

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE DEPARTMENT OF HUMAN SERVICES

In the Matter of Community Action of
Minneapolis, Inc.

**ORDER REGARDING MOTION TO
DISMISS AND MOTION TO STAY**

This matter is before Administrative Law Judge Tammy L. Pust pursuant to a Notice and Order for Prehearing Conference and Hearing filed with the Office of Administrative Hearings on November 4, 2014. The matter involves the appeal of Community Action of Minneapolis, Inc., from the Minnesota Department of Human Services's (Department's) attempt to terminate the corporation's designation and funding as a community action agency under Minnesota law.

Jacob Campion, Assistant Attorney General, represents the Department in this matter and in a related receivership action filed with the Second Judicial District Court as Court File No. 62-CV-14-6991 (Receivership Action). Lee A. Hutton, III, and Patricia St. Peter, Zelle Hofmann Voelbel & Mason LLP, represent Community Action of Minneapolis, Inc. (CAM or Respondent). Jeffrey R. Ansel, Winthrop & Weinstine, PA, represents BGA Management, LLC, d/b/a Alliance Management, the receiver (Receiver) appointed pursuant to a November 18, 2014 Order of the Honorable William H. Leary, III, Judge of District Court, Second Judicial District, in the Receivership Action.

On December 16, 2014, Respondent moved for a stay of these proceedings pending completion of the Receivership Action; the Department opposes the motion. On January 15, 2015, the Department moved to dismiss Respondent's appeal of the Department's termination attempt, which forms the basis for the current proceedings, because CAM's board of directors lacked authority to authorize the appeal. Respondent opposes the Department's motion.

After briefing by all parties, the Administrative Law Judge heard oral argument on January 20, 2015 with respect to the Department's motion to dismiss and Respondent's motion to stay these proceedings. The record closed on that date.

Based on the submissions of the parties, the oral argument, and for the reasons set forth in the Memorandum attached hereto, the Administrative Law Judge makes the following:

ORDER

IT IS HEREBY ORDERED THAT:

1. The Department's motion to dismiss Respondent's appeal of the Department's attempt to terminate Respondent's designation and funding as a community action agency under Minnesota law is **DENIED**.

2. For the reasons set forth below, Respondent's motion for a stay of these proceedings is **HELD UNDER ADVISEMENT** pending supplementation of the record and, if necessary, a subsequent motion requesting that the Administrative Law Judge seek the Receiver's consent to providing CAM with supervised access to financial and other records necessary to present its defenses in these pending administrative proceedings.

3. The matter will proceed to another Prehearing Conference commencing at **10:00 a.m. on March 3, 2015**, by telephone conference, to review the status of the case, consider the above-referenced motion if filed, identify the issues for hearing and set the date for hearing. To participate, the parties shall call 1-888-742-5095 and enter conference code 847 901 7851#.

Dated: February 19, 2015

s/Tammy L. Pust

TAMMY L. PUST
Chief Administrative Law Judge

MEMORANDUM

Factual and Procedural Background

Community Action of Minneapolis, Inc.

Community Action of Minneapolis, Inc. is a Minnesota nonprofit corporation formed in 1992.¹ Since approximately 1994, CAM has also been a designated community action agency pursuant to Minn. Stat. §§ 256E.30-.32 (2014).

¹ The Department's motion submissions note that CAM is "a non-profit organization formed in 1994 by the city of Minneapolis to utilize community action grants." Memorandum of Law in Support of Motion to Dismiss, at 2 (Jan. 12, 2015); see also Affidavit of Gary Johnson, Exhibit (Ex.) A, at 1 (Audit Report). In accord with R. 201, Minn. R. Evid, the Administrative Law Judge takes judicial notice of the fact that CAM was incorporated not in 1994 but in 1992, according to the public records of the Minnesota Secretary of State. The 1992 incorporation date is also consistent with the Department's filings, which include one set of corporate minutes for the Minneapolis Community Action Council, Inc. dated December 14, 1992, with a one page Proposed Amendment to Bylaws of Community Action of Minneapolis dated November 30, 1994. Affidavit (Aft.) of Joelle Hoeft, Ex. C.

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From at least 1994 to the present, CAM's duly adopted bylaws (Bylaws) have provided, in relevant part, as follows:

Section 2. Composition and Election. The Board of Directors shall be composed of fifteen (15) members, as the Board of Directors it [sic] may determine this [sic] from year to year. This number may be changed from time to time in accordance with these Bylaws, but shall not be fewer than fifteen (15) members nor more than fifty-one (51) members.

. . . .

Section 5. Quorum. The quorum of all Board meetings will be 50% of filled seats or as stated in Section 10 of this Article.² If there is no quorum, no business can be transacted. In the absence of a quorum, the only action that may be taken are measures to obtain a quorum, fix the time at which to adjourn or to recess.³

Respondent's Board of Directors (Board) has never had 15 members; it has had at least two vacant Board positions since the year 2000.⁴ In 2006, the Board had nine members.⁵ As of August 12, 2014, the Board had 11 filled positions.⁶ By October 13, 2014, another seven Directors had resigned⁷ and Respondent's Board was made up of four individuals: David M. Anderson, Board Chair; Cheryl Jones; Towanna Williams; and Manuel Rubio.⁸

Department-Administered Grants and Audit

Pursuant to federal⁹ and state¹⁰ law, the Department distributes and monitors grants of public funds to designated "community action agencies"¹¹ for the purpose of assisting in the reduction of poverty, revitalizing low-income communities, and empowering low-income families to become financially self-sufficient.¹² Historically, the Department has administered two grant contracts with Respondent: (1) a Supplemental Nutrition Assistance Program (SNAP) Outreach Grant, totaling \$27,841.21 for the last fiscal period; and (2) a combined Minnesota Community Action Grant and federal

² Section 10 allows for action without a meeting if authorized in writing signed by all directors. This revision is inapplicable in the present case.

³ Aff. of Jacob Campion, Ex. A, at 2 (CAM Bylaws, art. III, § 2, art. IV, § 5)

⁴ Audit Report, at 4

⁵ *Id.*

⁶ *Id.*

⁷ Aff. of David M. Anderson, at 1, ¶3.

⁸ *Id.*

⁹ 42 U.S.C. § 9901 (2012).

¹⁰ Minn. Stat. §§ 256E.30-.32.

¹¹ See Minn. Stat. § 256E.31

¹² 42 U.S.C. § 9901(1); Minn. Stat. § 256E.30.

Community Services Block Grant, totaling \$2,834,498 for the most recent biennium.¹³ In addition, Respondent was a grantee of the federally-funded Low Income Home Energy Assistance Program (LIHEAP) and the Weatherization Program, both administered through the Minnesota Department of Commerce.¹⁴

The Department has supervised Respondent's initial and continuing designation and funding as a statutorily-defined community action agency since 1994.¹⁵ Annually, the Department has monitored Respondent's operations for compliance with relevant federal and state law.¹⁶ In pertinent part, Minnesota law requires all community action agencies duly designated pursuant to Minnesota Statutes, chapter 256E (2014) (256E Designated Agencies) to be operated under the control of a board of directors comprised of at least 15 members, which is statutorily required to represent low-income individuals, community interests, and elected officials in identified percentages.¹⁷

For over 15 consecutive years, the Department's annual monitoring reports have noted that Respondent has been operating with less than 15 individual directors.¹⁸ Until the present action, the Department has never sought to withhold grant funds or withdraw or terminate Respondent's status as a 256E Designated Agency due to the number of persons seated on its Board.

In 2006, the Office of the Legislative Auditor (OLA) completed a fiscal audit of the Minnesota Department of Commerce.¹⁹ The OLA report concluded that the Department of Commerce did not adequately monitor Respondent when it provided \$1.35 million to households ineligible for emergency LIHEAP benefits, for which Respondent incurred a \$100,000 fine from the federal government.²⁰

Seven years later in 2013, the Department commenced an audit of CAM's administration of the combined Community Block Grant funds based on revelations included in the 2006 OLA report related to misuse of LIHEAP grant funds, plus an increase in administrative costs and an unexpected key staff departure.²¹ The Department met with CAM staff in May, June, and July of 2014 to discuss its preliminary audit findings.²² On August 12, 2014, the Department issued its final audit report (Audit

¹³ Aff. of G. Johnson, at 1; Aff. of J. Hoeft, Exs. A, C. Initially and as approved on or about July 24, 2013, this combined grant totaled \$1,759,532. Aff. of J. Hoeft, Ex. B. In a grant amendment signed by CAM on April 24, 2014, and signed by the Department's program representative on June 28, 2014, the grant amount was increased to \$2,834,498. *Id.*, Ex. C.

¹⁴ Audit Report, at 1.

¹⁵ Testimony of G. Anderson on January 20, 2015; see also Minn. Stat. § 256E.30, subd. 5.

¹⁶ *Id.*

¹⁷ Minn. Stat. § 256E.31, subd. 3.

¹⁸ Audit Report, at 4.

¹⁹ Office of the Legislative Auditor, Financial Audit Division Report 06-06 (Mar. 9, 2006), available at <http://www.auditor.leg.state.mn.us/fad/pdf/fad0606.pdf>.

²⁰ *Id.*; Audit Report, at 2.

²¹ Aff. of G. Johnson, at 1-2, ¶ 5, 6.

²² *Id.* at 2, ¶ 8.

Report), documenting deficiencies in board oversight, inadequate allocation of costs, and unacceptable levels of documented program outcomes.²³

In relevant part, the Audit Report also confirmed, from the Department's own annual monitoring reports, that Respondent's Board had never had 15 members. The Audit Report's stated recommendation related to Board representation was as follows:

Community Action of Minneapolis should submit documentation to the Office of Economic Opportunity with each grant application to provide evidence of compliance with Mn. Stat. Section 256E.31, Subd. 3 pertaining to the minimum number of required board positions. If Community Action of Minneapolis can not provide documentation showing that they have been in compliance with this state law **at least once during the last grant period**,²⁴ the Office of Economic Opportunity should withhold funding, in lieu of termination, until Community Action of Minneapolis fills a minimum of 15 board positions as required by Minnesota Administrative Rules.²⁵

The Department requested that CAM submit a corrective action plan by September 1, 2014.²⁶ Untimely, Respondent submitted a proposed corrective action plan on September 5, 2014, which the Department found to be insufficient in addressing the deficiencies noted in the Audit Report.²⁷

On September 26, 2014, the Department notified Respondent of its intent to terminate CAM's recognition as a 256E Designated Agency and to terminate all related state and federal grants.²⁸ Thereafter, the Department referred the individuals formerly served by Respondent to other 256E Designated Agencies.²⁹

Respondent's Appeal

The Department's September 26, 2014 Notice of Termination for Cause informed Respondent of its right to request a contested case hearing within 30 days of its receipt of the noticed action.³⁰ At the Board's October 13, 2014 meeting, two of the Board's four Directors authorized the appeal of the Department's termination action.³¹ That appeal was communicated to the Department in a letter dated October 21, 2014.³²

²³ *Id.*, Ex. A, at 1.

²⁴ Emphasis added.

²⁵ Audit Report, at 5 (citing Minn. R. 9571.0090, subp. 1(D) (2013) (Withholding of Cash Disbursements)).

²⁶ Aff. of G. Johnson, Ex. A, at 1.

²⁷ See *id.*, Ex. C, at 1.

²⁸ *Id.*

²⁹ Aff. of J. Hoeft, at 2-3, ¶ 16.

³⁰ Aff. of G. Johnson, Ex. C, at 3.

³¹ Aff. of D. Anderson, at 1, ¶¶ 4, 5.

³² *Id.*, at 1, ¶ 6, Ex. B.

Receivership Action

In the fall of 2014, the Department of Human Services and the Department of Commerce (DOC), jointly represented, filed a Petition to Appoint Receiver in an action filed in the Second Judicial District Court as Court File No. 62-CV-14-6991. Respondent filed a Cross-Petition to Appoint Receiver in the same action. After a hearing held on November 17, 2014, the Honorable William H. Leary, III, Judge of District Court, Second Judicial District, issued an Order Appointing Receiver dated November 18, 2014.³³ Pursuant to this order, Judge Leary appointed Michael Knight of Alliance Management to serve as a limited receiver over CAM's assets and perform the following duties:

(1) [P]rovide an accounting of CAM's assets and liabilities; (2) review the expenditures made by CAM and determine which expenditures were improper under the DHS and DOC grants; and (3) recommend a distribution plan to the court to pay legitimate creditors, including reimbursing DHS and DOC for any expenditures improperly charged by CAM to the DHS and DOC grants.³⁴

On December 12, 2014, Judge Leary issued an Order on Receiver's Request for Instructions, clarifying that the Receiver has no legal authority to represent CAM in the current administrative proceedings pending before the Office of Administrative Hearings.³⁵

Standard of Review

Motion to Dismiss

An Administrative Law Judge may recommend dismissal of a matter if the subject pleadings fail to state a claim upon which relief may be granted or indicate a lack of jurisdiction, insufficient service of process, or other legal deficiency.³⁶ The focus of a motion to dismiss for failure to state a claim is on the adequacy of the pleadings.³⁷ The court must consider only the facts alleged in the pleading at issue, accepting those facts as true.³⁸ Dismissal is proper when it is clear and unequivocal from the face of the pleading that it fails to set forth a legally sufficient claim or defense to support judgment in the party's favor.³⁹

³³ Order Appointing Receiver, at 1 (Nov. 18, 2014).

³⁴ *Id.* at 2.

³⁵ Order on Receiver's Request for Instructions, at 2 (Dec. 12, 2014).

³⁶ Minn. R. 1400.5500(K) (2013); see Minn. R. Civ. P. 12.02.

³⁷ *Grp. Health Plan, Inc. v. Philip Morris Inc.*, 621 N.W.2d 2, 14 (Minn. 2001).

³⁸ *Bodah v. Lakeville Motor Express, Inc.*, 663 N.W.2d 550, 553 (Minn. 2003).

³⁹ See *Jacobson v. Bd. of Trustees*, 627 N.W.2d 106, 109 (Minn. Ct. App. 2001).

Summary Disposition Standard

Although the Department titled its pleading as a motion to dismiss, it submitted additional documents outside the pleadings in support of its motion. Accordingly, the motion to dismiss must be treated as a motion for summary disposition.⁴⁰

Summary disposition is the administrative equivalent of summary judgment.⁴¹ Summary judgment is appropriate when there are no genuine issues of material fact and a party is entitled to judgment as a matter of law.⁴² The Office of Administrative Hearings has generally followed the summary judgment standards developed in judicial courts in considering motions for summary disposition in contested case matters.⁴³

The moving party must demonstrate that no genuine issues of material fact exist and that it is entitled to summary disposition as a matter of law.⁴⁴ If the moving party is successful, the nonmoving party then has the burden of proof to show specific disputed facts that affect the outcome of the case.⁴⁵ It is not sufficient for the nonmoving party to rest on mere averments or denials. The nonmoving party must present specific facts demonstrating a genuine issue for hearing.⁴⁶ When considering a motion for summary disposition, the Administrative Law Judge must view the facts in the light most favorable to the nonmoving party.⁴⁷ All doubts and factual inferences must be resolved against the moving party.⁴⁸ If reasonable minds could differ as to the import of the evidence, summary disposition should not be granted.⁴⁹

Parties' Positions

The Department asserts that it is entitled to judgment as a matter of law because CAM's appeal of the Department's attempt to terminate its status as a 256E Designated Agency was invalid for lack of a quorum supporting the Board's action. As a 256E Designated Agency, CAM, and not its individual directors, is the only entity lawfully authorized to appeal the Department's termination of its 256E Designated Agency status.⁵⁰ The Department notes that CAM is required to have a 15-member board of directors under Minnesota Statutes, section 256E.31, and by its own Bylaws,⁵¹ and asserts that a majority of the 15 members are required as a quorum in order to effect corporate action. Because 11 of the Board's 15 seats were unfilled at the time of the

⁴⁰ See Minn. R. Civ. P. 12.03; *Moreno v. Crookston Times Printing Co.*, 610 N.W.2d 321, 327 (Minn. 2000); Minn. R. 1400.6600 (2013).

⁴¹ Minn. R. 1400.5500(K).

⁴² Minn. R. Civ. P. 56.03; Minn. R. 1400.5500(K).

⁴³ Minn. R. 1400.6600.

⁴⁴ *Theile v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988).

⁴⁵ *Highland Chateau, Inc. v. Minn. Dep't of Pub. Welfare*, 356 N.W.2d 804, 808 (Minn. Ct. App. 1984), *review denied* (Minn. Feb. 6, 1985).

⁴⁶ Minn. R. Civ. P. 56.05.

⁴⁷ *Ostendorf v. Kenyon*, 347 N.W.2d 834, 836 (Minn. Ct. App. 1984).

⁴⁸ *Thiele*, 425 N.W.2d at 583.

⁴⁹ *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 250-51 (1986).

⁵⁰ See Minn. R. 9571.0060, subps. 3, 5 (2013).

⁵¹ CAM Bylaws, art. III, § 2.

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Board's attempt to appeal, the Department asserts that the Board's attempted action was invalid for lack of a required quorum.⁵²

CAM argues that its Board acted with an adequate quorum as required by the Minnesota Nonprofit Corporation Act⁵³ and in compliance with its own Bylaws, and as such its appeal of the Department's action is lawful and binding. CAM also asserts that the Department should be estopped from asserting otherwise on the basis of the doctrine of waiver, given the Department's failure to object to the reduced number of directors serving on CAM's Board despite the agency's 15-year knowledge of this fact.

Analysis and Conclusion

CAM existed as a nonprofit corporation before it became a 256E Designated Agency under Minnesota law. Its corporate existence had to predate its designation, as only "a political subdivision of the state, a combination of political subdivisions, a public agency, or a private nonprofit agency" is eligible for designation under chapter 256E.⁵⁴

As a creature of statute, CAM "has such rights and responsibilities, such powers and limitations, as are accorded it by the legislature."⁵⁵ Under the Minnesota Nonprofit Corporation Act, CAM, as a corporate entity, has the authority to sue and be sued, and to defend against claims brought against it in this administrative forum.⁵⁶ Only the corporate entity itself may take binding action on behalf of the corporation; its individual directors, members, shareholders or even stakeholders may not.⁵⁷

A nonprofit corporation, and its directors and officers, are expected to comply with its corporate bylaws, which are designed to establish rules of internal operation for the corporation.⁵⁸ Courts construe corporate bylaws according to the rules of interpretation that govern the construction of contracts and statutes,⁵⁹ the primary of which is to "ascertain and give effect to the intention of the parties."⁶⁰ Determining intent requires examination of the bylaws' wording, not in isolation but in the context in which the words are used within the whole document.⁶¹

⁵² Memorandum of Law in Support of Motion to Dismiss, at 6-7 (Jan. 12, 2015).

⁵³ Minn. Stat. §§ 317A.001-.909 (2014).

⁵⁴ Minn. Stat. § 256E.31, subd. 1. Nothing in the record suggests that CAM was ever a political subdivision or public agency.

⁵⁵ *Kopio's, Inc. v. Bridgeman Creameries, Inc.*, 248 Minn. 348, 350, 79 N.W.2d 921, 923 (1956).

⁵⁶ Minn. Stat. § 317A.161, subd. 3 (2014).

⁵⁷ *Singer v. Allied Factors*, 216 Minn. 443, 445-46, 13 N.W.2d 378, 445 (1944) ("An appeal may be taken only by 'the aggrieved party.' A corporation is a distinct entity from its stockholders. All corporate powers, franchises, and rights are vested in the corporation and not in the stockholders. Among such powers is that of suing and defending in its own name.... As a logical consequence, a stockholder ordinarily cannot appeal [on] behalf of a corporation." (citations omitted)).

⁵⁸ *Diedrick v. Helm*, 217 Minn. 483, 497, 14 N.W.2d 913, 921 (1944).

⁵⁹ See *Mauer v. Kircher*, 587 N.W.2d 512, 514-15 (Minn. Ct. App. 1998) (applying rules of contract and statutory construction to the interpretation of a bank's bylaws), *review dismissed* (Minn. July 29, 1999).

⁶⁰ *Metro. Sports Facilities Comm'n v. Gen. Mills, Inc.*, 470 N.W.2d 118, 122-23 (Minn. 1991).

⁶¹ *Motorsports Racing Plus, Inc. v. Arctic Cat Sales, Inc.*, 666 N.W.2d 320, 324 (Minn. 2003); see also *Isaacs v. Am. Iron & Steel Co.*, 690 N.W.2d 373, 376-79 (Minn. Ct. App. 2004).

CAM's Bylaws explicitly state that the corporate Board shall be made up of no fewer than 15 members "as the Board of Directors it [sic] may determine this [sic] from year to year."⁶² The Bylaws further state that a quorum of directors adequate to conduct corporate business will consist of "50% of filled seats."⁶³ This word in is consistent with the statutory definition provided for nonprofit corporations generally,⁶⁴ which defines the term "quorum" as a majority or different percentage, as provided in the organization's articles or bylaws, of directors "currently holding office."⁶⁵

The Department appears to argue that these statutory and Bylaw-based definitions of "quorum" are trumped by the requirement that the CAM Board be made up of 15 directors as specified in: (1) CAM's Bylaws; and (2) the provisions of chapter 256E. The Department therefore contends that "CAM must have eight board members to establish a quorum and conduct business."⁶⁶

This reading completely ignores the limiting reference to "filled" seats in CAM's Bylaws, as well as the Nonprofit Corporation Act's reference to a quorum being calculated as to directors "currently holding office." As such, it leads to an inappropriate result.

In October of 2014, the CAM board was made up of only four directors, two of whom approved the appeal. While two is not a majority of four, it is "50% of the filled seats," which is the percentage specified as a quorum in CAM's Bylaws. Therefore, the appeal was a valid exercise of CAM's authority as defined by the Minnesota Nonprofit Corporation Act.⁶⁷

The provisions of Minnesota Statutes, section 256E.31 do not alter this result. The language of section 256E.31 cannot be used to contradict the plain meaning of section 317A.235.⁶⁸ The meaning of section 317A.235 is clear: a corporation's bylaws can define what constitutes a quorum of directors "currently holding office." CAM's

⁶² CAM Bylaws, art. III, § 2

⁶³ *Id.*, art. IV, § 5.

⁶⁴ The specified definition is not universally applicable. See, e.g., Minn. Stat. §§ 1.21 (Great Lakes Basin Compact) ("The presence of commissioners from a majority of the party states shall constitute a quorum."), 3.922 (Indian Affairs Council) ("A majority of the voting members of the council is a quorum."), 15B.03(g) (Capitol Area Architectural and Planning Board) ("A quorum of the board is six members."), 44.04 (Personnel Board) ("Two members of the board shall constitute a quorum."), 50.06, subd. 4 (Banking Directors) ("A majority of the directors constitutes a quorum for the transaction of business.") (2014).

⁶⁵ Minn. Stat. § 317A.235 (2014).

⁶⁶ Memorandum of Law in Support of Motion to Dismiss, at 6 (Jan. 12, 2015).

⁶⁷ See Minn. Stat. § 317A.235.

⁶⁸ See *State v. Nelson*, 842 N.W.2d 433, 436 (Minn. 2014) ("[I]f a statute is susceptible to only one reasonable interpretation, 'then we must apply the statute's plain meaning.'" (quoting *Larson v. State*, 790 N.W.2d 700, 703 (Minn. 2010)); *Bd. of Ed. of City of Minneapolis v. Sand*, 227 Minn. 202, 210, 34 N.W.2d 689, 694 (1948) (stating that definition of "teacher" in one section of statute "exclusive of other statutory definitions; and that result to other statutes is not justified, for the reason that to do so would result in a definition of a word different from that which the legislature has enacted").

Bylaws do just that. While section 256E.31 refers to the size of the board required for administering community action programs by 256E Designated Agencies,⁶⁹ it does not specify the number of board positions that must be filled to conduct corporate business nor seek to alter the requirements for a sufficient quorum as prescribed by general tenets of corporate law.⁷⁰ Although CAM may have acted in violation of its statutory directive from 256E and even in violation of its contractual obligations referenced in the various underlying grant agreements, those issues are not presented by the Department in its current motion. Instead, the Department seeks summary disposition based on the fact that the two board members who authorized the current contested case hearing lacked legal authority to act on behalf of the corporation. For the reasons set forth above, they did in fact have such authority and lawfully used it to perfect the appeal.⁷¹

Moreover, the Department has no sufficient basis upon which to assert otherwise. As set forth in Minn. Stat. § 317A.165, subd. 1 (2014), a corporation's acting outside the authority of its bylaws does not render its action invalid and thus void with respect to third parties. Rather, such an ultra vires act merely gives rise to a cause of action against the corporation for injunctive relief or damages related to violation of its authority.⁷² Therefore, the Department has no authority to challenge CAM's appeal on the grounds that its directors' vote violated the requirements of its Bylaws. As such, this appeal will proceed.

⁶⁹ Minn. Stat. § 256E.31, subd. 3, .32 (defining community action agencies administering board and community action *programs*). Specifically, subdivision 3 mandates, "Each community action agency shall administer its *community action programs* through a community action board consisting of 15 to 51 members." (Emphasis added.) As defined in section 256E.32, subdivision 1, *community action programs* are limited by the Legislature to programs, defined by the statute as projects or components providing service to the community.

⁷⁰ Section 256E.31 allows a 256E Designated Agency to "administer its community action programs [only] through a community action board consisting of 15 to 51 members." While an argument may be made under this statute that a 256E Designated Agency loses its authority to administer its programs whenever the number of filled board positions drops below 15, the Department did not rely on this argument. Instead, it challenged the definition of quorum, not CAM's authority to administer its programs due to having fewer than 15 sitting board members. It should be noted that strict application of such a reading of the statute, if raised, would require the invalidation of every 256E Designated Agency with only 15 board members every time a board member leaves and is not immediately replaced. It is doubtful that the legislature intended this result. See *State v. Murphy*, 545 N.W.2d 909, 916 (Minn. 1996) ("It is well settled that courts may presume that the legislature does not intend an absurd result.").

⁷¹ The only case cited by both parties, *Dodge v. Kenwood Ice Co.*, 204 F. 577, 580 (8th Cir. 1913) supports this conclusion. The case involved one board member who abandoned his office and then sued because the other two board members acted as a unit of two, notwithstanding a statutory requirement that all corporate boards have at least three members. *Dodge*, 204 F. at 579-80. Noting the existence of the statute with which the two-person board was out of compliance, the court found that "when the remaining two members assembled and acted [as a quorum], they constituted the board." *Id.* at 580. This holding supports the conclusion that an adequate quorum can be assembled even when the board membership is statutorily deficient.

⁷² Minn. Stat. § 317.165, subds. 2, 3 (2014); see also *Little Canada Charity Bingo Hall Ass'n v. Movers Warehouse, Inc.*, 498 N.W.2d 22, 24 (Minn. Ct. App. 1993) (stating that while "a corporation's violation of its by-laws may be challenged by a director or member . . . a third party has no power to challenge corporate action based on such a violation").

Given the conclusion set forth herein, the Administrative Law Judge finds it unnecessary to address CAM's defenses based on the legal theory of waiver or the related theory of laches. If they apply at all, these arguments go to Respondent's defense to the underlying substantive action, not to the procedural inadequacy alleged in the present motion.

Motion to Stay

Respondent seeks a stay of these administrative proceedings pending completion of the Receiver's work and termination of the receivership. The record is silent as to when such termination is expected. The Department opposes the granting of a stay and indicates it is fully prepared to proceed to hearing.

A decision to stay pending judicial proceedings is discretionary with the court.⁷³ "In deciding whether to defer to another court, a ... court considers judicial economy, comity between courts, and the cost to and the convenience of the litigants."⁷⁴

As the district court has clarified that the Receiver has no authority to defend CAM in the current proceedings, the interests of judicial economy and comity are not at issue. While it would appear that the fulfillment of the Receiver's specified duties⁷⁵ would be of assistance to the Department in these administrative proceedings, the Administrative Law Judge takes the Department at its word that it is fully prepared to proceed absent a stay. As such, the interests of cost and convenience do not dictate that a stay is necessary with respect to the Department.

Respondent has argued that it is unable to present its defenses to the Department's actions given that the Receiver has possession and control of all of CAM's financial and operational records. The record is unclear as to whether: (1) Respondent retained copies of its records when such were turned over to the Receiver; or (2) Respondent has requested copies of information from the Receiver and been denied such. The Administrative Law Judge requests immediate supplementation of the record with respect to this point.

If the record supplementation establishes that CAM has no current access to the records and is unable to obtain such, Respondent may move the Administrative Law Judge to seek the Receiver's consent to provide necessary and supervised access to the necessary information. The district court's Order Appointing Receiver provides a mechanism for such a request, as follows:

⁷³ *Real Estate Equity Strategies, LLC v. Jones*, 720 N.W.2d 352, 358 (Minn. Ct. App. 2006).

⁷⁴ *Fed. Home Loan Mortg. Corp. v. Nedashkovskiy*, 801 N.W.2d 190, 192 (Minn. Ct. App. 2011(quotations omitted).

⁷⁵ The Receivership Action involves the Receiver's providing an accounting of CAM's assets and liabilities, a determination of whether its expenditures were lawful under the relevant grant agreements, and a recommended asset distribution and reimbursement plan.

The Receiver, as custodian of CAM's records and *in its sole and absolute discretion*, is authorized *but not required* to provide documents and information regarding CAM *upon the reasonable or lawful request* of any government official *or agency*.⁷⁶

As a public agency, it would appear that the Office of Administrative Hearings has authority to request compliance from the Receiver, though not the authority to compel such.

T. L. P.

⁷⁶ Order on Receiver's First and Second Request for Instructions, at 10, ¶ 8 (Dec. 23, 2014) (emphasis added).