

CASE NO. A07 – 2103

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STATE OF MINNESOTA  
IN COURT OF APPEALS

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BARBARA WILHITE,  
*Appellant,*

vs.

SCOTT COUNTY HOUSING AND  
REDEVELOPMENT AUTHORITY,  
*Respondent,*

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PETITIONER'S BRIEF

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The appendix to this brief is not available for online viewing as specified in the *Minnesota Rules of Public Access to the Records of the Judicial Branch*, Rule 8, Subd. 2(e)(2).

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## LEGAL ISSUES

1. Is the determination of the Scott County Housing and Redevelopment Authority hearing officer that Realtor violated her Section 8 Housing Choice Voucher obligation because she was evicted for a serious violation of her lease supported by substantial evidence?

*The hearing officer determined that the Dakota County CDA acted properly in finding that the Relator violated her Section 8 Housing Choice Voucher obligations and terminating assistance.*

### Apposite Authority:

*Carter v Olmsted County HRA*, 574 N.W. 2d 725 (Minn.App. 1998).  
24 C.F.R. § 982

2. Is the Scott County HRA notice to terminate Realtor Barbara Wilhite Section 8 Housing Choice Voucher procedurally and constitutionally deficient?

*The hearing officer did not explicitly rule on this issue*

### Apposite Authority:

*Goldberg v. Kelly*, 397 U.S. 254, 267-71, 90 S.Ct. 1011 (1970).  
*Edgecomb v. Housing Auth.*, 824 F.Supp. 312, 314 (D.Conn.1993).  
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3. Was Realtor Barbara Wilhite deprived of her constitutional right to confront and cross-examine witnesses with first hand knowledge of the reason for her eviction?

*The hearing officer did not explicitly rule on this issue.*

### Apposite Authority:

*Goldberg v. Kelly*, 397 U.S. 254, 267-71, 90 S.Ct. 1011 (1970).

## **STATEMENT OF THE CASE**

On August 1, 2007, the Respondent Scott County Housing and Redevelopment Authority notified Relator Barbara Wilhite that her Section 8 Housing Choice Voucher was to be terminated, effective July 31, 2007. On August 8, 2007 Ms. Wilhite made a timely request for an informal hearing to contest the termination of her Section 8 Housing Choice Voucher.

An informal hearing was held on August 21, 2007. Hearing officer Kathleen Kline presided over the informal hearing. Ms. Kline issues a decision, dated September 3, 2007, affirming the decision of the Scott County Housing and Redevelopment Authority to terminate Ms. Wilhite's Section 8 Housing Choice Voucher.

On November 5, 2007, Ms. Wilhite filed and served a petition for a writ of certiorari with this Court, seeking review of the decision issued by the hearing officer.

## **STATEMENT OF THE FACTS**

Realtor Barbara Wilhite, her daughter, and grandchildren are a low – income family who participated in the Section 8 Housing Assistance Program. (A – 66).

In a letter dated August 1, 2007, Ms. Wilhite was informed by the Scott County Housing and Redevelopment Authority (Scott County HRA) that it intended to terminate her Section 8 Housing Choice Voucher effective July 31, 2007. (A – 29). As the reason for the termination the notice stated only the following. “...An eviction action was ordered for you on July 24, 2007...” and federal regulations provide “the PHA must

terminate program assistance for a family evicted from housing assisted under the program fro [sic] serious violation of the lease.” (A – 29). No other basis or ground for termination was indicated in this notice. No factual information was included in this notice describing any action or failure to act by Ms. Wilhite that the Scott County HRA considered to be a serious lease violation and believed to be the basis for Ms. Wilhite’s eviction. *Id.*

Barbara Wilhite and Tamara Brown, her daughter, had entered into a lease with the management of Evergreen Heights Townhomes to rent a Townhome unit located at 3091 Pinetree Lane, Shakopee, MN 55379 on July 1, 2006. (A –49 – 62). The term of this lease was for one year, beginning on July 1, 2006, and ending on June 30, 2007. (A – 49).

By letter dated April 16, 2007, Ms. Wilhite and Ms. Brown were notified by Hannah Murphey, Community Manager for Evergreen Heights Townhomes, that their lease expired on June 30, 2007 and would not be renewed and that they were to vacate the premises no later than June 30, 2007 by noon. (A – 38).

Barbara Wilhite was not able to vacate her Townhome unit at Evergreen Townhomes by noon on June 30, 2007. ( A – 23).

A completed form entitled “Eviction Action Complaint”, dated July 10, 2007, was filed by Evergreen Heights Townhomes against Barbara Wilhite and Tamara Brown in the Scott County District Court. (A – 23). The Eviction Action Complaint stated the following as the reasons for the eviction action. First, an X was marked in the check-off

box preceding printed and fill-in wording alleging that the tenant (Ms. Wilhite) failed to vacate the property after she was given written notice to do so on April 16, 2007 by management. *Id.* Second, on the complaint form where there is a check off box followed by the printed words, “The tenant has broken the terms of the rental agreement with property landlord by:...”, an X was marked in the check-off box and, after the printed words, the following allegation describing the reason for the eviction was written: “Failure to vacate by end of lease term.” *Id.*

A completed form entitled “Eviction Action - Findings of Fact and Conclusions of Law, Order and Judgment”, dated July 24, 2007, specified what allegations in the complaint had been proven by the plaintiff, Evergreen Heights Townhomes. (A – 24 and 25). An X was marked in the check off-box preceding the following printed words: “Notice to vacate was properly given and Defendant has failed to vacate said property.” No other bases or grounds for the eviction were shown to have been proven on this form. (A – 24). An X was not marked in the check-off box preceding the printed words “Defendant has failed and refuses to pay rent...” Neither was an X marked in the check-off box preceding the printed words “Defendant has broken the terms of the rental agreement and Defendant has failed to vacate the property.” *Id.* The Court Administrator was directed accordingly to enter judgment for Plaintiff for recovery of the premises. (A – 26). A judgment was then entered on July 24, 2007 as evidenced by a Notice of Entry of Judgment, dated July 24, 2007. (A – 27).

An informal hearing was held by the Scott County HRA on August 24, 2007. (A – 66). Scott County’s hearing officer, Kathleen Kline, presided over the hearing. Nicole Horner, an employee with the Scott County HRA testified on behalf of the Scott County HRA. *Id.* Barbara Wilhite testified on behalf of herself and was represented by JaPaul Harris of Southern Minnesota Regional Legal Services, Inc. *Id.*

Nicole Horner testified at the informal hearing that pursuant to a HUD regulation the HRA terminates Section 8 housing assistance for a family evicted from housing for serious violations of the lease. (A – 9). Ms. Horner also testified that if Ms. Wilhite had vacated her rental unit as directed in the notice to vacate, the Scott County HRA would have taken no action to terminate her voucher. (A – 10 and A – 68). Ms. Horner also testified that she had informed Ms. Wilhite that if she was evicted for any reason the HRA would be forced to terminate her Section 8 rental assistance. (A – 68).

Barbara Wilhite, through Attorney JaPaul J. Harris argued at the informal hearing that the eviction of Ms. Wilhite was based on her failure to vacate her apartment, after receiving proper notice, and that this is not a serious lease violation. (A – 68). In support of her argument Ms. Wilhite, through her attorney provided the hearing officer with a copy of the Eviction Action - Findings of Fact, Conclusions of Law, Order and Judgment dated July 24, 2007, for Evergreen Heights Townhomes vs. Barbara Wilhite & Tamara Brown. (A – 68). Ms. Wilhite, through her attorney, pointed out that the Eviction Action - Findings of Fact, Conclusions of Law, Order and Judgment stated the reason for

eviction was that she failed to vacate her apartment after receiving proper notice. (A – 11).

Scott County HRA's hearing officer, Kathleen Kline, issued a written decision dated September 30, 2007 affirming the Scott County HRA's decision to terminate Ms. Wilhite's Section 8 rental assistance. (A – 66 through 72). Ms. Kline in the Conclusion to her decision stated that Ms. Horner testified it is the policy of the HRA to terminate a Section 8 participant for a court-ordered eviction. (A – 70). Ms. Kline further stated the following in her Conclusion:

Ms. Wilhite failed to provide any details as to her efforts to find a place to go or why she could not have stayed at the place her other family members went to. It is, therefore, the opinion of the hearing officer that Ms. Wilhite was duly informed of the consequences of her action and any resulting court-ordered eviction and chose nonetheless not to vacate her rental unit in violation of her lease. (A – 71).

Hearing officer Kline further concluded that

...Barbara Wilhite did in fact seriously and repeatedly violate a provision of her lease on numerous occasions as noted above and this led to a court-ordered eviction which based on federal program regulations and Scott County HRA policies is grounds for termination of her Section 8 participation. (A – 71).

### **STANDARD OF REVIEW**

The Court of Appeals has exclusive jurisdiction to hear this writ of certiorari. *Township of Honner v Redwood County*, 518 N.W.2d 639, 640 – 641 (Minn. App. 1994). An administrative agency's decision must be supported by

“substantial” evidence. *Carter v. Olmsted County HRA*, 574 N.W. 2d 725, 730 (Minn. App. 1998). Substantial evidence is defined as “such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.” *Carter v. Olmsted County HRA*, 574 N.W. 2d 725, 730 (Minn. App. 1998) citing *Soo Line R. Co. v. Minnesota Dep't of Transp*, 304 N.W.2d 301, 305-06 (Minn.1981). Substantial evidence means more than a scintilla of evidence, “some” evidence, or “any” evidence. *Hiawatha Aviation v. Minnesota Dep't of Health*, 375 N.W.2d 501(Minn. 1986). An agency’s quasi – judicial determinations will be upheld unless they are unconstitutional, outside the agency’s jurisdiction, procedurally defective, based on erroneous legal theory, unsupported by substantial evidence, or arbitrary and capricious. *Carter v. Olmstead County Housing and Redevelopment Authority*, 574 N.W. 2d 725, 729 (Minn. App. 1998) (citing *Hiawatha Aviation v. Minnesota Dep't of Health*, 375 N.W.2d 406, 501(Minn. App. 1985), affd 389 N.W.2d 507 (Minn. App. 1986).

## ARGUMENT

**I. The Hearing Officer’s determination that Realtor Barbara Wilhite violated her Section 8 Housing Choice Voucher obligation because she was evicted for a serious violation of her lease is not supported by substantial evidence.**

A hearing officer must issue a written decision, stating briefly the reasons for the decision, and basing factual determinations on a preponderance of the evidence presented at the hearing. 24 CFR § 982.555 (e)(6). The hearing officer’s decision must be

supported by substantial evidence. *Carter v. Olmstead County Housing and Redevelopment Authority*, 574 N.W. 2d 725, 729 (Minn. App. 1998). Where the quasi-judicial determination of a housing authority and its hearing officer is not supported by substantial evidence, it should not be upheld. *Carter v. Olmstead County Housing and Redevelopment Authority*, 574 N.W. 2d 725, 729 (Minn. App. 1998) (citing *Hiawatha Aviation v. Minnesota Dep't of Health*, 375 N.W.2d 406, 501 (Minn. App. 1985), *aff'd* 389 N.W.2d 507 (Minn. App. 1986)).

In the present case, the Scott County Housing and Redevelopment Authority's termination of Ms. Wilhite was based solely on the Eviction Action brought by Evergreen Townhomes against Ms. Wilhite. At the informal hearing, the hearing officer concluded that:

Barbara Wilhite did in fact seriously and repeatedly violate a provision of her lease on numerous occasions as noted above and this led to a court-ordered eviction which based on federal program regulations and Scott County HRA policies is grounds for termination of her Section 8 participation.

In discussing the grounds for termination the hearing officer referenced several past lease violations including late payments of rent, and three Unlawful Detainers filed in 2005 – 2006. Hearing Officer Kline characterized these incidents as leading to the eviction action brought against Ms. Wilhite by Evergreen Townhomes. However, in its notice of termination of assistance the Scott County HRA did not make reference to these past incidents and did not indicate that they were the basis of its decision to terminate assistance. The eviction action complaint brought by Ms. Wilhite's landlord against her

did not allege that she had committed a serious violation of her lease. It merely alleged that Ms. Wilhite failed to vacate her apartment at the end of her lease term after proper notice was given. It is important to note that the eviction complaint gave the plaintiff the opportunity to allege that Ms. Wilhite committed violations of her lease; however, Evengreen Townhomes only alleged Ms. Wilhite failed to vacate her apartment at the end of her lease term after proper notice was given.

Moreover, at a hearing held on July 24, 2007 the evicting court in this case determined only that Ms. Wilhite failed to vacate the rental property after being given proper notice to vacate. The evicting court had the opportunity to find that Ms. Wilhite failed to pay rent or broke the terms of her lease; however, the court deliberately decided in its Findings of Fact and Conclusions of Law not to find or conclude that Ms. Wilhite had failed to pay rent or broken the terms of her rental agreement. An eviction action and eviction judgment may be based exclusively on a finding and conclusion that a tenant has failed to vacate the rental property after being given proper notice to vacate. There need be no finding or conclusion that the tenant has violated the lease. That is exactly what the evicting court determined in this case.

The Scott County HRA terminated Ms. Wilhite's Section 8 Housing Choice Voucher for violation of 24 C.F.R. 982.552 (b)(2). That regulation provides that "the PHA must terminate program assistance for a family evicted from housing assisted under the program for serious violation of the lease." The Scott County HRA had the burden of

proving by substantial evidence that, among other things, the eviction was for serious violation of the lease.

The Scott County HRA and its hearing officer relied on correspondence from Evergreen Townhomes and Hannah Murphey that Ms. Wilhite had past issues with late payment of rent, and lease violations. However, these violations were not alleged in the eviction complaint. The Scott County HRA offered no testimony or even a statement from Ms. Wilhite's landlord that any lease violation was the actual basis of the eviction action or even could have been a successful basis for Ms. Wilhite's eviction.

In addition, the Scott County HRA offered no evidence whatsoever that the "actual" eviction action or "actual" eviction judgment was for a serious lease violation, i.e., that a serious lease violation was the court's actual basis for granting the eviction. Merely pointing out that Ms. Wilhite had past issues with late payment of rent does not constitute substantial evidence that she was evicted for serious violation of the lease. This is particularly true when the actual eviction does not reference these past incidents as a basis. The Scott County HRA was required to prove that the actual eviction was for a serious violation of the lease. It failed to do so. The hearing officer, in her decision, was unable to conclude that Ms. Wilhite was actually evicted for a serious violation of her lease. Even though no serious lease violation was asserted, proven or found to exist by the evicting court, the Scott County HRA's hearing officer was able only to speculate that serious lease violations "led" to a court ordered eviction.

For the above stated reasons, the record lacks substantial evidence that Ms.

Wilhite was evicted for a serious violation of her lease.

**II. The decision of Scott County HRA'S hearing officer to terminate Realtor Barbara Wilhite Section 8 Housing Choice Voucher should not be upheld because its notice to terminate her assistance was procedurally and constitutionally deficient and Ms. Wilhite was deprived of her constitutional right to confront and cross examine witnesses with first hand knowledge of the reason for her eviction.**

In *Goldberg v. Kelly*, 397 U.S. 254, 267-71, 90 S.Ct. 1011 (1970), the United States Supreme Court recognized that due process mandates several safeguards prior to the government's termination of welfare benefits. In *Goldberg* the court stated that to comply with due process, the individual must be given a meaningful pretermination hearing including the following safeguards: (1) timely and adequate notice detailing the reasons for termination; (2) an opportunity to appear personally at the hearing, present evidence and oral arguments and confront and cross-examine adverse witnesses; (3) the right to be represented by counsel; (4) a right to a decision rendered by an impartial decisionmaker; (5) a right to have that decision based solely on rules of law and the evidence presented at the hearing; and (6) a right to a statement by the decisionmaker setting forth the reasons for the decision and the evidence upon which it was based. *Id.* Courts have held that the *Goldberg* requirements apply to the termination of section 8 benefits. See *Edgecomb v. Housing Auth.*, 824 F.Supp. 312, 314 (D.Conn.1993) (holding that termination of section 8 benefits must be judged by the standards in *Goldberg* and that a termination notice must contain sufficient detail to alert the Section 8 tenant of the nature of the adverse evidence so that she can effectively refute such

evidence at a pre – termination hearing); *Ferguson v. Metropolitan Development and Housing Agency*, 485 F.Supp. 517, 522 (D. Tenn. 1980) (Section 8 case recognizing that "*Goldberg* ... provides the essential standard for a hearing on termination of public assistance benefits relating to the livelihood and survival of the participant"); *Simmons v. Drew*, 716 F.2d 1160, 1162 (7th Cir.1983) (comparing section 8 assistance to job tenure and recognizing it as a property right protected by the Fourteenth Amendment); *See also Driver v Housing Authority of Racine County*, 713 N.W. 670, 676 – 677 (Wis. App. 2006) (holding that factual information supporting a termination decision be set out with detail and specificity in the termination notice).

In addition, the United States Department of Housing and Urban Development (HUD) enacted regulations, which codify the *Goldberg* standards. HUD regulations provide that a housing authority may terminate section 8 assistance if the family violates any family obligations under the program. 24 C.F.R. § 982.552(c)(1)(i) (2005). These regulations further provide that a PHA must apprise the participant family of the right to a hearing in a "prompt written notice" that also contains, among other things, information, "a brief statement of reasons for the decision." *See* 24 C.F.R. § 982.555(c)(2)(i).

*a Scott County HRA gave insufficient notice by failing to provide any facts or details in support of its stated conclusion that Ms. Wilhite was evicted for a serious violation of her lease.*

In *Edgecomb* the court found that the notice must be "sufficiently specific ... to enable [the tenant] to prepare rebuttal evidence to introduce at his hearing appearance." *Id. at 315*. In order to effectively rebut adverse evidence at the hearing, the notice must alert the tenant of the nature of this adverse evidence. *Edgecomb at 315; See also Driver v. Housing Authority of Racine County*, 713 N.W. 670, 676 – 677 (Wis. App. 2006).

In the present case, the Scott County HRA on August 1, 2007 notified Ms. Wilhite that it was terminating her Section 8 Housing Choice Voucher for violation of 24 C.F.R. 982.552 which states, "the PHA must terminate program assistance for a family evicted from housing assisted under the program for serious violation of the lease." No facts describing the nature of the alleged "serious violation" were presented in this notice. Based on this notice Ms. Wilhite's prepared defense was that her eviction was due to her being a holdover tenant and this was not a serious violation of the lease. At that informal hearing the Scott County HRA recited for the first time contacts it had with Ms. Wilhite's landlord regarding past incidents of alleged lease violations it relied upon to form its basis for termination.<sup>1</sup>

In *Edgecomb v. Housing Auth.*, 824 F.Supp. 312, 314 (D.Conn.1993), the court held that the purpose of the written notice was, "to inform the tenant of the allegations so that he can prepare a defense." *Edgecomb*, 824 F.Supp. at 314. In the present case the notice

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<sup>1</sup> However, upon questioning, the Scott County HRA presented seemingly contradictory testimony, stating that the sole basis for the termination was Ms. Wilhite's failure to vacate her apartment, and that the Scott County HRA would not have taken action to terminate her voucher had she vacated her apartment

provided by the Scott County HRA failed to provide Ms. Wilhite with information essential to preparing a defense that she was evicted for a serious violation of her lease.

The eviction court, in its Finding of Fact, and Conclusion of Law, Order and Judgment, deliberately concluded that Ms. Wilhite was not evicted for a failure or refusal to pay rent or for breaking the terms of her rental agreement. The court concluded that she was evicted only for failing to vacate the rental property after a notice to vacate had been properly given. Based on the court's conclusion, Ms. Wilhite had no reason to believe that the evicting court had determined that she had violated her lease at all. And the Scott County HRA in its termination notice presented Ms. Wilhite with no factual basis for concluding that the evicting court had evicted her for any violation of her lease, much less serious violation of her lease. The Scott County HRA, in its notice to Ms. Wilhite, did not inform her that it had evidence that the eviction action was brought because she was in default in her rent at the time the action was brought and this was the reason the court evicted her. Neither did the Scott County HRA in its termination notice inform her of evidence it had showing that some other lease violation was the reason the court evicted her. The Scott Count HRA's notice failed entirely to identify any evidence indicating that proof had been offered in the eviction proceedings that Ms. Wilhite was in default in her rent at the time or that she was in violation of her lease. Because Ms. Wilhite was not informed of any evidence or proof of this kind in the notice of termination, she did not have a fair opportunity to defend herself against the Scott County HRA's assertion that she was evicted for a serious violation of her lease.

- b. *The decision of the HRA and its hearing officer to terminate Barbara Wilhite's Section 8 Housing Choice Voucher should not be upheld because by not making available for cross examination and questions witnesses with first hand knowledge of the basis for her eviction, the HRA deprived her of her constitutional right to confront and cross examine witnesses.*

In *Goldberg*, the Supreme Court stated that welfare recipients must be given the "opportunity to confront and cross-examine the witnesses relied upon by the defendants." *Goldberg at 270, 90 S.Ct. at 1021.*

In the present case, the Scott Count HRA received an eviction summons that alleged that Ms. Wilhite and her family failed to vacate her apartment at the end of the lease term and that proper notice to vacate was given. On July 24, 2004 the Scott Count HRA received an eviction order that stated that the tenant had failed to vacate the property after proper notice was given and an immediate writ of recovery of the premises and order to vacate was issued. It is important to point out that the sole basis for the eviction was Ms. Wilhite's failure to vacate the property after proper notice was given.

At the informal hearing, the Scott Count HRA relied upon evidence including letters, and e-mails provided by Evergreen Townhomes and Hannah Murphey, community manager. Based on these items of correspondence, the Scott County HRA speculated that the eviction dated July 24, 2007 was due to a serious violation of the lease and argued that the actions outlined in the correspondence led to the eviction action.

The Eviction Summons and Complaint did not allege any of these past actions as the basis for eviction. Ms. Wilhite did not have an opportunity to confront and cross-examine her landlord, or townhouse manager at the Eviction hearing on July 24, 2007.

The Scott County HRA did not make Hannah Murphey, or anyone from Evergreen Townhomes available to testify. Ms. Wilhite therefore was denied the opportunity to confront and cross-examine the only witnesses relied upon by the Scott Count HRA.<sup>2</sup> Ms. Wilhite was deprived of any opportunity to question the only other individual with first hand knowledge of whether she was in default in her rent or in violation of her lease. Evergreen Townhomes, and Hannah Murphey are the only individuals with firsthand knowledge of the underlying basis for the eviction, and they where not made available for cross-examination in violation of Ms. Wilhite's constitutionally protected right.

### CONCLUSION

The Scott County HRA hearing officer's decision is deficient. It is not supported by substantial evidence. The hearing officer's decision failed to state any facts that demonstrate that Ms. Wilhite was evicted for a serious violation of the lease. In addition, the Scott County HRA failed to set fourth in its notice the actual evidence it relied upon thus denying Ms. Wilhite the ability to prepare an effective defense. The Scott County HRA denied Ms. Wilhite the ability to confront and cross-examine any individuals with first had knowledge of the underlying reasons for the eviction action. For the reasons set forth above, Realtor Barbara Wilhite, respectfully requests this Court to reverse the decision of the Scott County HRA and its hearing officer terminating her Section 8 Housing Choice Voucher.

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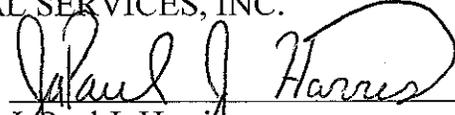
<sup>2</sup> Not only was Ms. Wilhite deprived of any opportunity at the HRA's informal hearing to question witnesses with first hand knowledge of these past incidents, but she was presented with no opportunity to address these incidents during the eviction proceedings because they were not stated to be the basis for the eviction

Dated: February 20, 2008

Respectfully submitted

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**STATE OF MINNESOTA**  
**IN COURT OF APPEALS**

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Barbara Wilhite,

Relator,

v.

**CERTIFICATE OF BRIEF LENGTH**

Scott County Housing and Redevelopment  
Authority,

Appellate Case No. A07 - 2103

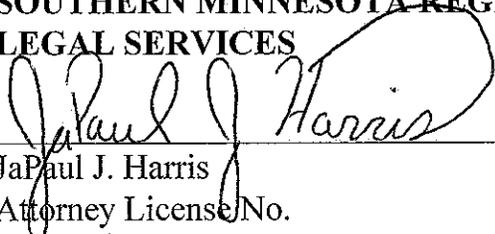
Respondent.

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I hereby certify that this brief conforms to the requirements of Minn. R. Civ. App. P. 132.01, subd. 1 and 3, for a brief produced with a proportional font. The length of this brief is 4,295 words. This brief was prepared using Microsoft Word 2000.

Dated: February 20, 2008

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