

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE METRO GANG STRIKE FORCE ADVISORY BOARD

In the Matter of Antwan Scarver, #209562

**FINDINGS OF FACT,
CONCLUSIONS AND DECISION**

The Metro Gang Strike Force Advisory Board (Advisory Board) has directed the League of Minnesota Cities Insurance Trust (LMCIT) to pay equitable claims filed against the Metro Gang Strike Force (MGSF) by persons whose property or currency was seized but not properly forfeited. The Advisory Board and LMCIT have established a process whereby claimants may seek administrative review of the record or, in the alternative, participate in an administrative hearing to contest the denial of a claim.

On December 1, 2009, Antwan Scarver (Claimant) requested a hearing. On December 7, 2009, LMCIT provided the Administrative Law Judge Manuel J. Cervantes (ALJ) and the Claimant its claim file. On February 23, 2010, the matter came before the ALJ, pursuant to a Notice of Hearing, dated January 21, 2010. The hearing was conducted via video conferencing between a courtroom at the Office of Administrative Hearings and the Minnesota Correctional Facility - Lino Lakes. The hearing record closed at the conclusion of the hearing.

STATEMENT OF ISSUE

Should currency seized from the Claimant on April 30, 2007 by the MGSF be returned to the Claimant?

The ALJ concludes that the MGSF used appropriate legal process to forfeit the funds seized from the Claimant and that LMCIT's denial of the claim should be affirmed.

Based upon the record in this matter, the ALJ makes the following:

FINDINGS OF FACT

1. On April 30, 2007, investigators of the MGSF were assigned to a "saturation detail" at the Benihana Restaurant in Golden Valley, Minnesota. A "saturation detail" is the bringing to bear a concentration of law enforcement resources upon a particular location and/or issue. The saturation detail was conducted due to numerous complaints about narcotic sales and drug use in the parking lot. Investigators observed three males exit a blue Crown Victoria in the Benihana parking lot. The

investigators smelled a strong odor of marijuana coming from the men. The investigators saw all three men enter the restaurant.¹

2. The investigators observed the three men leave the restaurant and reenter the Crown Victoria approximately one hour later. The Crown Victoria entered eastbound Interstate 394 at a high rate of speed. The speed limit in this area of I-394 is 60 miles per hour. The investigators followed the Crown Victoria at 80 miles per hour and could not keep pace with the vehicle. The investigators observed the Crown Victoria weaving in and out of traffic and it failed to signal the lane changes. The investigator who was driving the pursuit vehicle established a pace behind the Crown Victoria. It was driving at approximately 100 miles per hour.²

3. Pulling up behind the Crown Victoria, the investigator in the pursuit vehicle activated the emergency lights and siren. The Crown Victoria immediately pulled over to the median. As the investigator approached, he could smell a strong odor of marijuana coming from the Crown Victoria. None of the men had driver license identification. The three men were arrested, booked, and questioned at the Golden Valley Police Department. The driver of the Crown Victoria was issued citations for Careless Driving, Driving after Revocation, and Possession of a Small Amount of Marijuana. No charges were filed against the Claimant or the other passenger. The investigator seized the currency the men had in their possession, including \$1,626.00 from the Claimant. All three men were subsequently released.³

4. The Claimant was served with a Notice of Seizure and Intent to Forfeit Property, on April 30, 2007. The Notice advised the Claimant that the \$1,626.00 in currency seized from him would be forfeited automatically unless the Claimant demanded a judicial determination, under Minn. Stat. § 609.5314, subd. 3.⁴

5. The Claimant timely requested a judicial determination and the matter was submitted to arbitration in Hennepin County District Court on January 9, 2008.⁵ The Claimant was represented by an attorney at the arbitration.⁶ By Award of Arbitrator, dated January 10, 2008, the Arbitrator found in favor of the MGSF and denied the Claimant's request for return of the seized currency.⁷

6. On January 16, 2008, the Claimant was advised of his right to a trial *de novo* before a district court judge. The Claimant did not avail himself of this process and judgment was entered in favor of the MGSF on February 11, 2008.⁸

¹ Minnesota Gang Strike Force, Report of Investigation, Investigator Bean.

² Exhibit 12; Minnesota Gang Strike Force, Report of Investigation, Investigator Bean.

³ *Id.*

⁴ Ex. 11; Notice of Seizure and Intent to Forfeit Property.

⁵ Ex. 9; Award of Arbitrator.

⁶ Testimony of the Claimant.

⁷ Ex. 9.

⁸ Ex. 7; Notices of Trial de Novo, Entry of Judgment, and Register of Actions.

7. The Claimant filed a claim with LMCIT on October 16, 2009, alleging the currency was wrongfully seized. He alleged that he did not commit a crime and was not charged.⁹

8. LMCIT considered the Claimant's request. LMCIT asserts that the Claimant was given a proper Notice of Seizure, the Claimant contested the seizure in District Court, and the Arbitrator found that the seizure was proper. LMCIT denied the Claimant's request for the return of the currency.¹⁰

9. On December 1, 2009, the Claimant requested an administrative hearing to contest LMCIT's denial of his claim.¹¹

Based upon the foregoing Findings of Fact, the ALJ makes the following:

CONCLUSIONS

1. The ALJ has jurisdiction in this matter pursuant to Minn. Stat. § 14.55 and the Resolution of the Advisory Board, approved on September 16, 2009.¹²

2. The MGSF used the appropriate legal process to forfeit the currency seized from the Claimant on April 30, 2007, the Claimant availed himself, with attorney representation, of the arbitration process, but did not prevail.

3. No reimbursement from the LMCIT is required.

Based on the foregoing Conclusions, the ALJ makes the following:

DECISION

LMCIT's denial of the Claimant's request for reimbursement is AFFIRMED.

Dated: March 18, 2010

s/Manuel J. Cervantes

MANUEL J. CERVANTES
Administrative Law Judge

⁹ Public Claim Report.

¹⁰ Notice of Appeal.

¹¹ LMCIT 1st Report, dated November 18, 2009.

¹² See Minutes, Metro Gang Strike Force Advisory Board Meeting, Sept. 16, 2009.

NOTICE

Pursuant to a resolution, dated September 16, 2009, the Advisory Board and LMCIT have agreed to be bound by the ALJ's decision in this matter. This decision is **not** binding in any way on the Claimant, and the Claimant has lost no legal right or remedy by pursuing this administrative review. The Claimant may bring an action in any court with jurisdiction over the claim asserted herein.

MEMORANDUM

The record reflects that the MGSF seized \$1,626.00 in currency from the Claimant while investigating the sale and use of narcotics in western Hennepin County. A small amount of marijuana was also seized during the course of the investigation.

Under Minn. Stat. § 609.5314, certain property and currency found in proximity to controlled substances are presumed to be subject to administrative forfeiture. The claimant of the property bears the burden to rebut the presumption.¹³

The MGSF gave the Claimant notice of its intent to seize the currency and the Claimant initiated an action to obtain its return in Hennepin County District Court. The Claimant was represented. The parties agreed to submit the matter to arbitration. The Arbitrator found in favor of MGSF. A request for a trial *de novo* was not requested by the Claimant, after due notice. Following the appeal period, judgment was entered in favor of MGSF.

At the hearing in the present matter, the Claimant argued that the investigators were too far removed from his car to smell marijuana. The Claimant asserted that as he and his companions entered the restaurant on April 30, 2007, the investigators were across the parking lot from the restaurant entrance. The Claimant also denied that the Crown Victoria was speeding.

The Claimant admits that marijuana was found in the possession of the driver. This permitted the MGSF to invoke the administrative forfeiture provisions of Minnesota law. The Claimant offered no evidence at the hearing to rebut the presumption that the currency should not be forfeited, i.e., he did not produce a contemporaneous paystub reflecting that the money in his possession came from wages or a contemporaneous bank withdrawal receipt showing that the money came from the Claimant's bank account. Under the circumstances of this case, the Claimant did not rebut the statutory presumption and therefore, the ALJ affirms the LMCIT's decision to deny the claim.

M. J. C.

¹³ *Id.*