OAH 21-0325-38894

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

Conrad Lange Zbikowski,

Complainant,

vs.

Liza Anondson,

Respondent.

NOTICE OF DETERMINATION OF PRIMA FACIE VIOLATION AND ORDER FOR PREHEARING CONFERENCE

On December 13, 2022, Conrad Lange Zbikowski (Complainant) filed a Fair Campaign Practices Complaint (Complaint) with the Office of Administrative Hearings. The Complaint alleges that Liza Anondson (Respondent), in her capacity as property manager for Mill District City Club Apartments, violated Minn. Stat. § 211B.20 (2022), by denying Complainant access to an apartment building.

Following a review of the Complaint, the undersigned Administrative Law Judge determines that the Complaint establishes a prima facie violation of Minn. Stat. § 211B.20. For the reasons detailed in the Memorandum below, this allegation will proceed to a telephone prehearing conference and, if necessary, a hearing before a panel of three administrative law judges. The Administrative Law Judge will hold the prehearing conference to set a date for such further proceedings and to discuss other preliminary matters.

THEREFORE, IT IS HEREBY ORDERED AND NOTICE IS GIVEN that this matter is scheduled for a prehearing conference to be held before the undersigned Administrative Law Judge at **11:00 a.m.** on **Friday**, **January 6, 2023**. The prehearing conference will be held by telephone, and the parties must call in for the conference. At the appointed time, the parties are directed to:

(a) Telephone **1-877-304-9269,** and, when prompted,

(b) Enter the conference code: **871131#**.

At the prehearing conference, the Administrative Law Judge will address issues related to the hearing, including scheduling the hearing date, identifying the issues to be resolved, and discussing the number of potential witnesses and exhibits. The Administrative Law Judge will also address whether the matter may be disposed of on a written record without an evidentiary hearing.

Any party who needs an accommodation for a disability to participate in this hearing process may request one. Examples of reasonable accommodations include wheelchair accessibility, an interpreter, or Braille or large-print materials. If any party requires an interpreter, the Administrative Law Judge must be promptly notified. To arrange an accommodation, contact the Office of Administrative Hearings at P.O. Box 64620, St. Paul, Minnesota 55164-0620, or call 651-361-7900 (voice) or 651-361-7878 (TDD).

A failure by any party to participate and appear by telephone at the prehearing conference may result in a finding of default, and the Complaint may be dismissed or disposed of pursuant to Minn. Stat. § 211B.35, subd. 2 (2022).

Dated: December 16, 2022

KIMBERLY MIDDENDORF
Administrative Law Judge

MEMORANDUM

According to the Complaint, Complainant is seeking election to the Minneapolis City Council Ward 3 seat in the November 2023 general election.[1] Complainant alleges that he has organized a campaign committee and has filed an initial compaign financial report as required by Minn. Stat. § 211A.02 (2022).[2]

Respondent is the property manager for the Mill District City Club Apartments (Apartments) located in Minneapolis.[3]

Complainant alleges that on November 28, 2022, he sent an email to the address for the property manager of the Apartments requesting that he be provided access to the building on December 5, 2022, starting at 5:00 p.m., to door knock and leave campaign literature.[4] According to the Complaint, Complainant did not receive a reply from Respondent.[5] Complainant states that he sent another email to Respondent on December 2, 2022, asking if Respondent had any questions.[6] On the morning of

[1] Complaint (Dec. 13, 2022).
[2] *Id*.
[3] *Id*.
[4] *Id*.
[5] *Id*.
[6] *Id*.

December 5, 2022, Complainant states he sent another email to Respondent and left a voicemail message but did not hear back from Respondent.[7]

Complainant asserts that he arrived at the Apartments at approximately 4:30 p.m. on December 5, 2022 and was informed that Respondent had directed staff not to allow him or his campaign members into the building because the apartments are private residences.[8] Complainant states that he sent another email to Respondent at 5:11 p.m. on December 5, 2022, advising her that denying him access violated state law and attaching a copy of Minn. Stat. § 211B.20.[9] Complainant requested that he and his campaign be allowed access to the Apartments on December 12, 2022, from 5-7 p.m.[10]

On December 6, 2022, Respondent sent a reply email to Complainant.[11] Respondent stated that she was advised by the corporate owners of the Apartments not to particpate in political canvassing.[12] Respondent explained that the residents of the Apartments pay for security and she is "hesitant anytime anyone wants to gain access."[13]

I. Standard for Prima Facie Determinations

To establish a prima facie violation of the Fair Campaign Practices Act, a complainant must allege sufficient facts to show that a violation of law has occurred.[14] The complaining party must submit evidence or allege facts that, if accepted as true, would be sufficient to prove a violation of Minn. Stat. §§ 211A.01-.14, 211B.01-.37 (2022).[15]

For purposes of a prima facie determination, this tribunal must accept the facts that are alleged in the Complaint as true, without independent substantiation, provided that those facts are not patently false or inherently incredible.[16] In determining whether a complaint alleges sufficient facts to state a prima facie case, reasonable inferences must be drawn in the light most favorable to the complainant.[17]

A complaint must be dismissed if it does not include evidence or allege facts that, if accepted as true, would be sufficient to prove a violation of Minn. Stat. §§ 211A.01-.14, 211B.01-.37.[18]

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[7] *Id*.
[8] *Id*.
[9] *Id*. at Attachment 1.
[10] *Id*.
[11] *Id*.
[12] *Id*.
[13] *Id*.
[14] Minn. Stat. § 211B.32, subd. 3.
[15] *Barry v. St. Anthony-New Brighton Indep. Sch. Dist. 282*, 781 N.W.2d 898, 902 (Minn. Ct. App. 2010).
[16] *Id*.
[17] *Abrahamson v. St. Louis Cty. Sch. Dist*., 819 N.W.2d 129, 136 (Minn. 2012).
[18] *Barry,* 781 N.W.2d at 902.

II. Denial of Access by Political Candidates to Multiple Unit Dwellings (Minn. Stat. § 211B.20)

Minn. Stat. § 211B.20 prohibits denying access to political candidates to campaign in multiple unit dwellings. So long as the candidate has organized a campaign committee under federal or state law, filed a financial report as required under section 211A.02, or filed an affidavit of candidacy for elected office, the candidate must be granted access and allowed to be accompanied by campaign volunteers.[19]

Access to the building is only required if it is located within the district or territory represented by the office sought.[20] The candidate must be seeking access only for the purpose of campaigning, and the candidate must be running for office in the next general election.[21] A candidate and any accompanying campaign volunteers granted access must be permitted to leave campaign materials for residents at their doors.[22]

Section 211B.20 does not prohibit denial of admittance into particular apartments or personal residential units.[23] Requiring proper identification and a prior appointment as necessary prerequisites to admission is allowed.[24] And limiting visits by candidates and their volunteers to a reasonable number of persons or reasonable hours is permitted.[25] Finally, admittance may be denied for good cause.[26]

III. Analysis and Conclusion

Accepting the facts alleged as true, which is required at this stage of review, the Administrative Law Judge finds Complainant has alleged sufficient facts to support finding a prima facie violation of Minn. Stat. § 211B.20. According to the Complaint, Complainant is a candidate for office in the next general election and was denied access to campaign at a multiple unit dwelling.

This matter shall proceed to a prehearing telephone conference as ordered. In the event the parties reach an agreement regarding reasonable access to the building prior to January 6, 2023, Complainant shall notify the Administrative Law Judge in writing and indicate whether the prehearing conference is necessary.[27]

K. J. M.

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[19] Minn. Stat. § 211B.20, subd. 1(a).
[20] *Id*. at subd. 1(b).
[21] *Id*.
[22] *Id*. at subd. 1(c) (a manager of a nursing home may direct that the materials be left at a central location within the facility).
[23] *Id*. at subd. 2(1).
[24] *Id*. at subd. 2(2), (5).
[25] *Id*. at subd. 2(4).
[26] *Id*. at subd. 2(6).
[27] *See* Minn. Stat. § 211B.36, subd. 2 (a complaint may be withdrawn at any point time prior to the evidentiary hearing).