

8-1700-8059-2

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE MINNESOTA DEPARTMENT OF HUMAN RIGHTS

Robert McIntosh,

Complainant,

v.

P.M. Broadcasting Co.,

Respondent.

ORDER GRANTING
MOTION IN LIMINE

On September 10, 1993, Complainant filed a Motion in Limine requesting order prohibiting Respondent from asserting a counterclaim of conversion against the Complainant in this proceeding. The Motion was filed pursuant to discussions during a prior prehearing conference. On October 12, 1993 Respondent filed its objections to the Motion. Oral arguments were not determined to be necessary and were not scheduled.

Sonja Dunnwald Peterson, Horton and Associates, Attorneys at Law, 700 Title Insurance Building, 400 Second Avenue South, Minneapolis, Minnesota 55401, has appeared on behalf of the Complainant. Frank Kundrat, Hall, Bye, Hanson, Steil & Weinberger, P.A., Attorneys at Law, 1010 West St. Germain, Suite 600, St. Cloud, Minnesota 56301, has appeared on behalf of Respondent.

Based upon all the files, records and proceedings herein, and for the reasons set forth in the appended Memorandum,

IT IS HEREBY ORDERED:

1. The Complainant's Motion precluding the Respondent from asserting counterclaim against the Complainant in this proceeding should be and is GRANTED.

2. Respondent is not prohibited from asserting in this proceeding that the Complainant was discharged for converting or misappropriating monies of Respondents.

Dated this 14th day of October, 1993.

JON L. LUNDE
Administrative Law Judge

MEMORANDUM

In a contested case proceeding arising under the Minnesota Human Rights Act (MHRA), the Administrative Law Judge does not have subject matter jurisdiction to consider tort claims. Thus, in McKee v. County of Ramsey, 135 N.W.2d 460, 462 (Minn. 1976) the court held that tort claims (i.e., negligence) could not be asserted to recover a woman's expenses relating to childbirth in an administrative proceeding to determine her entitlement to maternity benefits under Minn. Stat. §§ 261.01 et seq. In Cable Communications Board v. Northwest, Cable Communications Partnership 135 N.W.2d 658, 669 (Minn. 1984), the court held that an applicant for a cable communication franchise seeking to require the cable communications board to convene a contested case hearing prior to granting the franchise to another applicant was not entitled to raise constitutional and antitrust issues in a board proceeding because the board has no jurisdiction to determine them. Later, in Department of Human Rights v. Spiten, 424 N.W.2d 815 the court held that a respondent's counterclaim against the Department of Human Rights in a contested case proceeding arising under the Minnesota Human Rights Act for violations of the Privacy of Communications Act could not be heard in a contested case proceeding because it was not within the administrative law judge's subject matter jurisdiction. Based on these cases and the language of the Minnesota Human Rights Act, it is concluded that the Administrative Law Judge does not have subject matter jurisdiction to consider tort claims or other counterclaims. Respondent may wish to assert against the Complainant in this case. Hence, the Administrative Law Judge does not have jurisdiction to determine whether Respondent has a valid counterclaim against Complainant for conversion or other tort. Therefore, Complainant's Motion in Limine must be granted. However, caveat applies.

Although the Administrative Law Judge does not have subject matter jurisdiction to decide tort claims, he does, nevertheless, have authority to determine whether the Complainant was discharged for converting monies belonging to the Respondent or because Respondent believed that he did so. It is essential that facts relied upon strictly as a defense to the Complainant's cause of action be heard as a defense even though they are not heard to resolve the validity of the Respondent's tort claim or the amount of that claim. Therefore, the Respondent may present in this case the evidence it had led it to believe that the Complainant had converted, misapplied or stolen money or property belonging to the Respondent. Complainant must prove that such assertions are a mere pretext. All relevant evidence with respect to that issue will be heard but, as was said before, the merits of the Respondent's tort claims will not be decided as tort claims, nor will the Administrative Law Judge determine an amount the Complainant may owe to Respondent.

In Ress v. Abbott Northwestern Hospital, Inc., 488 N.W.2d 519 (Minn. 1972), the court held that in determining whether a nurse was discharged for misconduct, an unemployment compensation judge could determine if the nurse acted outside the scope of his license, even though the Board of Nursing generally has jurisdiction over such issues. It frequently happens that issues in contested cases necessarily involve conduct that may also be the subject of civil or criminal actions. Those issues must be decided. In this

case, if the conversion of money belonging to Respondent is the basis for the Charging Party's discharge, evidence regarding the conversion must be heard. The ultimate decision reached, however, is not necessarily determinative of Respondent's civil tort claim.

JLL

OAH Docket No. 8-1700-8059-2
DHR File No. E23687

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DISMISSAL ORDER

On April 12, 1994 a Stipulation of Dismissal with Prejudice executed by counsel for both parties was filed with the Office of Administrative Hearing. In the Stipulation, the parties agreed that Complainant's Complaint against Respondent was being dismissed with prejudice and without costs or any other relief to any party.

Based upon all the files, records and proceedings herein,

IT IS HEREBY ORDERED: That the Complainant's Complaint against Respondent should be and is hereby is DISMISSED WITH PREJUDICE and without cost or any other relief to any party pursuant to the parties' Stipulation of Dismissal with Prejudice which is incorporated herein by reference.

Dated this 12th day of April, 1994.

/s/ Jon L. Lunde

JON L. LUNDE
Administrative Law Judge