624 N.W.2d 264 (Minn. 2001) 18

In re Lecy ex rel. Chanhassen Chiropractic Ctr., P.A.,
No. A04-1235, 2005 WL 626614 (Minn. Ct. App. Mar. 15, 2005) 18

In re River City Woodworking, Inc.,
No. A04-2106, 2005 WL 1432367 (Minn. Ct. App. June 21, 2005) 18

In re Wiseway Motor Freight, Inc.,
No. CX-99-648, 1999 WL 759999
(Minn. Ct. App. Sept. 28, 1999) 2, 19, 33, 38, 39

In re Wren,
699 N.W.2d 758 (Minn. 2005) 2, 46

L.K. v. Gregg,
380 N.W.2d 145 (Minn. Ct. App. 1986) 1, 32

Matter of Dakota County Mixed Mun. Solid Waste Incinerator,
483 N.W.2d 105 (Minn. Ct. App. 1992) 27

McKush v. Hecker, 559 N.W.2d 725
(Minn. Ct. App. 1997) 26

Metro. Airports Comm'n v. Noble,
763 N.W.2d 639 (Minn. 2009) 1, 24

Mission Covenant Church v. Nelson,
91 N.W.2d 440 (Minn. 1958) 26

Naegele Outdoor Advertising, Inc. v. Minneapolis Cmty. Dev. Agency,
551 N.W.2d 235, 237 (Minn. Ct. App. 1996) 18

St. Croix Sensory, Inc. v. Dep't of Employment & Econ. Dev.,
785 N.W.2d 796 (Minn. Ct. App. 2010) 19

Sawh v. City of Lino Lakes,
800 N.W.2d 663 (Minn. Ct. App. 2011) 18

Sundae v. Anderson,
No. 02-855, 2003 WL 24014341 (D. Minn. April 24, 2003) 46

Warnert v. MGM Props.,
362 N.W.2d 364 (Minn. Ct. App. 1985) 30

Other State Cases

Ackerley Commc'ns, Inc. v. Mt. Hood Cmty. Coll.,
627 P.2d 487 (Or. Ct. App. 1981) 1, 22

Haddock v. Dep't of Cmty. Dev.,
526 A.2d 725 (N.J. Super. Ct. App. Div. 1987) 30

Hindsley v. Lower Marion,
360 A.2d 297 (Pa. Commw. Ct. 1976) 24

Lectronic Distribs., Inc. v. Redevelopment Auth. of Phil.,
272 A.2d 208 (Pa. Super. Ct. 1970) 22

Reg'l Transp. Dist. v. Outdoor Sys., Inc.,
34 P.3d 408 (Colo. 2001) 1, 23, 26

Remmen v. Dep't of Roads,
No. A-08-1032, 2009 WL 1819291 (Neb. Ct. App. Jun. 23, 2009) 30

Se. Pa. Transp. Auth. v. Frankford 5206 Bar, Inc.,
587 A.2d 855 (Pa. Commw. Ct. 1991) 23, 26

Superior Strut & Hanger Co. v. Port of Oakland, 72 Cal. App. 3d 987
(Cal. App. 1st Dist. 1977) 24, 25, 26

Minnesota Statutes

Minn. Stat. § 117.50 42

Minn. Stat. § 117.52. ..... 2, 31, 42, 43, 44, 46

Minn. Stat. § 500.20 26

Minn. Stat. § 513.04 30

Minn. Stat. § 513.05 30

Minn. Stat. § 541.023 26

Federal Statutes and Other Federal Authorities

Uniform Relocation Assistance and Real Property Acquisition Policies
Act of 1970, 42 U.S.C. §§ 4601-4655 (2003) ..... passim

42 U.S.C. § 4622(a) (2000) 38

49 C.F.R. § 24 ..... 1, 2, 4, 15, 17, 21, 25, 30, 33, 34, 37, 39, 41, 48

H.R. Rep. No. 91-1656 (1970) 33

Other Authorities

21 MNPRAC § 11.01.2 32

31 C.J.S. *Estoppel and Waiver* § 196 44

Hearings Before the Subcomm. on Intergovernmental Relations of the
Senate Comm. of Governmental Operations, 91st Cong., 1st Sess.,
Vol. 1 (1969) 23

STATEMENT OF ISSUES

1. **Whether the University's finding that Relators were not displaced persons under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended and the accompanying regulations in 49 C.F.R. Part 24 (the "URA") was arbitrary, oppressive, unreasonable, fraudulent, under an erroneous theory of law or without any evidence to support it?**

The University's Hearing Officer found that Relators were not entitled to relocation benefits under the URA because, among other things, they had no legal right in the property following the natural expiration of the subject lease, that Relators had no automatic right to lease extension, and that the lease was not terminated solely because the University received federal funds. The most apposite authority is: 49 C.F.R. § 24; *U.S. v. Petty Motor Co.*, 327 U.S. 372 (1946); *Metro. Airports Comm'n v. Noble*, 763 N.W.2d 639 (Minn. 2009); *Reg'l Transp. Dist. v. Outdoor Sys., Inc.*, 34 P.3d 408 (Colo. 2001); *Ackerley Commc'ns, Inc. v. Mt. Hood Cmty. Coll.*, 627 P.2d 487 (Or. Ct. App. 1981).

2. **Whether the University's decision to determine both the eligibility and entitlement to relocation benefits was arbitrary, oppressive, unreasonable, fraudulent, under an erroneous theory of law or without any evidence to support it?**

The University's Hearing Officer denied Relators' request to bifurcate the hearing process into separate proceedings to determine eligibility and entitlement to benefits, finding that 49 C.F.R. Part 24 does not specifically require any particular form of hearing or require that the issues of eligibility and entitlement to benefits be treated separately. The most apposite authority is: 49 C.F.R. § 24; *L.K. v. Gregg*, 380 N.W.2d 145 (Minn. Ct. App. 1986).

3. **Whether the University's finding that Relators failed to document reasonable and necessary relocation expenses entitling them to an award of relocation benefits under the URA was arbitrary, oppressive, unreasonable, fraudulent, under an erroneous theory of law, or without any evidence to support it?**

The University's Hearing Officer found, among other things, that Relators failed to document reasonable and necessary relocation expenses entitling them to an award of relocation benefits under the URA, having failed to submit any competent supporting documentation to substantiate their claims. The most apposite authority is: 49 C.F.R. § 24; *In re Wiseway Motor Freight, Inc.*, No. CX-99-648, 1999 WL 759999 (Minn. Ct. App. Sept. 28, 1999); *In re Application for Relocation Benefits by Mistelske*, No. A06-1429, 2007 WL 1747105 (Minn. Ct. App. June 19, 2007).

4. **Whether the University was required to initiate proceedings in the Office of Administrative Hearings when Minnesota's relocation assistance statute does not apply, Claimants requested and then consented to the University's internal appellate process to determine their eligibility and entitlement to relocation benefits, all of the claims have been fully litigated with finality, and the University afforded due process to Claimants in the proceeding below?**

In the proceeding below, Relators conceded that Minnesota's relocation assistance statute did not apply to their claim and, as such, requested that the University initiate an internal appeal of the denial of relocation benefits pursuant to the URA. The University so commenced the internal appellate process, to which Relators consented. Relators received due process when the University followed the process set forth in the URA, and Claimants cannot relitigate the substantive findings on the merits by the University's Hearing Officer in another forum. The most apposite authority is: Minn. Stat. § 117.52; *In re Wren*, 699 N.W.2d 758 (Minn. 2005); *Application of Relocation Benefits of Wilkins*

Pontiac, Inc., 530 N.W.2d 571 (Minn. Ct. App. 1995); *Graham v. Special Sch. Dist. No. 1*, 472 N.W.2d 114 (Minn. 1991).

STATEMENT OF THE CASE

Following the expiration of a succession of one-year leases between the University and Jensen Field for an eight-acre parcel at UMore Park, ten Claimants submitted a demand to the University for relocation benefits under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (the "URA"). Only one Claimant, Jensen Field, had a legal relationship with the University—a one-year lease that expired by its terms on October 31, 2010. The other nine Claimants have no legal relationship with the University or Jensen Field and had no legally cognizable property interest. None of the Claimants relocated anywhere. Collectively, Claimants sought in excess of $250,000 for the unsubstantiated disposition of unspecified inventory and other property.

The University properly denied the claims for relocation benefits. Claimants are not "displaced persons" within the meaning of the law because they had no legal right to remain on the property following expiration of the prime lease between Jensen Field and the University. Claimants were not displaced as a result of a federally funded project or an acquisition of property. Claimants were long-aware that their use of the leased premises was on borrowed time as it was inconsistent with the University's research mission and the long-established Concept Master Plan for the development of UMore Park.

Even if the Claimants were "displaced persons," the University properly denied the claims for benefits because Claimants failed to prove the need for or value of benefits. No Claimant is entitled to relocation advisory services or claim assistance, as they do not qualify for such services and had no justifiable or articulated need for those services. Even knowing that the University declined to supply such services and disputed their claim to be "displaced persons," Claimants proceeded to dispose of property, without retaining any records of such disposition, and without notifying the University. Claimants cannot meet their burden to substantiate a claim for benefits because they have no record of any inventory, sale or other disposition of property. The University properly exercised its discretion to deny these unsubstantiated claims.

Following the University's denial of the application for relocation benefits, Claimants submitted a written appeal to the University of Minnesota pursuant to the procedure set forth in the URA, 49 C.F.R. § 24.10, seeking a determination of their eligibility and entitlement to relocation benefits. The University designated Vice President Kathleen O'Brien to serve as the Hearing Officer. Following a hearing to which Claimants consented, Vice President O'Brien issued a final determination denying Claimants' appeal, concluding that Claimants were not entitled to relocation benefits under the URA because they had no legal right in the property following the natural expiration of the subject lease and no automatic right to lease extension, and that the lease was not terminated because the University received federal funds. Vice President O'Brien further concluded that even if the Claimants were displaced persons within the

meaning of the URA, Claimants failed to document reasonable and necessary relocation expenses entitling them to an award of benefits under the URA.

Claimants appeal these findings. Claimants also seek novel relief in the form of a referral to the Office of Administrative Hearings under Minnesota statutes to relitigate the identical issues raised and decided in the administrative proceeding mandated by the URA. The Minnesota relocation benefits statute does not apply here because there has been no property acquisition by the University and the University's substantive finding regarding eligibility and entitlement to benefits is entitled to preclusive effect.

STATEMENT OF FACTS

This matter concerns a claim by Jensen Field, Inc., and individual claimants (collectively, "Claimants" or "Relators") who assert that they are displaced persons eligible for relocation advisory services, claims assistance, benefits and payments (the "Claims") as a result of the expiration of a lease between Jensen Field, Inc. and the Regents of the University of Minnesota.

Parties

The University of Minnesota is an institution of higher learning established by the Territorial Laws of the State of Minnesota and perpetuated by the Minnesota Constitution as a constitutional corporation. In 1947-48, the University acquired the 8,000 acre

UMore Park site from the federal government. UMore Park is located 25 miles southeast of the Twin Cities in Dakota County.[1]

Jensen Field is a Minnesota corporation formed in 1982 with the corporate purpose of providing an umbrella entity for a loose collection of aviation hobbyists whose membership changed over time.[2] The individual Claimants comprised the membership of Jensen Field as of October 31, 2010.

Lease History

The parties have stipulated to the following facts and supporting documents regarding the history of the leasing arrangement governing the subject property:[3]

On December 31, 1986, the University leased approximately eight of UMore Park's 8,000 acres to Jensen Field.[4] The lease agreement provided for a five year term, commencing on November 1, 1986 and ending on October 31, 1991. The agreement provided that the lease "may be continued for a maximum period of Two (2) years thereafter if the land is available for continued leasing and the parties mutually agree on lease terms."[5]

---

1 B-001 ¶¶ 1-3. On January 6, 2012, the record was transmitted to the Court by counsel for the University's Hearing Officer. The record is paginated in the upper right corner as "A-___" and "B-___," referenced as such herein.

2 *See* Relators' Memorandum at 7. There is no evidence other than Claimants' unsubstantiated assertion that the University required the creation of the Jensen Field corporate entity. A-171.

3 *See* B-001-133.

4 B-001 ¶ 2; B-007-10.

5 *Id.*

The lease agreement further provides in pertinent part:

- "The premises may be used only by the Lessee for operation of its non-assignable private airport."
- "Lessee shall not assign this lease nor sublet all or any portion of the Leased Premises without prior written consent of the Lessor."
- "Upon the expiration of this Lease or earlier termination thereof, the Lessee shall remove its personal property and any improvements constructed on the Leased Premises by it or its sublessees (hangars, cement floors, etc.) and return the land to the condition which existed at commencement of its use of the premises on November 1, 1982."

The lease contained no automatic right to any lease extension.[6]

During the 1980s, Jensen Field supplied the University with copies of certain subleases for various subtenants of the property. All of those subleases expired during the 1990s.[7] Throughout the duration of its relationship with Jensen Field, the University consistently demanded and required from Jensen Field compliance with the approval requirements for sublessees of the property.[8]

---

[6] B-003 ¶¶ 23, 25; B-007-010.

[7] B-004 ¶ 24. Relators allege that the University "allowed" the individual Claimants to remain on the property. None of these Claimants had sublease agreements, and the dates of occupation have not been disclosed to the University and are not part of the record. A-087.

[8] *See, e.g.*, A-175 (requiring execution of sublease agreements); A-176 (requiring compliance with insurance requirements); A-177-81 (requiring execution of hold harmless and indemnification agreement and insurance requirements); B-109 (requiring sublessees to hold harmless and indemnify the University); B-027-28 (written approval of

The parties entered into several written lease extensions: on September 25, 1991, through October 31, 1993; September 15, 1993, through October 31, 1994; and October 6, 1994, through October 31, 1995. At that time, the University denied Jensen Field's request to extend the lease through October 31, 1999 stating "At this time, the University is not granting any long term lease requests."[9] The parties entered into additional written lease extensions: on October 4, 1995, through October 31, 1996;[10] October 23, 1996, through October 31, 1997;[11] and November 18, 1997, through October 31, 1998.[12] In each year, the University denied Jensen Field's request to extend the lease for more than one year.

On October 20, 1998, the parties entered into a written lease extension through October 31, 1999. The University denied Jensen Field's request to extend the lease for a three year period. The University also notified Jensen Field that "In the future, we will only be leasing land and/or buildings to lessees who have a partnership/participation with an academic department within the University of Minnesota." The parties then amended the lease agreement to add the following term: "Lessee shall provide the University with

---

sublease); B-133 (inquiring whether Jensen Field violated sublease provision of lease agreement).

9 B-001 ¶¶ 5-7; B-013-16.

10 B-001 ¶ 7; B-016.

11 B-001 ¶ 8; B-017.

12 B-002 ¶ 9; B-018.

evidence that all sublessees (and other users of the Lease Premises) hold harmless and indemnify the University."[13]

The parties entered into additional written lease extensions: on October 28, 1999, through October 31, 2000;[14] October 31, 2000, through October 31, 2001;[15] October 3, 2001, through October 31, 2002;[16] October 8, 2002, through October 31, 2003;[17] October 20, 2003, through October 31, 2004;[18] and October 13, 2004, through October 31, 2005.[19] Again, in each year, the University denied Jensen Field's request to extend the lease for more than one year.

On April 12, 2005, the University approved a sublease of a portion of the leased premises to Lockheed Martin for the purpose of working with the University's Department of Aerospace Engineering and Mechanics on various student projects. The sublease was effective during the University's spring semester 2005.[20]

The parties entered into additional written lease extensions: on October 25, 2005, through October 31, 2006;[21] October 5, 2006, through October 31, 2007;[22] October 4,

---

13 B-002 ¶ 10; B-019-20.

14 B-002 ¶ 11; B-021.

15 B-002 ¶ 12; B-022.

16 B-002 ¶ 13; B-023.

17 B-002 ¶ 14; B-024.

18 B-002 ¶ 15; B-025.

19 B-002 ¶ 16; B-026.

20 B-002 ¶ 17; B-027-28.

21 B-002 ¶ 18; B-029.

22 B-003 ¶ 19; B-030.

2007, through October 31, 2008;[23] and October 8, 2008, through October 31, 2009.[24] Again, in each year, the University denied Jensen Field's request to extend the lease for more than one year.

Final Lease Agreement

On November 17, 2009, the parties entered into a written lease extension through October 31, 2010. The University denied Jensen Field's request to extend the lease for five years.[25] The University also notified Jensen field that "the University is unable to continue this lease after October 31, 2010" and that

> With the University's recent receipt of notice of a US Department of Energy award of up to $8 million in federal stimulus funds for a research project at UMore Park involving wind energy, we expect the University will begin constructing a wind turbine . . . at UMore Park this coming spring/summer, with its operation then scheduled to begin by the fall of 2010. Therefore, the University is unable to continue this lease after October 31, 2010.[26]

On January 15, 2010, the United States Department of Energy issued to the University a formal grant award for a wind turbine project at UMore Park. The wind turbine project is not located on the leased premises.[27]

On June 14, 2010, University representatives met with two of the individual Claimants, who secretly recorded the meeting.[28] During the meeting, one of the Claimants admitted that the leased property could not be used for flying purposes because

---

23 B-003 ¶ 20; B-031.

24 B-003 ¶ 21; B-032.

25 B-003 ¶ 22; B-033-34.

26 *Id.*

27 B-004 ¶ 31; B-035-104.

28 B-005 ¶ 32; B-104-127.

of safety issues relating to the wind turbine project located adjacent to the leased property. The parties further discussed that the wind turbine would have no direct impact on Jensen Field, but the operation of the turbine presented safety issues.[29]

The parties also discussed that the University had other development projects which were inconsistent with the future lease of Jensen Field. Claimants conceded that Jensen Field was incompatible with the University's long term plans for UMore Park.[30]

The parties also discussed that the wind turbine project was an immediate, but not the sole reason for the University's refusal to grant further extensions of the lease.[31]

On July 19, 2010, Claimants delivered a claim for relocation benefits under the URA, requesting that the University issue a Notice of Relocation Eligibility and provide relocation advisory services and claims assistance.[32]

On August 19, 2010, unbeknownst to the University, Claimants obtained an estimate to move their personal property, equipment and airplanes from All Furniture, Inc. Claimants did not supply that estimate to the University at that time.[33]

On or before October 31, 2010, unbeknownst to the University, Claimants moved, sold or otherwise disposed of twelve of the thirteen airplane hangars located at Jensen Field, their personal property, equipment and airplanes.[34]

---

29 B-104-05.

30 B-106.

31 B-126-27.

32 B-005 ¶ 33; B-129-29.

33 B-005 ¶ 34; B-130-32.

34 B-005 ¶ 35.

The lease agreement expired by its terms on October 31, 2010.[35] As of that date, Jensen Field did not have any sublease agreements with any third party.[36] At least in the last ten years, the University accepted lease payments solely from Jensen Field and had no knowledge of any arrangement between any of the Claimants and Jensen Field.[37]

In January 2011, long after Claimants had moved, sold or otherwise disposed of their hangars, property, equipment and airplanes, Claimants supplied to the University a copy of the August 19, 2010 estimate to move their property. Claimants did not keep track of or supply the University with actual expenses incurred as a result of the alleged disposition of their property. Claimants did not supply the University with information regarding the purported sale of their property, including the dates of sale or amounts for which items were sold. Claimants also disposed of certain property at no cost to them.[38] Before moving their property from Jensen Field on or before October 31, 2010, Claimants provided to the University no information, invoices, bills or other proof of expenses for their move. After Claimants moved their property from Jensen Field, Claimants provided no other information, invoices, bills or other proof of expenses for their move, other than the estimate from All Furniture, Inc., supplied to the University in January 2011.[39]

---

35 B-004 ¶ 25.

36 B-004 ¶ 26.

37 A-184-85.

38 A-087-88.

39 *Id.*

UMore Park Development

Commencing by at least November 2005, the University conducted a comprehensive planning process for the future use of UMore Park, including development of a "Concept Master Plan" in 2008 and the direction to create a limited liability company to manage development of the property and to purse the formation of a legacy fund to capture development revenue to support academic mission pursuits.[40]

The UMore Park Concept Master Plan dated October 2008 was affirmed by the Board of Regents in December 2008 and does not depict Jensen Field as an ongoing element or part of the planned development.[41]

As part of the University's planning process, the University directed the commencement of studies for the interim use of the portion of UMore Park including Jensen Field for sand and gravel mining and related operations. Environmental review processes required by Minnesota Statutes were commenced in 2009 with the proposal for mining to commence in mid-2011.[42]

The University contemplated that the area of the sand and gravel mining operations, when completed, would result in the creation of ponds and other amenities for the future redevelopment of UMore Park, on and adjacent to the then-existing location of

---

[40] A-183-84; A-186; A-193-94. *See also* http://www.umorepark.umn.edu/about/regents/index.htm.

[41] A-184; A-193; *see also* conservancy.umn.edu/bitstream/93153/1/MasterPlanImage.pdf.

[42] A-184; A-188; *see also* http://www.umorepark.umn.edu/planning/sand/index.htm.

Jensen Field for master planned residential, commercial/retail/office and light industrial development, and educational facilities to serve the master planned area.[43]

Claimants knew the University's long term plans for UMore Park's redevelopment and the sand/gravel project would preclude the future use of the leased property by Jensen Field.[44]

URA Claims

On July 19, 2010, Claimants first asserted a claim of eligibility and entitlement to relocation benefits under the URA.[45] On that day, counsel for the Claimants sent a letter to the University alleging that Claimants were eligible and entitled to benefits under the URA because of the wind turbine project and requested certain advisory assistance.[46] Six months later, on January 24, 2011, Claimants supplied further detail related to their application for relocation benefits and demanded that the University issue a decision on the claim within 10 days.[47]

On February 2, 2011, the University supplied a formal response to the application for relocation benefits, denying the claim in its entirety. The University set forth several reasons for its decision, including that neither Jensen Field nor occupants of the property qualified as displaced persons under the URA and that even if they qualified as displaced

---

43 A-183-196; *see also* www.umorepark.umn.edu/prod/groups/ssrd/@pub/@ssrd/@umorepark/documents/content/ssrd_content_256840.pdf.

44 *Id.*; B-105-07.

45 B-128-29.

46 *Id.*

47 A-087-88.

persons, they failed to supply required proof of entitlement to benefits. The University notified Jensen Field of the proper procedure for appeal of the University's denial of relocation benefits as set forth in 49 C.F.R. § 24 and directed Jensen Field to tender any appeal to then-University President Robert Bruininks.[48]

On February 9, 2011, Claimants requested reconsideration of the University's decision, which was denied by the University.[49]

On February 14, 2011, Claimants tendered an appeal request to then-University President Bruininks, seeking a determination of their eligibility for and entitlement to relocation benefits.[50]

University Administrative Proceedings

On March 25, 2011, then-President Bruininks designated University Vice President Kathleen O'Brien to serve as the University official charged with making a final determination in the administrative appeal hearing related to the claims for relocation benefits regarding Jensen Airfield. Vice President O'Brien was directed to conduct appropriate proceedings to make a final determination of the claims.[51]

On May 26, 2011, Vice President O'Brien held a pre-hearing conference with the parties to discuss the scope and process of the administrative appeal hearing. On June 7, 2011, Vice President O'Brien issued an Administrative Order setting forth the scope of

---

48 A-002-07.

49 A-008-12.

50 A-013-14.

51 A-001. The University retained independent counsel to advise Vice President O'Brien during the appeal. ADD-1; A-016, A-019.

the administrative appeal, ordering that the issues of eligibility and entitlement to relocation benefits shall be determined in one proceeding based on written submissions of the parties and setting forth a briefing schedule. The parties stipulated to certain facts and submitted materials to the Hearing Officer for consideration.[52]

Final Administrative Decision

On September 15, 2011, Vice President O'Brien issued a final University determination in the administrative appeal hearing related to the claims for relocation benefits.[53] Vice President O'Brien considered two issues:

1. Are Claimant Jensen Field, Inc., and the Individual Claimants displaced persons entitled to relocation benefits pursuant to the requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (the "URA"), and the accompanying regulations in 24 C.F.R. Part 24, as amended?

2. Did Claimant Jensen Field, Inc., and the Individual Claimants document necessary and reasonable relocation expenses entitling them to an award of relocation benefits under the URA?

As to the first issue, Vice President O'Brien found that Claimants were not entitled to relocation benefits under the URA. Vice President O'Brien concluded, among other things, that the Claimants had "no legal claim to relocation benefits when the natural expiration of the rental agreement terminated their right to use the sites identified in the Lease."[54] Vice President O'Brien further concluded that Claimants knew their access to Jensen Field was limited and had been on notice since October 28, 1998 that the

---

52 A-016-17.

53 The final University determination is set forth in Relators' Addendum. ADD-1-19.

54 ADD-13.

University intended to confine its leasing activities at UMore Park to groups or entities with a direct connection to the University's academic and research mission. Vice President O'Brien also concluded that the proposed redevelopment and sand/gravel project described in the UMore Park Concept Master Plan precluded the future use of the premises by Jensen Field and that Claimants had been long aware of that fact. Finally, Vice President O'Brien concluded that the lease "was not terminated by the University because it received federal funds for the wind turbine project, but because the University elected not to renew the Lease" and that Claimants had no right to an automatic lease extension.[55]

As to the second issue, Vice President O'Brien found that Claimants failed to document reasonable and necessary relocation expenses entitling them to an award of relocation benefits under the URA. Vice President O'Brien concluded, among other things, that Claimants "provided no competent supporting documentation to substantiate their Claims."[56] Vice President O'Brien further concluded that "there is simply no credible documentation of **any** 'reasonable and necessary' expenses actually incurred for relocation services, 'self-move' expenses or other activities permitted by the URA comprising the Claims."[57]

On October 28, 2011, Claimants timely filed a Petition for Writ of Certiorari with this Court.

---

55 ADD-15.

56 *Id.*

57 *Id.* (emphasis in original).

STANDARD OF REVIEW

The University's denial of relocation benefits is only reviewable by writ of certiorari to this Court. *Naegele Outdoor Adver., Inc. v. Minneapolis Cmty. Dev. Agency*, 551 N.W.2d 235, 237 (Minn. Ct. App. 1996). In reviewing an agency decision regarding a claim for relocation benefits, this Court has confined certiorari review to "(1) questions affecting jurisdiction; (2) regularity of proceedings; and (3) whether the order in question was arbitrary, oppressive, unreasonable, fraudulent, under an erroneous theory of law, or without any evidence to support it." *In re River City Woodworking, Inc.*, no. A04-2106, 2005 WL 1432367, at *3 (Minn. Ct. App. June 21, 2005); *see also Application for Relocation Benefits of Sokol v. Metro. Airports Comm'n*, No. C9-02-1284, 2003 WL 943856, at *2 (Minn. Ct. App. Mar. 11, 2003) (citations omitted).

Certiorari review is further "limited to an inspection of the record" with this Court affording deference "to [the] agency's conclusions regarding conflicts in testimony, the weight given to expert testimony and the interferences to be drawn from testimony." *In re River City Woodworking, Inc.*, 2005 WL 1432367, at *3 (citing *In re Excess Surplus Status of Blue Cross & Blue Shield of Minn.*, 624 N.W.2d 264, 278 (Minn. 2001)). This Court will not "retry facts or make independent credibility determinations." *In re Lecy ex rel. Chanhassen Chiropractic Ctr., P.A.*, No. A04-1235, 2005 WL 626614, at *1 (Minn. Ct. App. Mar. 15, 2005). This Court "will uphold the agency's decision if the lower tribunal furnished any legal and substantial basis for the action taken." *Sawh v. City of Lino Lakes*, 800 N.W.2d 663, 667 (Minn. Ct. App. 2011).

A "hearing officer's decision enjoys a presumption of correctness." *In re Wiseway Motor Freight, Inc.*, 1999 WL 759999, at *3. Quasi-judicial agency decisions "reflect discretionary decision-making" and "must be accorded deference by the judiciary to avoid usurpation of the executive body's administrative prerogatives." *Anderson v. County of Lyon*, 784 N.W.2d 77, 81 (Minn. Ct. App. 2010). Although questions of law are reviewed *de novo*, this Court reviews factual findings "in the light most favorable to the decision." *St. Croix Sensory, Inc. v. Dep't of Employment & Econ. Dev.*, 785 N.W.2d 796, 799 (Minn. Ct. App. 2010).

Here, the Findings of Fact, Conclusions and Order are grounded on detailed legal and factual findings to which this Court should defer. In this appeal, Claimants challenge the factual findings of the Hearing Officer, most notably the reasons the University chose not to renew the subject lease following its expiration and the sufficiency of the proof of entitlement to benefits. The Court should not retry these facts and should defer to the factual findings of the Hearing Officer. Claimants have no other legitimate challenge to the University's final determination. This Court should therefore affirm the University's decision because it was not arbitrary, oppressive, unreasonable, fraudulent, based on an erroneous legal theory or without any supporting evidence.

ARGUMENT

This case begins and ends with the undisputed fact that, following the expiration of the lease, no Claimant held an existing property interest such that they could be eligible or entitled to relocation benefits. Claimants must have an existing property interest in order to avail themselves of the protections afforded by the URA. Here,

Claimants allege that they derived that property interest from a one-year lease with the University for the subject property. Upon expiration of that lease, however, Claimants had no further property interest. When Claimants' property interest expired, so did their ability to invoke the URA. This is not a case of first impression; this is a case of black letter property law.

The Hearing Officer properly concluded that Claimants are not displaced persons entitled to relocation benefits under the URA because they have not lost an existing property interest. Although Jensen Field held a series of one-year leases with the University for the property at issue, once its lease expired, it had no further interest in the property, and is therefore not entitled to compensation under the URA. These findings are based on established property law and are grounded in the undisputed factual record. The Hearing Officer also concluded, as a factual matter, that Jensen Field and the other Claimants were "displaced" because the prime lease expired, not because of a federally funded project. In the absence of any existing right to occupy the property, no Claimant is a "displaced person" under the URA. The Court should defer to these findings on certiorari review.

The Hearing Officer also properly concluded that even if Claimants were eligible for relocation benefits, they were not entitled to such benefits because, as a factual matter, they failed to submit any credible evidence documenting reasonable and necessary relocation expenses. The Court should likewise defer to these factual findings on certiorari review, affirming the decision of the Hearing Officer in its entirety.

I. Claimants Are Not Displaced Persons Under The URA.

A. Claimants' right to occupy the subject property ended upon expiration of the lease.

The University has no obligation to pay relocation benefits to persons whose legal right to possess property has expired. The Hearing Officer correctly stated the law that in order to be eligible for relocation benefits, Claimants must show that their property interest was extinguished "as a direct result of rehabilitation or demolition for a project." 49 C.F.R. § 24.2(a)(9)(i)(B). In reviewing the lease and the relationship of the parties, the Hearing Officer properly concluded that any rights that Claimants had in the property originated from the lease itself and ended upon the expiration of that lease; that there was no automatic right to lease extension; and that the University as landowner had the sole discretion to grant such extensions. In the absence of an existing property interest upon the expiration of the lease, the Hearing Officer correctly concluded that Claimants had no legal claim to relocation benefits when the natural expiration of the rental agreement terminated their property interest. These are findings based on the undisputed record to which this Court should defer.

The Hearing Officer's decision is well grounded in the law. A property interest in a lease only extends to the end of the tenant's term, plus any additional rights created by contract. *U.S. v. Petty Motor Co.*, 327 U.S. 372, 381 (1946). The fact that parties have chosen to renew a lease in the past does not create any additional property interest in the absence of a legal right to renew. *Id.* at 380 ("Changeable intentions are not an interest in land . . . [t]hey added nothing to the tenants' legal rights, and legal rights are all that must

be paid for."). Once a lease expires, a tenant's property interest is extinguished, including the right to compensation for a government taking or relocation benefits. *See Ackerley Commc'ns, Inc. v. Mt. Hood Cmty. Coll.*, 627 P.2d 487, 490 (Or. Ct. App. 1981) (explaining that claimant does not have a right to relocation benefits for private property when the natural expiration of a rental agreement terminated the claimant's legal right to use the location).

The rejection of the claim for relocation benefits is consistent with the purpose of the URA: to compensate parties who are coerced to give up their property rights in favor of a government project. *Moorer v. Dep't of Hous. & Urban Dev.*, 561 F.2d 175, 182 (8th Cir. 1977). The URA extends only to those tenants whose right to possess the property is actually disturbed by government action. *Messer v. Virgin Islands Urban Renewal Bd.*, 623 F.2d 303, 305–06 (3d Cir. 1980) (finding that claimant was not a displaced person when it moved before agency acquired property or sent notice to vacate); *Lectronic Distribs., Inc. v. Redevelopment Auth. of Phil.*, 272 A.2d 208, 210-11 (Pa. Super. Ct. 1970) (holding that tenant who was allowed to remain on property for the eleven months remaining on its lease was not entitled to damages for dislocation of its business because the redevelopment authority never interfered with tenant's peaceful possession). The URA was intended to "benefit those displaced by public agencies with coercive acquisition power, such as eminent domain. It was intended to benefit individuals who were not willing sellers." *Moorer*, 561 F.2d at 182.

The legislative history of the URA confirms that Congress was concerned with establishing a "uniform policy among Federal agencies, and State and local recipients of

Federal funds in their dealings with property owners and others displaced by Federal or federally aided *land acquisitions*." Hearings Before the Subcomm. on Intergovernmental Relations of the Senate Comm. of Governmental Operations, 91st Cong., 1st Sess., Vol. 1, at 1-2 (1969) (statement by Sen. Muskie) (emphasis added). Courts have confirmed that the URA is intended to compensate for "acquisitions accomplished through the power of condemnation by federal agencies and state and local public agencies receiving federal financial assistance." *Isham v. Pierce*, 694 F.2d 1196, 1201 (C.A. Cal. 1982). As the United States Supreme Court explained in *Alexander v. United States Department of Housing and Urban Development*, Congress "initially intended to provide better relocation assistance when property is acquired for federal programs, not to extend assistance beyond that limited context to all persons somehow displaced by governmental programs." 441 U.S. 39, 50 (1979). The Court confirmed that this basic statutory objective "remained unchanged through succeeding legislative sessions." *Id.* at 51.

The University did not coerce Claimants to give up anything, did not acquire anything, and never interfered with Jensen Field's lawful possession of the property. The University elected not to renew a lease, as is its right as a property owner. Tenants are not entitled to relocation benefits when their move is a result of the natural expiration of a lease. *Reg'l Transp. Dist. v. Outdoor Sys., Inc.*, 34 P.3d 408, 419 (Colo. 2001) (explaining that lessees do not qualify as displaced persons when move resulted from landlord's decision to terminate the lease); *Se. Pa. Transp. Auth. v. Frankford 5206 Bar, Inc.*, 587 A.2d 855, 860 (Pa. Commw. Ct. 1991) (holding that lessee "failed to sufficiently plead entitlement to damages as a 'displaced person' since the termination of

its occupancy here resulted from the natural expiration of its then current lease term"); *Hindsley v. Lower Marion*, 360 A.2d 297, 299 (Pa. Commw. Ct. 1976) (explaining that tenant did not move because of an acquisition, but because the Township "declined to renew the lease"); *see also Dugger v. City of Missoula*, 676 F. Supp. 209, 210 (D. Mont. 1987) (holding that tenant was not displaced even though landlord terminated tenancy after city purchased nearby property because decision to terminate lease was not arbitrary or capricious and was independent). To that end, the Minnesota Supreme Court has held in the context of an eminent domain proceeding that a tenant is only entitled to compensation when that tenant holds a remaining interest in the property. *Metro. Airports Comm'n v. Noble*, 763 N.W.2d 639, 643 (Minn. 2009) (explaining that constitutional rights to just compensation can be altered by lease terms and holding that former tenant has no remaining rights upon expiration of lease in the absence of expressly agreed-upon residual property interest). All of these cases underscore that a tenant whose lease has expired has no further property interest compensable under the URA or otherwise.

Claimants' reliance on the 1977 California case *Superior Strut & Hanger Co. v. Port of Oakland*, 72 Cal. App. 3d 987 (Cal. App. 1st Dist. 1977) is misplaced. There, a port authority acquired property from a private entity for redevelopment. Following the acquisition, however, the port authority continued to lease that property to a tenant for an interim period until the port authority was prepared to commence with the redevelopment, at which time the port authority terminated the existing tenancy. The court found the tenant was entitled to relocation benefits because the property was

acquired for public use and the termination of the tenancy cut short the tenant's property interest.

In this case, however, the University did not take any affirmative steps to interfere with an existing property interest. Jensen Field leased the property in question for fixed periods, usually one year, with full knowledge and agreement that the University was under no obligation to renew the lease. Any right Jensen Field or other property occupants may have had in the property ended upon expiration of the lease. In fact, the University treated Jensen Field favorably in *affirmatively renewing* the lease in November 2009 for another one year term. The University did so notwithstanding the fact that the governing lease had already expired; and that sand/gravel mining development activities in UMore Park would soon commence; and that a wind turbine project was a possibility. The University did not acquire property; it was the original landlord. The University did not attempt to frustrate the intent of the URA by temporarily leasing property following an acquisition; it merely exercised its long-standing contractual right not to renew a lease at the end of a term. The issue presented in *Superior Strut* of whether tenants holding an existing property interest were entitled to statutory relocation benefits is not the issue presented by this case. The issue here is whether a tenant whose lease has expired and who holds no existing property interest is entitled to relocation benefits. The University is unaware of any authority finding such a right. That is because former tenants do not have a property interest at all and are not displaced persons within the meaning of 49 C.F.R. § 24.2(a)(9). The concerns about frustrating the intent of the relocation act expressed in *Superior Strut* are absent here.

Contrary to their assertion, neither *Superior Strut* nor any other case cited by Claimants stands for the proposition that a governmental entity must pay relocation benefits to a tenant upon expiration of its lease, who holds no residual property interest. As a matter of public policy, a public entity should not be liable for relocation costs where it chooses to make its land available to a private entity for short term, recreational use and then later, after the private rights have expired, regains possession of its property for its own uses. A finding to the contrary unduly restricts an owner's right to use its property in the manner which it chooses, discourages property redevelopment, and contravenes public policy to encourage the highest and best use of property. *See Mission Covenant Church v. Nelson*, 91 N.W.2d 440, 442 (Minn. 1958) (finding that the law "leans in favor of the unrestricted use of property"); *McKush v. Hecker*, 559 N.W.2d 725, 727-28 (Minn. Ct. App. 1997) (explaining that it is an "overriding principle of law that agreements restricting the free use of property are strictly construed against limits on use").[58]

There is also no authority supporting Claimants' assertion that the amendments to the URA somehow changed this long-established property law.[59] The 1987 amendments only expanded the URA to apply to rehabilitation and demolition activities that do not

---

[58] Minnesota statutes also favor the unrestricted use of property. *See* Minn. Stat. § 500.20 (restrictive covenants on property title or use are void after 30 years); *see also* Minn. Stat. § 541.023 (freeing fee simple recorded property interests from old encumbrances and adverse rights that interfere with marketability of property).

[59] The Hearing Officer also relied on authority decided after the 1987 amendments. *See Reg'l Transp. Dist. v. Outdoor Sys., Inc.*, 34 P.3d 408, 419 (Colo. 2001); *Se. Pa. Transp. Auth. v. Frankford 5206 Bar, Inc.*, 587 A.2d 855, 860 (Pa. Commw. Ct. 1991).

necessarily involve the acquisition of real property; nowhere in the amendments did Congress intimate that the URA affords rights to a tenant whose lease has expired and who is without any remaining property interest.[60] The amendments did not disturb the overarching concern of the URA, to ensure "that those whose property is coercively obtained or taken by the government for federal or federally assisted programs are treated fairly and equipped with sufficient rights to prevent government overreaching." *Reg'l Transp. Dist.*, 34 P.3d at 416 (expressly contemplating 1987 amendments). Neither the original URA nor the 1987 amendments apply to a situation like this one, where the University is not "overreaching" and instead treated Claimants fairly by not interrupting their property interest.

---

[60] The purported vesting date is also a red herring. The vesting date only becomes relevant when a claimant is displaced by a federally funded project requiring rehabilitation or demolition. Here, Claimants were not displaced by a federally funded project. The University had not yet been awarded the grant for the wind turbine project in November 2009, the date the claim to relocation benefits supposedly vested – the University received the award to construct the wind turbine on January 15, 2010, two months *after* it notified Jensen Field that its lease would not be renewed. B-035. In other words, even if Claimants' rights vested with the November 2009 notice of lease nonrenewal, there was no federally funded project at that time and therefore no claim under the URA at all. Even so, the project does not involve rehabilitation or demolition of the leased property because the wind turbine project is not located on the eight acre parcel leased by Jensen Field and did not require any alteration to the condition of the leased property. A-195.

In any event, Claimants did not raise the issue regarding the vesting date to the Hearing Officer below and cannot assert that issue now. Certiorari review is "limited to the existing record." *Matter of Dakota County Mixed Mun. Solid Waste Incinerator*, 483 N.W.2d 105, 106 (Minn. Ct. App. 1992). This Court will not consider an issue that has not been raised below in the absence of an allegation that Claimants did not learn of the issue until "so long after the agency proceedings had concluded that they were unable to raise the issue before the agency" or that the agency "had refused to entertain the issue in its own proceedings." *Id.* Claimants have not and cannot so allege here.

Claimants ask this Court to reach far beyond that which Congress intended and re-write the URA to afford them with unrecognized rights not set forth in the statute. Such an extension of the URA would be one of "first impression" as the University is not aware of any authority to support an entitlement to benefits even though a legal interest in property extinguished upon expiration of a lease. Claimants have certainly offered no authority. Congress intended the URA to compensate tenants whose existing property rights are cut short by a federal project, not to grant windfall profits to former tenants with no residual property rights.

B. The Court should defer to the factual findings of the Hearing Officer that Claimants were not displaced because of a federally funded project.

Independently, the claim to relocation benefits fails because Claimants were not displaced by a federally funded project. In evaluating all of the evidence supplied by the parties, the Hearing Officer specifically concluded that the continued lease of the subject property was inconsistent with the University's overall planned redevelopment, independent of the wind turbine project. The Hearing Officer specifically found that Claimants have been on notice for over a decade that the University would not lease the premises for more than a one-year term, denying fifteen separate requests for a longer lease term;[61] and that the University intended and preferred to use the property for projects related to the University's academic and research missions.[62] Beginning in 1998, each lease extension included the express condition that the University may terminate the

---

61 ADD-13; B-001-003 ¶ 6–22.

62 B-002 ¶ 10.

lease with six months' notice, or refuse to extend the lease in favor of projects furthering the University's educational or research needs.[63] The Hearing Officer also pointed to record evidence *submitted by Claimants* showing their awareness that the proposed redevelopment and sand/gravel project described in the Concept Master Plan precluded their future use of Jensen Field.[64]

The Hearing Officer specifically found that the wind turbine project was only one, *but not the only*, example of a current academic research project in the advancement of the University's long-stated intention to further its academic and research mission at UMore Park.[65] The Concept Master Plan conspicuously identifies the sand/gravel mining project, which would have the effect of re-grading the location of the development area and creating ponds and related amenities on and adjacent to the Jensen Field site.[66] The Hearing Officer specifically concluded that the continued hobbyist use of Jensen Field was inconsistent with the Concept Master Plan, and that Claimants were long aware that their continued use of the property was destined for extinction. The Hearing Officer then concluded that, notwithstanding the statements by certain lower level University officials concerning the impact of the wind turbine project, the University had a comprehensive approach to the use of the Jensen Field site for its core academic and research missions and for future redevelopment of UMore Park consistent with the Concept Master Plan,

---

63 *Id.*

64 B-003; B-005 ¶ 32, Ex. W (Transcript at B-106, 111, 112, 115, 121, 126).

65 ADD-10.

66 ADD-14; *see also* http://www.umorepark.umn.edu/index.htm (tab at Sand and Gravel Resources).

which provided no ability for the continued use of Jensen Field by the Claimants.[67] The Hearing Officer weighed the evidence, made credibility determinations, and issued factual findings based in the record that Claimants were not displaced as a direct result of an acquisition, demolition or rehabilitation for a specific federally funded project, a

---

[67] The University also maintained that the individual Claimants had no property rights at all because the University did not approve (and Claimants did not have) any subleases from which they may derive property rights. As such, Claimants were not in lawful occupation of the property, or "persons not displaced" within the meaning of the URA. 49 C.F.R. § 24.2(a)(9)(ii)(K); 49 C.F.R. § 24.2(a)(29); *see also Remmen v. Dep't of Roads*, No. A-08-1032, 2009 WL 1819291, at *8 (Neb. Ct. App. Jun. 23, 2009) (holding that individuals occupying or storing materials on public property in the form of a preexisting right-of-way without consent are squatters and unlawful occupants and are consequently not considered displaced persons); *Haddock v. Dep't of Cmty. Dev.*, 526 A.2d 725, 730–31 (N.J. Super. Ct. App. Div. 1987) (explaining that in order to be eligible for relocation benefits as a lawful occupant, the occupancy must be recognized by the owner and must not be the result of trespass or unauthorized sublease).

Claimants allege that the presence of a lease agreement is unnecessary to create a lawful tenancy or property interest. Claimants cite no authority to support this proposition, nor do they cite any authority holding that they have a property right or interest in the absence of a valid lease. To the contrary, the Statue of Frauds provides that there can be no lawful property interest in the absence of a written lease agreement. Minn. Stat. § 513.04. In addition, leases for longer than one year are void unless expressly stated otherwise. Minn. Stat. § 513.05. Because Claimants had no property interest under either Minnesota law or by contract following the October 31, 2010 expiration of the lease, and the University did not interfere with a valid property interest during the pendency of that lease, there is no right to relocation benefits.

The Hearing Officer concluded that whether the individual Claimants were trespassers was not dispositive of the issue of their eligibility to benefits because their rights were extinguished upon termination of the principal lease between the University and Jensen Field. That conclusion is well grounded in black letter law that a sublessee's property rights cannot exceed that of the leaseholder. *See Warnert v. MGM Props.*, 362 N.W.2d 364, 367 (Minn. Ct. App. 1985) ("The general rule is thus that termination of the prime lease terminates a subtenant's possessory rights under the sublease."). The University also notes that no individual Claimant paid rent to the University. A-184-85.

Independently, the Hearing Officer concluded based on the record that Claimants had long been on notice that the use of Jensen Field as a hobbyist airport was doomed, even independent of the wind turbine project. In any event, the Hearing Officer properly concluded that the individual Claimants' rights, if any, expired with the prime lease.

threshold requirement to eligibility for benefits. *See* 49 C.F.R. § 24.2(a)(9)(i). The University re-acquired its unencumbered interest in the property through the expiration of the lease, not through coercive means to enable a federally funded project.

Relators' brief omits any mention of these factual findings or this undisputed record evidence, to which this Court should defer on certiorari review. There is no claim or any indication that these findings are arbitrary, oppressive, unreasonable, fraudulent, under an erroneous theory of law, or without any supporting evidence. To the contrary, these findings are based on the URA itself, the stipulated or undisputed facts submitted by the parties, and reasonable inferences and conclusions drawn from those facts. This Court should not second-guess the factual findings of the Hearing Officer.

II. The Hearing Officer Properly Considered The Substantive Claim For Relocation Benefits.

A. The Hearing Officer did not commit error of law in determining entitlement to benefits.

Relators allege that the Hearing Officer committed "error of law" in considering their substantive claim for relocation benefits before determining eligibility. The URA itself sets forth the procedure for appealing the rejection of a claim for relocation benefits, but does not specifically require or prohibit any particular form of hearing or require that the issues of eligibility and entitlement to benefits be treated separately.[68] 49 C.F.R. Part 24. The Hearing Officer so concluded in her June 7, 2011 and September 21,

[68] The Hearing Officer also concluded that Minn. Stat. § 117.52, subd. 1 likewise does not mandate that a bifurcated process be used to determine eligibility for and entitlement to relocation benefits. ADD-16.

2011 Orders and did not commit error of law. This Court's certiorari review does not extend to challenges of the agency's process. *L.K. v. Gregg*, 380 N.W.2d 145, 149 (Minn. Ct. App. 1986); *see also* 21 MNPRAC § 11.01.2.

In any event, the Hearing Officer decided the question of entitlement to benefits because *Claimants appealed that issue*. On February 2, 2011, the University denied the claim of entitlement to benefits, which Claimants appealed both on February 9, 2011 and February 14, 2011.[69] Claimants then supplied evidence and argument to the Hearing Officer regarding their purported entitlement to benefits.[70] Claimants cannot now complain that the Hearing Officer decided that issue.

Even so, the Hearing Officer did not rule on the question of entitlement until determining eligibility. The September 21, 2011 Order first addresses and decides the issue of whether Claimants are displaced persons entitled to relocation benefits under the URA. After resolving that issue, the Hearing Officer addressed the question of whether Claimants documented reasonable and necessary relocation expenses entitling them to an award of benefits under the URA. This procedure was not "error of law" and was within the sound discretion of the Hearing Officer.

B. Claimants are not entitled to relocation advisory services or claims assistance.

Claimants' assertion that the determination of entitlement to benefits was premature is hollow. The Hearing Officer properly concluded that Claimants failed to

---

69 A-002-15.

70 A-020-67; A-102-70.

timely request and had no need for relocation advisory services or claims assistance.[71] Claimants are not entitled to such services because they do not qualify for such services, failed to timely inform the University of the need for such services, failed to assemble or retain documentation to enable the provision of such services, and did not actually need such services. The claim for relocation advisory services and claims assistance is just a red herring to cover up the absence of documentation to support damages alleged by Claimants.

The Hearing Officer properly concluded that Claimants failed to present credible, or *any*, evidence that such services were reasonable and necessary. An agency is only required to pay for those services that are "reasonable and necessary." *In re Wiseway Motor Freight, Inc.*, No. CX-99-648, 1999 WL 759999, at *2 (Minn. Ct. App. Sept. 28, 1999). Claimants have never explained why they needed such relocation advisory services or claim assistance to assemble a damages claim, likely because such services were wholly unnecessary here. These services are intended to help entities relocate homes or businesses, not individuals who trade, dispose or sell hobby property upon the expiration of a lease. No Claimant needed relocation advisory services because *no one moved anywhere*.[72] No Claimant needed claim assistance because no Claimant supplied an inventory or any other documentation of their property.

---

[71] ADD-16.

[72] Although the Hearing Officer did not address this issue, an actual move must occur to be eligible for benefits. 49 C.F.R. § 24.2(a)(9)(ii)(D); H.R. Rep. No. 91-1656, at 3, 8, 12 (1970) (explaining Congressional intent to compensate for actual expenses incurred in relocation of property and reestablishment of business).

In addition, Claimants do not qualify for such services. Claimants mischaracterize these services as "mandatory," a word that does not appear anywhere in the regulations. In fact, 49 C.F.R. § 24.207(a) requires that a *claimant* "shall" support its claim for relocation benefits with appropriate documentation and evidence of expenses, something the Claimants did not do, even when asked. Upon the presentation of such evidence, the regulations contemplate reasonable assistance to "complete and file" the claim for payment. Here, despite a request from the University, Claimants supplied no documentation.[73] The University had no ability to "reasonably assist" Claimants to complete and file a claim for payment in the absence of any documentation setting forth what exactly Claimants sought payment for, making the requested assistance an exercise in utter futility.[74]

---

[73] Subsection (b) requires an agency to request additional documentation regarding the claim. The University requested such documentation, and Claimants responded that no documentation existed. See A-087-88. Subsection (e) requires an agency to promptly inform displaced persons of the agency's determination and the basis thereof. The University supplied such notice on February 2, 2010 and earlier. See A-089-099. Subsection (d)(1)(i) identifies the time in which a claimant can assert a claim, and here, Claimants not only asserted a claim but demanded immediate resolution of their claim well before the expiration of the 18 month limitations period. A-088. In any event, Claimants have no ability to supplement their proof of claim because such documentation is nonexistent. *Id.*

[74] Claimants also make much of the provisions in 49 C.F.R. § 24.205(c)(2), yet those provisions only apply in the event of a displacement as a result of an *acquisition* of property, an event that did not occur here. 49 C.F.R. § 24.205(c)(1). Moreover, the services referenced in 49 C.F.R. § 24.205(c)(2) are, by the express terms of the regulations, *optional* and within the discretion of the agency. *See* 49 C.F.R. § 24.205(c) (referencing relocation advisory program an agency "may offer").

The Hearing Officer also properly concluded that the timeliness of these requests was suspect, a credibility determination entitled to deference on certiorari review.[75] Claimants did not request such services until July 19, 2010, notwithstanding the fact that the University notified Jensen Field in 1998 that the lease would not be extended if the University found a use for the property that furthered its academic or research mission and then in 2009 notified Jensen Field that the lease would not be extended for another term after it expired on October 31, 2010. Less than one month after the request for assistance, on August 13, 2010, the University notified Claimants that they were not eligible for relocation advisory services or claim assistance because the University did not consider Claimants to be "displaced persons." The University reiterated its position several times, with final rejection of the claim on February 2, 2011.[76]

Claimants, knowing the position of the University, could have procured these services and later requested reimbursement, but did not do so. Claimants were certainly able and well-advised, having prepared written specifications to obtain a moving estimate and having retained experienced relocation benefits counsel well before the lease expired.[77] Instead, Claimants did not keep track of *any information* relating to the sale or

---

[75] ADD-16.

[76] A-089; A-090-93; A-094-99.

[77] The University notes that Claimants obtained the moving estimate less than one week after the University first rejected the application for relocation benefits, claims assistance and relocation advisory services. *Compare* A-089 (August 13, 2010 letter) with B-005 ¶ 34 (August 19, 2010 estimate).

other disposition of their property despite ample notice that any assistance they might obtain would necessarily require proper documentation.[78]

Incredibly, Claimants now assert that the University never issued a determination as to whether their claims were sufficiently documented, an assertion which belies the record. After Claimants delivered to the University the bare-bones estimate in January 2011, the University requested additional documentation and information from Claimants regarding details of their claim. In response to this request, Claimants responded that they did not "keep track of" their expenses, that they gave away property, and that they had no further detail to supply the University. Along with that information (or lack thereof), Claimants demanded that the University formally respond to their claim within 10 days.[79] On February 2, 2011, the University supplied a formal response to Claimants, specifically informing them that they failed to supply required proof of their claim.[80] Even if Claimants had more time to submit their claim, they have made no effort to do so and *cannot* do so.[81]

---

[78] A-087-88.

[79] A-087-88.

[80] A-002-07.

[81] The assertion that the statute of limitations for filing a claim for benefits may not expire until April 2012 is irrelevant. Claimants filed their claim and demanded resolution by the University, and the University complied. The URA does not allow Claimants to ignore the principles of *res judicata* or otherwise afford potentially infinite chances within the limitations period to file the same claim. Claimants chose to file their claim and the University timely decided that claim at the behest of Claimants. The Hearing Officer properly concluded that Claimants "have had ample notice that they needed to support their claim with some credible evidence of expenses incurred" and that their claim was denied since "no evidence cognizable under the URA has been submitted in

Also, even if the University determined that Claimants were eligible for benefits under the URA, only those services that are "reasonable and necessary" and supported by documentation are eligible for reimbursement. Relocation assistance is not necessary for these Claimants who sold or otherwise disposed of their property and who did not actually relocate anywhere. Claim assistance is likewise unnecessary because a displaced person is only entitled to such assistance as is "reasonabl[y] necessary to complete and file" its claim. 49 C.F.R. § 24.207. Here, Claimants could have retained receipts and other documentation related to the sale or other disposition of its property but elected not to do so. The URA does not provide for the re-creation of data necessary to support a claim for the requested assistance when Claimants made no effort to inventory their property, retain receipts for property sold, moved or demolished, or keep any other records related to the subject property. Without this documentation, claim assistance is futile. The Hearing Officer's conclusions are well supported by the record, are not contrary to law, and should be affirmed by this Court.

III. Claimants Failed To Satisfy Their Burden To Establish A Claim For Relocation Benefits.

The Hearing Officer properly concluded that Claimants failed to document reasonable and necessary relocation expenses. Congress did not intend the URA to provide a windfall for individuals inconvenienced by a denial of a lease extension, but instead to compensate for the actual expenses involved in packing up a residence or business, finding a replacement location, and reestablishing a business or home.

---

spite of ample time to do so." ADD-16. The Court should defer to these factual findings on certiorari review.

Claimants disposed of their property, retained the money earned from sales, and made no effort to document these transactions. Even when the University informed Claimants that they were not eligible for relocation advisory services or claim assistance, they made no effort to document their claims for purposes of reimbursement on appeal. Because Claimants cannot document their actual expenses—or any expenses at all—they failed to meet their burden to establish a claim for benefits.

Upon review of the record, the Hearing Officer concurred, finding that Claimants "provided no competent supporting documentation to substantiate their Claims" and "provided no information at all to support any relocation claims" and that "there are no facts in the record which indicate that any of the Claimants actually moved anything anywhere, or incurred any costs at all."[82] Accordingly, the Hearing Officer concluded that, based on the existing record, Claimants failed to supply proof of a claim for relocation benefits.[83] The Hearing Officer's decision was based on the absence of facts to support a claim for benefits and is entitled to deference on certiorari review.

The decision of the Hearing Officer is also well-grounded in the law. The URA only allows compensation for "the 'actual reasonable expenses' of moving the personal property of a business, searching for a replacement site for the business, and reestablishing the business at the new site." *In re Application for Relocation Benefits by Mistelske*, No. A06-1429, 2007 WL 1747105, at *2 (Minn. Ct. App. June 19, 2007) (quoting 42 U.S.C. § 4622(a) (2000)); *see also In re Wiseway Motor Freight, Inc.*, 1999

---

82 ADD-15.

83 ADD-10.

WL 759999, at *2 (explaining that an agency is only required to reimburse "actual moving expenses" that it concludes are "reasonable and necessary"). Claimants were therefore required to provide sufficient documentation to establish that their expenses were actual and reasonable. *Kroger Co. v. Reg'l Airport Auth. of Louisville and Jefferson County*, 286 F.3d 382, 390–91 (6th Cir. 2002) (finding that agency did not act arbitrarily or capriciously in denying reimbursement claims for lack of proper documentation).

Claimants are not entitled to relocation benefits for property sold because they failed to provide inventory or receipts or any other evidence establishing the property sold, amount of the sale and estimates of any loss.[84] Claimants allege that they are entitled to reimbursement for the estimated cost to move these items, notwithstanding the fact that the items were sold, not moved. Section 24.303 allows for the discretionary award of moving expenses "if the Agency determines that they are actual, reasonable and necessary." 49 C.F.R. § 24.303. Moreover, Section 24.303 provides examples of the type of moving expenses contemplated by this section: utility connections necessitated by right-of-way improvements, site feasibility or marketing studies, and impact fees. These examples do not include compensation for property sold rather than moved.

The Hearing Officer properly determined that the single estimate supplied by Claimants failed to meet the requirements of the URA. Section 24.301(d) requires the submission of either "the lower of two bids or estimates prepared by a commercial mover or qualified Agency staff person" or "receipted bills for labor and equipment." 49 C.F.R.

[84] The University notes the possibility that Claimants profited from the sale of the subject property. The URA does not contemplate payment of benefits under such circumstances.

§ 24.301(d)(2). The University did not prevent Claimants from obtaining a second bid, or retaining receipted bills for labor and equipment. Claimants did neither.[85] In the absence of proper support, the University is under no obligation to reimburse Claimants for hypothetical, undocumented expenses. *In re Appeal of Chelloy, Inc.*, No. C6-02-884, 2002 WL 31752270, at *2–3 (Minn. Ct. App. Dec. 10, 2002) (holding that claimants are only entitled to the actual cost of moving).

Even if the University exercised its discretion to waive the two-bid requirement, the Hearing Officer concluded that the single bid submitted by Claimants is too vague and lacks the detail necessary to verify or justify a claim for benefits.[86] Claimants did not do "the best they could" to document moving expenses; Claimants allege that they have *actually moved or sold* the property in question.[87] Documentation of the actual, incurred expense of the sale or move would be the best and most equitable measure to determine benefits, but Claimants have not provided such data to the University and have admitted that such data does not exist.[88] Finally, the URA specifies that the agency should only waive the requirement of two bids in the case of "a low cost or uncomplicated move." Given that Claimants allege that they moved, disposed, sold, bartered, or demolished

---

[85] Claimants' self-serving allegation that they lacked the wherewithal to obtain a second estimate is without any factual basis.

[86] ADD-15.

[87] It is unclear whether Claimants moved, disposed or sold the property before or after obtaining the estimate. It is also unclear what property was moved, disposed or sold, or for how much.

[88] A-087-88.

twelve airplane hangars and the contents thereof, the documentation provided by Claimants is simply insufficient to support a claim to any benefits whatsoever.[89]

Claimants assert that they cannot provide proper documentation without claim assistance and that the University cannot object to the Claimants' proof of claim when it declined to provide such assistance. As a legal matter, there is absolutely no authority supporting Claimants' assertion that the University gave up its right to object to Claimants' purported proof of claim upon the denial of the application for benefits. As a factual matter, Claimants' assertion lacks credibility—Claimants could have retained receipts of sales, taken an inventory of their property, obtained more detailed moving estimates or taken photos of the alleged property that they sold or moved. If Claimants were sophisticated enough to surreptitiously audio tape a meeting with the University, they were certainly sophisticated enough to write down what property they sold, when they sold it, and the amount they received for it. Claimants retained experienced counsel to assist them with their application for relocation benefits, and had no need for any assistance from the University to undertake these uncomplicated and inexpensive efforts. Claimants were notified on November 17, 2009 that their lease would not be renewed, but waited until July 19, 2010 to request claim assistance and relocation advisory services. When the University denied these requests on August 13, 2010, Claimants failed to take *any* steps to document their claim to receive reimbursement in the event that they succeeded in appealing the University's determination.[90]

---

[89] B-005 ¶ 34.

[90] A-087-88.

The Hearing Officer properly concluded that reimbursement under the URA is contingent on the qualified party providing sufficient documentation to support their claim. Claimants are entitled only to those reasonable expenses that Claimants actually incurred. They are not entitled to relocation benefits for property that was sold or disposed of rather than relocated. Claimants have not provided the required two bids, or receipts of labor and equipment. Claim assistance cannot compensate for this lack of documentation, and was not reasonably necessary to enable Claimants to retain basic records of their expenses. Without proper documentation, Claimants are not entitled to relocation benefits.[91] The Court should defer to these factual findings on certiorari review.

IV. Claimants' Procedural Challenges Lack Merit.

Claimants allege that, rather than following the appeal procedure set forth in the URA, the University should have initiated contested case proceedings in the Office of Administrative Hearings under Minn. Stat. § 117.52, subd. 4. Claimants' procedural objection lacks merit.

A. Minnesota Statutes do not apply to this case.

Claimants are not entitled to an appeal before the Office of Administrative Hearings because Minn. Stat. § 117.52 does not apply. By its express terms, Minn. Stat. § 117.52, subd. 1 only applies when an actual "acquisition" has occurred. An "acquisition" is defined by Minn. Stat. § 117.50, subd. 4 and includes "acquisition by eminent domain; acquisition by negotiation; programs of areawide systematic housing

[91] ADD-15-16.

code enforcement; and demolition." There is no such acquisition of property in this case, as the University did not exercise its power of eminent domain or acquire or demolish anything. Instead, this claim arises under the URA, as the Claimants allege they are displaced persons because a lease was not renewed as a result of federal financial participation, not an acquisition of property. Indeed, Claimants conceded at the pre-hearing conference that Minn. Stat. § 117.52 does not apply to the claims here because no "acquisition" occurred and the University was not exercising its power of eminent domain.[92] Accordingly, Claimants have no cause of action under Minnesota law and have no grounds to compel contested case proceedings in the Office of Administrative Hearings.

B. Claimants consented to the proceeding before the University's Hearing Officer.

Even if Minnesota statutes applied, Claimants consented to the resolution of their claims through the administrative process adopted by the University. On February 14, 2011, Claimants appealed to the University's then-President the denial of relocation benefits under the URA in accordance with the procedure set forth in the URA. Claimants affirmatively requested an "administrative appeal hearing" from the University, and the University complied with Claimants' request. Given that the claim for relocation benefits originated under the URA and Claimants alleged they were displaced persons as a result of a federally funded project, the University declined to initiate contested case proceedings under Minnesota Statutes and proceeded with the

---

[92] A-069 n.1.

appellate process set forth in the URA itself. Claimants willingly and fully participated in that process. Claimants made no attempt to compel the University to initiate contested case proceedings under Minnesota Statute.[93] Claimants should be barred from objecting to the hearing process now that it has been completed in accordance with their express request. *See* 31 C.J.S. *Estoppel and Waiver* § 196; *Carr v. Liberty Life Assurance Co.*, 390 Fed. Appx. 694 (9th Cir. 2010) (finding party who consented to arbitration estopped from objecting to arbitration proceeding or award).

Even if Claimants were not barred from objecting to the hearing process, certiorari review is not the proper vehicle to compel contested case proceedings before the Office of Administrative Hearings. Claimants mistake certiorari review for a motion to compel reconsideration in another forum. Certiorari review is limited to "whether the agency acted within its jurisdiction and whether its decision was arbitrary, oppressive, unreasonable, fraudulent, under an erroneous theory of law or without evidence to support it." *Application for Relocation Benefits of Sokol v. Metro. Airports Comm'n*, 2003 WL 943856, at *2 (Minn. Ct. App. Mar. 11, 2003) (citations omitted). Under this limited review, and with this record, there is no evidence or assertion that the process adopted by the Hearing Officer was arbitrary, oppressive, unreasonable, fraudulent or

---

[93] If Claimants desired to compel the University to initiate contested case proceedings in the Office of Administrative Hearings, the proper procedure would have been to commence an declaratory judgment action in district court to compel the University to initiate such proceedings under Minn. Stat. § 117.52, subd. 4 after then-President Bruininks issued the March 25, 2011 administrative order directing the internal University appeal process. A-001. Claimants chose not to pursue that remedy and instead demanded that the University proceed with the appeal process set forth in the URA.

under an erroneous theory of law. The compelled reconsideration of the very issues decided in the University's administrative proceeding in yet another proceeding administered by the Office of Administrative Hearings is outside the purview of this Court on certiorari review.

Further, even if this Court had an ability to refer the claim for relocation benefits to another tribunal, relitigation of the identical claims in another forum is barred. The doctrine of res judicata applies to administrative proceedings when the agency is acting in an adjudicative capacity and the parties have had an adequate opportunity to litigate the issue in question. *Graham v. Special Sch. Dist. No. 1*, 472 N.W.2d 114, 115-16 (Minn. 1991). Collateral estoppel applies to agency action when the issue to be precluded is identical to the issue raised in the prior agency adjudication; the issue was necessary to the agency adjudication and properly before the agency; the agency determination is final and subject to judicial review; the estopped party was a party or in privity with a party to the prior agency determination; and the estopped party received a full and fair opportunity to be heard on the adjudicated issue. *Id.* at 116.

Here, Claimants seek to shop the identical claims, with the identical parties, in another forum with the hopes of achieving a more favorable outcome. The University afforded Claimants sufficient procedural and due process safeguards to preclude the relitigation of the claims in any other forum. *See, e.g.*, *Hartford v. Univ. of Minn.*, 494 N.W.2d 903, 908 (Minn. Ct. App. 1993) (holding that formal internal University grievance process sufficient to apply collateral estoppel). All of the substantive claims asserted by Claimants have been fully adjudicated through the internal University

process; Claimants have no independent rights subject to adjudication in any other forum. *Graham*, 472 N.W.2d at 116; *Sundae v. Anderson*, No. 02-855, 2003 WL 24014341, at *1 (D. Minn. April 24, 2003) (finding that plaintiff could not assert claims related to denial of relocation benefits in state court after such claims were dismissed in federal court because state claims arose out of same nucleus of operative fact).

Claimants have no additional rights under Minnesota law. Minnesota courts have consistently held that eligibility and entitlement to relocation benefits under the Minnesota act applies only when the federal act does not apply to the claim. *See, e.g.*, *In re Wren*, 699 N.W.2d 758, 762 n.4 (Minn. 2005) ("Minnesota Statutes § 117.52, subd. 1, applies when, as here, federal relocation assistance under the Uniform Relocation Assistance and Real Property Acquisition Policies Act, 42 U.S.C. §§ 4601-4655 (2003) (URA), is not available because there is no federal financial participation."); *Application of Relocation Benefits of Wilkins Pontiac, Inc.*, 530 N.W.2d 571, 574 (Minn. Ct. App. 1995) ("This statute applies to all acquisitions undertaken by any acquiring authority where no federal funding is involved."); *Fargo Electronics, Inc. v. State, Dept. of Transp.*, No. C1-92-1244, 1992 WL 383449, at *2 n.1 (Minn. Ct. App. Dec. 29, 1992) (noting that the Minnesota Act "merely makes URA applicable in Minnesota when federal funds are not involved. It does not create rights in addition to those that exist under the URA."). Accordingly, even if this Court had authority to order this matter to the Office of Administrative Hearings, such referral would be futile because the relitigation of identical claims in that tribunal is precluded.

C. Claimants received ample due process.

Claimants vaguely allege that the internal University appeal of the claim for relocation benefits is a violation of their constitutional rights to due process. Claimants, however, failed to supply any detail regarding these purported violations of their due process rights. In order to state a claim for violation of due process rights, Claimants must "allege (a) governmental action to [their] detriment, and (b) implication of either a property interest or a liberty interest." *Bishop v. Tice*, 622 F.2d 349, 353 (8th Cir. 1980). A procedural due process claim will fail if it does not set forth the manner of the purported deprivation. *Creason v. City of Washington*, 435 F.3d 820, 824 (8th Cir. 2006); *see also Parrish v. Mallinger*, 133 F.3d 612, 615 (8th Cir. 1998) ("A procedural due process claim focuses not on the merits of a deprivation, but on whether the State circumscribed the deprivation with constitutionally adequate procedures.").

Here, Claimants failed to set forth any cognizable deprivation of their due process rights. Claimants challenge the appointment of Vice President O'Brien as the Hearing Officer but fail to set forth any due process deprivation associated with her appointment or the hearing process.[94] The University adopted significant procedural safeguards for the benefit of Claimants. The University retained outside counsel to advise the Hearing Officer.[95] The Hearing Officer "was not involved with any of the decisions culminating in the termination of the Lease contested in this matter, and has not denied Claimants the

---

[94] A-021 n.2.

[95] ADD-1.

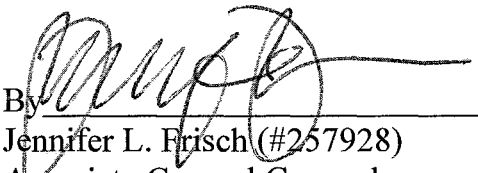
ability to present any evidence of entitlement to relocation benefits."[96] Claimants do not dispute that the University meticulously followed the appeal procedure set forth in 49 C.F.R. § 24.10. Claimants were represented by counsel and submitted letters, memos and related materials before the formal relocation hearing process commenced, without limitation, all of which are included in the Record.[97] Under these circumstances, Claimants were afforded all process that was due. *See In re Appeal of Chelloy*, 2002 WL 31752270, at *3 (discussing due process and hearing officer impartiality).

CONCLUSION

For the foregoing reasons, the University requests that the decision of the Hearing Officer be affirmed in all respects and discharge the Writ of Certiorari.

Dated: January 27, 2012

MARK B. ROTENBERG
General Counsel
University of Minnesota



By _____
Jennifer L. Frisch (#257928)
Associate General Counsel
360 McNamara Alumni Center
200 Oak Street SE
Minneapolis, MN 55455-2006
(612) 624-4100

Attorneys for Regents of the University of Minnesota

---

96 ADD-16.

97 ADD-16, 17 n.1.

Certificate of Brief Length

I hereby certify that this brief conforms to the requirements of the Minn. R. Civ. App. P. 132.01, subd. 3, for a brief produced with a proportional font of 13 pt. The length of the brief is 12,715 words. This brief was prepared using Microsoft Office Word 2010 software.

Dated: January 27, 2012

MARK B. ROTENBERG
General Counsel
University of Minnesota

By _____
Jennifer L. Frisch (#257928)
Associate General Counsel
360 McNamara Alumni Center
200 Oak Street SE
Minneapolis, MN 55455-2006
(612) 624-4100

Attorneys for Regents of the University of Minnesota