

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

James Stengrim,

Complainant,

vs.

ORDER OF DISMISSAL

Middle Snake Tamarac Rivers Watershed
District,

Respondent.

On March 9, 2011, James Stengrim (Complainant) filed a Complaint with the Office of Administrative Hearings alleging that the Middle Snake Tamarac Rivers Watershed District (MSTRWD or Respondent) had violated Minn. Stat. § 13.44, subd. 3 (2010).¹ The Chief Administrative Law Judge assigned the matter to the undersigned Administrative Law Judge on March 10, 2011, under Minn. Stat. § 13.085, subd. 3(a). Copies of the Complaint were sent to the Respondent by facsimile transmission and certified mail on March 10, 2011. The Respondent filed a response to the Complaint on March 21, 2011 and the Complainant filed a reply to the Respondent's response on March 24, 2011.

James Stengrim appeared for himself without counsel. Gerald W. Von Korff, Rinke Noonan, Attorneys at Law, appeared on behalf of the Respondent. After reviewing the Complaint and supporting materials, the response to the Complaint, and the Complainant's reply, the Administrative Law Judge has determined that the Complaint does not present sufficient facts to believe that a violation of Chapter 13 has occurred. Accordingly, the Complaint must be dismissed.

Based upon the Complaint, the Respondent's response and the Complainant's reply, and for the reasons set forth in the attached Memorandum,

IT IS HEREBY ORDERED as follows:

1. The Complaint filed by James Stengrim against the Middle Snake Tamarac Rivers Watershed District is **DISMISSED**.
2. Because the costs of the Office of Administrative Hearings in connection with this matter exceed the amount of the filing fee, Mr. Stengrim is not entitled to a refund of the filing fee under Minn. Stat. § 13.085, subd. 6(d).

¹ All references to Minnesota Statutes are to the 2010 edition, unless otherwise noted.

3. Because the Complaint has not been shown to have been frivolous in nature or to have been brought for the purposes of harassment, the Middle Snake Tamarac Rivers Watershed District is not entitled to recover reasonable attorneys fees under Minn. Stat. § 13.085, subd. 6(e).

Dated: April 7, 2011

s/Kathleen D. Sheehy
KATHLEEN D. SHEEHY
Administrative Law Judge

NOTICE OF RECONSIDERATION AND APPEAL RIGHTS

Minnesota Statutes § 13.085, subdivision 3, provides that the Complainant has the right to seek reconsideration of this decision on the record by the Chief Administrative Law Judge. A petition for reconsideration must be filed with the Office of Administrative Hearings no later than five business days after the Complainant receives notice that the Complaint has been dismissed for failure to present sufficient facts to believe that a violation of Chapter 13 has occurred. If the Chief Administrative Law Judge determines that the assigned Administrative Law Judge made a clear material error and grants the petition, the Chief Administrative Law Judge will schedule the complaint for a hearing under Minnesota Statutes § 13.085, subd. 4.

If the Complainant does not seek reconsideration, or if the Chief Administrative Law Judge denies a petition for reconsideration, then this order is the final decision in this matter under Minn. Stat. § 13.085, subd. 5(d), and a party aggrieved by this decision may seek judicial review as provided in Minn. Stat. §§ 14.63 to 14.69.

MEMORANDUM

Probable Cause Standard

The Minnesota Government Data Practices Act is set forth in Chapter 13 of the Minnesota Statutes. The Act specifies that “[a]ll governmental data collected, created, received, maintained or disseminated by a government entity shall be public unless classified by statute, or temporary classification . . ., or federal law, as nonpublic or protected nonpublic, or with respect to data on individuals, as private or confidential.”² The Act further provides that, upon request to a responsible authority or designee, a person shall be permitted to inspect and copy public government data at reasonable times and places.³ If the government entity determines that the requested data is classified in a manner that requires that the requesting person be denied access, the agency must inform the requesting person of the determination orally or in writing, and

² Minn. Stat. § 13.03, subd. 1.

³ Minn. Stat. § 13.03, subd. 3(a).

cite the particular statutory section, temporary classification, or provision of federal law on which the determination is based.⁴ If access is denied, a complaint alleging a violation of the Act may be filed with the Office of Administrative Hearings within the time period specified in the statute.⁵

Under Minn. Stat. § 13.085, an Administrative Law Judge must conduct a probable cause review and make a preliminary determination for the disposition of a complaint after a response to the complaint is filed.⁶ If the Administrative Law Judge determines that the complaint and any timely response of the respondent agency present sufficient facts to believe that a violation of Chapter 13 has occurred, the Judge must schedule a hearing on the matter. If, however, the Administrative Law Judge determines that the complaint and response do not present sufficient facts to believe that a violation of Chapter 13 has occurred, the complaint must be dismissed.

The purpose of a probable cause determination is to determine whether, given the facts disclosed by the record, it is fair and reasonable to hear the matter on the merits.⁷ If the Judge is satisfied that the facts appearing in the record, including reliable hearsay, would preclude the granting of a motion for a directed verdict, a motion to dismiss for lack of probable cause should be denied.⁸ A Judge's function in a probable cause determination does not extend to an assessment of the credibility of conflicting testimony; the task is simply to determine whether the facts available establish a reasonable belief that the Respondents committed a violation of applicable law.

Legal Background

The Complaint alleges that MSTRWD released, and continues to treat as public, documents concerning the value of real property owned by Complainant, in violation of Minn. Stat. § 13.44, subd. 3.⁹ MSTRWD alleges that Minn. Stat. § 13.44, subd. 3, does not apply to the data in question because the data was not acquired "for the purpose of . . . acquiring land through purchase or condemnation."

⁴ Minn. Stat. § 13.03, subd. 3(f).

⁵ Minn. Stat. § 13.085, subd. 2.

⁶ Minn. Stat. § 13.085, subd. 3(a).

⁷ *State v. Florence*, 239 N.W.2d 892, 902 (Minn. 1976); see also Notice of Determination of Probable Cause and Order for Prehearing Conference and Evidentiary Hearing in *Schmid v. Gerhardt*, OAH Docket No. 8-0305-21608-DP (Nov. 10, 2010) at 3-4.

⁸ *State v. Florence*, 239 N.W.2d at 903. In civil cases, a motion for a directed verdict presents a question of law regarding the sufficiency of the evidence to raise a fact question. The judge must view all the evidence presented in the light most favorable to the adverse party and resolve all issues of credibility in the adverse party's favor. See, e.g., Minn. R. Civ. P. 50.01; *LeBeau v. Buchanan*, 236 N.W.2d 789, 791 (Minn. 1975); *Midland National Bank v. Perranoski*, 299 N.W.2d 404, 409 (Minn. 1980). The standard for a directed verdict in civil cases is not significantly different from the test for summary judgment. *Howie v. Thomas*, 514 N.W.2d 822 (Minn. App. 1994).

⁹ The Complainant also alleged that some portion of the appraisal data is protected under federal law governing Conservation Reserve Payments, but he did not specify what data was allegedly protected or identify the federal law allegedly providing that protection. He also alleged that he gave certain data to the appraiser on the condition that it would remain confidential. He has not contended that MSTRWD had any obligation to protect the confidentiality of the data apart from its obligation to comply with Minn. Stat. § 13.44, subd. 3.

In April 2010, the Information and Policy Analysis Division of the Department of Administration (IPAD) published Advisory Opinion 10-010 regarding this particular dispute. The Advisory Opinion outlined the position of the parties as stated above and concluded that the question of why the appraisal was performed is a factual dispute, which the Commissioner of Administration could not resolve. Given that, the IPAD Advisory Opinion concluded:

If the Middle Snake Tamarac Rivers Watershed District (MSTRWD) obtained the appraisal to determine the value of Mr. Stengrim's settlement proposal, the data in question are public and the MSTRWD appropriately released the data. (Minnesota Statutes, section 13.03, subdivision 1.)

If the MSTRWD obtained the appraisal for the purpose of purchasing Mr. Stengrim's property, the dollar value (total plus dollar value of each component) is not public and should not have been released. (Minnesota Statutes, section 13.44, subdivision 3(a).)¹⁰

Minn. Stat. § 13.072 requires that "a court or other tribunal" defer to a Commissioner's Advisory Opinion "in a proceeding involving the data." The Complaint in this matter, filed on March 9, 2011, takes the issue presented to IPAD to the next level. The task here is to determine whether the facts available establish a reasonable belief that the Respondents obtained the appraisal of Complainant's property for the purpose of acquiring the land through purchase or condemnation. If there is not probable cause to believe the appraisal was requested for that purpose, then this complaint must be dismissed.

Jurisdiction: Existing Advisory Opinion

MSTRWD argues first that this complaint must be dismissed under Minn. Stat. § 13.085, subd. 2(e). Subdivision 2(e) requires the Office of Administrative Hearings (OAH) to notify the Commissioner of Administration when an action is filed under section 13.085. The subdivision further requires that a matter filed with OAH must be dismissed "if a request for an opinion from the commissioner was accepted on the matter under section 13.072 before the complaint was filed" While this section, if read literally, appears to require dismissal if an opinion on the same matter was ever accepted under section 13.072, even if such an opinion was issued before the filing of the complaint, this interpretation is inconsistent with other provisions in sections 13.072 and 13.085.

Section 13.072 was amended at the time that section 13.085 was enacted. The amendments included the following changes to subdivision 2:

Subd. 2. Effect. Opinions issued by the commissioner under this section are not binding on the government entity or members of a body subject to chapter 13D whose data or performance of duties is the subject of the

¹⁰ Department of Administration Advisory Opinion 10-010 (April 21, 2010), <http://ipad.stage.state.mn.us/opinions/2010/10010.html> (IPAD Opinion 10-010).

opinion, but an opinion described in subdivision 1, paragraph (a), must be given deference by a court or other tribunal in a proceeding involving the data. The commissioner shall arrange for public dissemination of opinions issued under this section. This section does not preclude a person from bringing any other action under this chapter or other law in addition to or instead of requesting a written opinion. A government entity, members of a body subject to chapter 13D, or person that acts in conformity with a written opinion of the commissioner issued to the government entity, members, or person or to another party is not liable for compensatory or exemplary damages or awards of attorneys fees in actions for violations arising under section 13.08 or 13.085, or for a penalty under section 13.09 or for fines, awards of attorney fees, or any other penalty under chapter 13D. A member of a body subject to chapter 13D is not subject to forfeiture of office if the member was acting in reliance on an opinion.¹¹

The first of these amendments clearly contemplates that OAH will defer to an Advisory Opinion already issued by the Commissioner of Administration in a proceeding involving the same data. Any interpretation of section 13.085, subd. 2(e), that would require dismissal of the complaint in a case where the Commissioner of Administration has already issued an Advisory Opinion would render the language in the amendment of section 13.072 meaningless and ineffective.

In addition, the express language of Minn. Stat. § 13.085, subd.6 (b), makes clear that the legislature contemplated the possibility that an action under 13.085 might follow issuance of an Advisory Opinion in the same matter:

Reasonable attorney fees, not to exceed \$5,000, must be awarded to a substantially prevailing complainant if the government entity that is the respondent in the action was also the subject of a written opinion issued under section 13.072 and the administrative law judge finds that the opinion is directly related to the matter in dispute and that the government entity did not act in conformity with the opinion.

The canon of statutory construction provided in Minn. Stat. § 645.17 (2) states that the legislature “intends the entire statute to be effective and certain.” If all parts of the statute are given effect, section 13.085, subd. 2(e), requires dismissal of a request for hearing only when an Advisory Opinion is pending at the time the hearing request is filed. Because the statute requires that OAH give deference to an Advisory Opinion, it makes sense to require that the advisory opinion be issued before the complaint process begins. Moreover, section 13.085 provides the opportunity for a hearing, along with enforceable remedies, neither of which is available under section 13.072. Therefore, it is reasonable to interpret the statute to permit an action to be filed under section 13.085 after an Advisory Opinion has been issued.

¹¹ 2010 Minn. Laws Ch. 297, §1.

Jurisdiction: Type of Alleged Violation

MSTRWD also argues that, because the Complainant is seeking redress for something that has already happened, OAH lacks jurisdiction because it could not provide meaningful relief even if MSTRWD violated the Data Practices Act. This argument fails for two reasons. First, the Complainant alleges that the violation of the Data Practices Act is ongoing. The Administrative Law Judge is authorized under Minn. Stat. § 13.085, sub. 5 (a)(4), to “issue an order compelling the respondent to comply with a provision of law that has been violated” If the Administrative Law Judge were to find that MSTRWD is permitting public access to data which should be protected from the public, the Administrative Law Judge could issue an enforceable order requiring MSTRWD to protect the data on an ongoing basis.

Second, there are two further remedies available to the Administrative Law Judge. Under Minn. Stat. § 13.085, subd. 5 (a)(5), the Administrative Law Judge could “refer the complaint to the appropriate prosecuting authority for consideration of criminal charges.” Finally, section 13.085, sub. 5 (a) (3), permits the Administrative Law Judge to impose a civil penalty of up to \$300. The nature of the violation alleged here does not limit the jurisdiction of the OAH to consider the complaint.

Retroactive Application of Law

Finally, the Respondent argues that the expedited hearing process created by section 13.085 would constitute an impermissible retroactive application of the law because it was enacted after the violation allegedly occurred. The legislature answered this question directly by stating that section 13.085 became effective July 1, 2010, and applies “to actions commenced on or after that date.”¹² The Respondent’s argument to the contrary is unfounded.

Factual Background

The disputes between the parties date back to approximately 2000, when the MSTRWD proposed a flood control project to address several years of severe flooding in the Red River Valley. The MSTRWD initiated the Agassiz Valley Water Resource Management Project (Agassiz Project) pursuant to Minn. Stat. § 103F.161, subd.3.¹³ The Agassiz Project required the taking of 2,635 acres of private property, including some of the Complainant’s property.¹⁴ Some of the affected landowners, including the Complainant, brought litigation against MSTRWD regarding compensation for their land and other issues.¹⁵ After some years, the matter was referred to the Board of Water and Soil Resources, which ordered the parties into mediation. The mediation resulted in a settlement agreement, effective as of April 21, 2006, in which:

¹² 2010 Minn. Laws Ch. 297, §6.

¹³ See *Middle-Snake-Tamarac Rivers Watershed District v. Stengrim*, 784 N.W.2d 834, 837 (Minn. 2010).

¹⁴ *Id.*

¹⁵ *Id.*

[t]he Watershed District agreed to pay \$1.7 million for the landowners' property. In return, the landowners agreed that "their challenges to the establishment of the Project are being dismissed with prejudice and that [they] will address no further challenges in litigation or otherwise against the establishment of the Project, which [the] Landowners now understand will be going forward."¹⁶

Approximately one year after the settlement agreement, MSTRWD commenced an action against the Complainant in Marshall County District Court, alleging that he had violated the settlement agreement by engaging in various activities calculated to interfere with the progress of the Agassiz Project.¹⁷ The Complainant asserted as an affirmative defense that his conduct was protected under Minnesota Statutes, Chapter 554, the anti-Strategic Lawsuit Against Public Participation (SLAPP) law. The District Court declined to dismiss the complaint on summary judgment; the Minnesota Court of Appeals reversed; and, eventually, the Minnesota Supreme Court reversed the Court of Appeals and remanded the case back to the District Court.¹⁸

While the matter was pending in the Court of Appeals, the parties engaged in settlement discussions. The record reflects that the Complainant and his attorney, Kelly Hadac, approached MSTRWD's attorney to suggest that the litigation might be resolved by MSTRWD acquiring additional land from the Complainant. MSTRWD's attorney indicated that this approach was worth discussing.¹⁹

The Complainant's attorney responded:

[T]rying to be as creative as possible . . . we felt the District purchasing Mr. Stengrim's land may have a positive impact of moving towards settlement. If you are looking for a lump sum figure, along with other terms that Stengrim would accept and/or agree to in terms of a settlement, then I can work towards that end²⁰

A couple of weeks later, Mr. Hadac sent a written settlement offer to MSTRWD. The letter provides at the top of the page: "Privileged and Confidential Settlement Communication Pursuant to Minn. R. Evid. 408." The proposal would have required MSTRWD to make a lump sum payment to the Complainant of \$635,000, in exchange for which (1) the Complainant would transfer title to MSTRWD of approximately 308 additional acres of his Complainant's property; (2) the Complainant would agree "to stop asking questions" and asserting challenges to various aspects of the Agassiz Project and several other issues within MSTRWD's jurisdiction; (3) the Complainant would agree to release any claims he had against MSTRWD; (4) the Complainant would agree to dismissal of the district court action with prejudice and without costs to either party; and (5) MSTRWD would agree to release any and all claims against the

¹⁶ 784 N.W.2d at 837.

¹⁷ *Middle-Snake-Tamarac Rivers Watershed District v. Stengrim*, 2009 WL 367286 (Minn. App. 2009).

¹⁸ *Middle-Snake-Tamarac Rivers Watershed District v. Stengrim*, 784 N.W.2d 834 (Minn. 2010).

¹⁹ Attachment to Complaint (email dated Jan. 3, 2009, 9:25 a.m.).

²⁰ Attachment to Complaint (email dated Jan. 3, 2009, 9:57 a.m.).

Complainant. No specific dollar value was attached to the piece of land; it was included as one term of the much broader proposed agreement.²¹ MSTRWD asserts that prior to receiving this settlement proposal, it had never expressed any interest in purchasing this additional property from the Complainant, and the Complainant has not disputed this assertion or offered any evidence to the contrary.

In response to the written settlement offer, MSTRWD wrote to Mr. Hadac:

Part of the problem is that there was a significant difference of opinion on the value of the property. The managers decided to get a short form appraisal This is necessary also for purposes of determining whether there would be funding for acquisition of the land²²

The appraisal was performed and presented to the MSTRWD managers at a closed session on February 23, 2009, as part of a discussion on settlement of the litigation. It is not clear how the Complainant obtained a copy of the appraisal, but he did. He promptly wrote to the MSTRWD, discussing the errors he perceived in the valuation data and urging MSTRWD to correct these errors. The appraisal was apparently discussed in a public meeting on March 16, 2009, at which time the appraised value of the property was made public.²³ The public discussions at that meeting led the Complainant to request, about one year later, the IPAD opinion, and subsequently led to the filing of the request for hearing in this case.²⁴

Analysis

The Complainant does not dispute the facts outlined above. He contends that the IPAD opinion is incorrect and that an appraisal requested in the context of settlement negotiations is still an appraisal for the purpose of purchasing the land. He asserts that, regardless of the settlement context, MSTRWD should have treated the appraisal as confidential data under Minn. Stat. § 13.44, subd. 3(a). Specifically, he writes that:

As described in my Complaint, the fact that an acquisition of property may occur in the context of a litigation settlement does not in any way disqualify it as a purchase. The semantical contortions of Respondent's attorney cannot alter the fact that the District obtained an appraisal of my property in response to my settlement overture which included a suggestion that the District acquire my property, and that if the settlement

²¹ Attachment to Complaint (settlement proposal dated Jan. 21, 2009).

²² Attachment to Complaint (email dated Jan. 27, 2009).

²³ The Complainant has not included the actual appraisal in the record, but MSTRWD has included the Complainant's letter seeking revisions as Ex. D to its Responsive Memorandum. The minutes of the meeting reflect that the appraisal was distributed during the meeting. See Attachment to Complaint (minutes of meeting on Mar. 16, 2009).

²⁴ After the Minnesota Supreme Court issued its opinion in *Middle-Snake-Tamarac Rivers Watershed District v. Stengrim* on June 30, 2010, MSTRWD moved for voluntary dismissal of the litigation in district court. The motion was granted, and the Complainant's renewed motion to dismiss under the anti-SLAPP statute was denied, on February 3, 2011. See Responsive Memorandum Ex. G.

would have gone through, the District would have purchased my property as part of the settlement. If the District had no interest in acquiring my property under any circumstances, there was no reason for obtaining the appraisal.²⁵

The question of whether MSTRWD might ultimately have purchased the property pursuant to the settlement agreement is not the proper focus of inquiry. As outlined in the IPAD opinion, the issue is whether MSTRWD requested the appraisal “*for the purpose of . . . acquiring land through purchase or condemnation.*”²⁶ If MSTRWD obtained the appraisal for the purpose of determining the value of the settlement proposal, then the data in question are public and MSTRWD appropriately released it.²⁷ The OAH is required to give deference to the Commissioner’s opinion as to the classification of the data.²⁸ Given the general presumption that government data are public unless otherwise classified, the Administrative Law Judge agrees that the Commissioner’s opinion properly distinguishes between public and confidential data. If the matter had settled, the settlement itself would have been public data.

The record unequivocally reflects that MSTRWD requested the appraisal for the purpose of evaluating the Complainant’s settlement proposal. The Complainant had proposed a settlement in which MSTRWD would pay a lump sum of cash in exchange for a parcel of the Complainant’s land and assurances as to the Complainant’s future conduct. Without an appraisal of the land, MSTRWD could not determine what it was being asked to pay for the remaining terms of the proposal. The Complainant has failed to present sufficient facts to show that a violation of Minn. Stat. § 13.44, subd. 3, has occurred, and his Complaint must be dismissed.

K. D. S.

²⁵ Complainant’s Reply Memorandum at 1-2.

²⁶ Minn. Stat. § 13.44, subd. 3 (emphasis added).

²⁷ IPAD Opinion 10-010.

²⁸ Minn. Stat. § 13.072, subd. 2.