

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE METRO GANG STRIKE FORCE ADVISORY BOARD

In the Matter of Cal Xiong

**FINDINGS OF FACT,
CONCLUSIONS,
AND DECISION**

This matter came on for a hearing before Administrative Law Judge Manuel J. Cervantes (ALJ) on June 16, 2010, in a courtroom at the Office of Administrative Hearings (OAH) in St. Paul pursuant to a Notice and Order for Hearing, served May 11, 2010.

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, currency, or both were 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, an administrative hearing to appeal the denial of a claim. Cal Xiong (Claimant) filed a Public Claim Form on November 3, 2009.¹

Derek Krause, LMCIT Claims Adjuster, appeared on behalf of LMCIT. Cal Xiong appeared on his own behalf.

STATEMENT OF ISSUES

1. Is Claimant entitled to compensation for a Panasonic VHS Camcorder, accessories, and bag seized from his father on or about June 2004, that were not documented in the records of the MGSF? If so, in what amount?

2. Is Claimant entitled to compensation for a Hewlett Packard (HP) Pavilion Computer that was destroyed by the MGSF because it contained contraband?

3. Is Claimant entitled to compensation for a camera bag (Minolta bag) that Claimant alleges was seized with his other personal property but was not documented in the records of the MGSF? If so, in what amount?

¹ Ex. 10, Claimant's Notice of Appeal and specific request for a hearing is not contained in the file.

4. Is Claimant entitled to compensation for \$143 in cash and a Sony cell phone that Claimant alleges were seized with his other personal property and that were not documented in the records of the MGSF? If so, in what amount?

5. Was the depreciation taken by LMCIT against Claimant's itemized property values reasonable?

The ALJ concludes that the hearing record and file supports compensation for the seizure of the Panasonic VHS Camcorder, accessories, and bag as well as for a Minolta bag of another camera. The ALJ further concludes that the depreciation taken against Claimant's personal property was reasonable as was the MGSF's decision to destroy the HP computer. Claimant is not entitled to compensation for the cash and Sony cell phone claims.

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

FINDINGS OF FACT

1. In June 2004, Claimant was the subject of an investigation relative to criminal sexual conduct involving minor girls. On May 27, 2004, a MGSF officer executed a search warrant at 584 East Jessamine Street in St. Paul, MN. Claimant owned this building and rented the upstairs units to tenants. Claimant used the basement apartment to lure minor girls for sexual act purposes.²

2. On June 7, 2004, a MGSF officer made an application for a search warrant of Claimant's home at 952 Duchess Street in St. Paul. The application was granted by a Ramsey County District Court Judge and the search was executed on June 8, 2004.³

3. Certain personal property, contraband, and cash were seized from Claimant's Duchess residence and a Receipt, Inventory and Return document was created. It is noted that item #7 of this document indicates that an empty box to a Panasonic VHS Camcorder was seized.⁴ Absent from MGSF inventory documents are the following claimed items: a Panasonic VHS Camcorder, accessories, and bag, a bag for a Minolta SLR camera, \$143 in cash, and a Sony cell phone.⁵

4. In or about June 2004, MGSF officers appeared at the home of Claimant's father, Cha Tong Xiong (Mr. Xiong) looking for Claimant's Panasonic VHS Camcorder. One of the officers was Hmong, Officer Xue Vang, who communicated with Mr. Xiong in his native Hmong language. Mr. Xiong had used the camera on an extended trip abroad in December 2003. He moved his personal belongings, including Claimant's camera, to the home Chang Xiong, his oldest son, because of a fire that occurred in his

² Exhibit 5b.

³ *Id.*

⁴ Ex. 5c and 2a.

⁵ Testimony of Claimant and Derek Krause, LMCIT Claims Adjuster.

own home. Mr. Xiong escorted the officers to Chang Xiong's home and retrieved the camera and accessories for the officers from Chang's home. The officers did not give Mr. Xiong a receipt for the Panasonic VHS Camcorder and accessories nor did these items appear on any of the MGSF property inventory forms.⁶

5. Claimant was charged with Criminal Sexual Conduct in the Third Degree-Felony in Ramsey County District Court on June 8, 2004. A second Criminal Sexual Conduct in the Third Degree-Felony complaint involving different victims was filed in Ramsey County District Court on June 10, 2004.⁷

6. On March 21, 2005, a MGSF officer delivered the HP computer that was seized from Claimant's Duchess residence to the St. Paul Police Department Crime Laboratory. On March 23, 2005, the Crime Laboratory prepared a report and CD of the information found on the computer. The MGSF officer viewed the contents of the CD and found color images of nude underage girls.⁸ Claimant acknowledged that these images were found on his computer.⁹

7. The Investigative Cover Sheet makes reference to a controlled narcotics purchase in Hennepin County by a reliable informant on March 22, 2005.¹⁰ The documents make no reference to Claimant. No criminal charge was issued to Claimant as a result of this narcotics purchase. None of the supporting documents in this part of the file involve Claimant in the sale of the narcotics in question.¹¹ The record contains no explanation for this discrepancy.

8. Claimant was tried on one Criminal Sexual Conduct in the Third Degree complaint in Ramsey County District Court in mid-2005 and was acquitted. The second felony complaint was dismissed in late 2005.¹²

9. This matter does not involve the application of the Administrative Forfeiture of Certain Property law because controlled substances were not involved.¹³

10. The MGSF was uncooperative with Claimant when he tried to obtain the return of his money and personal property as well as his request for arrest records for purposes of his immigration application.¹⁴

⁶ Test. of Cha Tong Xiong.

⁷ Ex. 5a, Ramsey County District Court Felony Complaint re: Kao (n/k/a Cal) Xiong, received June 11, 2004.

⁸ Ex. 5d.

⁹ Test. of Claimant.

¹⁰ Ex. 5.

¹¹ *Id.*

¹² Test. of Claimant.

¹³ See Minn. Stat. § 609.5314 (2009).

¹⁴ Test. of Claimant.

11. There is nothing in the record indicating that Claimant made a written demand for his property.¹⁵

12. On June 10, 2008, the MGSF ordered that the property seized from Claimant be destroyed.¹⁶

13. Upon review of this file, LMCIT acknowledged that Claimant was entitled to the return of his personal property and cash, subject to restrictions on the return of contraband.¹⁷ LMCIT and Claimant entered into discussions and into an agreement settling the property and cash issues.¹⁸

14. Claimant claimed total compensation in the amount of \$4,798.¹⁹ LMCIT denied compensation for the Panasonic VHS Camcorder and accessories, valued at \$780, because they were not documented on the MGSF property inventory form. Moreover, Claimant did not document when the seizure took place.

15. LMCIT denied compensation for the HP Pavilion Computer because it contained contraband.

16. LMCIT denied the Minolta bag claim, valued at \$15, because it was not documented on the MGSF property inventory form.

17. The LMCIT discounted the Sony cell phone claim, valued at \$100 and \$143 cash claim because they were not on the MGSF property inventory form and offered to settle those claims for \$135.

18. Finally, LMCIT depreciated the personal property from 0 to 50% in the total amount of \$1,595.²⁰ This resulted in a settlement amount of \$1,800 paid to Claimant.²¹

19. On May 11, 2010, the Office of Administrative Hearings served a Notice of Hearing upon the parties. LMCIT served the contents of its claim file upon Claimant on May 14, 2010.

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

¹⁵ Test. of Claimant, see Minn. Stat. § 626.04 (2009).

¹⁶ Ex. 5e.

¹⁷ Minn. Stat. § 626.04 (2009), test. of Krause.

¹⁸ Ex. 1.

¹⁹ Ex. 10a

²⁰ Ex. 2a, test. of Krause.

²¹ Ex. 1.

CONCLUSIONS

1. The Administrative Law Judge has jurisdiction in this matter pursuant to Minn. Stat. § 14.55 and the Resolution of the Metro Gang Strike Force Advisory Board, approved September 16, 2009.²²

2. Claimant is entitled to compensation for a Panasonic VHS Camcorder, accessories, and bag seized from his father on or about June 2004. Cha Tong Xiong testified in great detail and credibly regarding the MGSF officers' visit to his home. The facts include that the camera was not at his home, and that Mr. Xiong assisted the MGSF officers in retrieving the camera from his eldest son's home.

3. Mr. Krause credibly testified that the Camcorder VHS technology is old and that the camera and equipment should be depreciated by at least 35%. Given that the VHS technology is nearly obsolete and cameras do not hold their value, the ALJ attributes depreciation at 50%. Claimant is entitled to compensation of \$390 for the seized Panasonic VHS Camcorder.²³

4. LMCIT properly excluded the value of Claimant's HP Computer because it contained nude images of underage girls which are contraband and prohibited.²⁴

5. Claimant credibly testified that the Minolta bag was taken with the Minolta camera and the 80-200 mm zoom lens; items which were properly documented and compensated for. Claimant is entitled to compensation of \$15 claimed for the Minolta bag.

6. Claimant is not entitled to additional compensation for the cash or Sony phone.

7. LMCIT properly depreciated the Claimant's seized personal property.

8. Claimant is entitled to additional compensation totaling \$405 from LMCIT.²⁵

Based on the foregoing Conclusions, the Administrative Law Judge makes the following:

²² See Minutes, Metro Gang Strike Force Advisory Board Meeting, Sept. 16, 2009.

²³ \$780 minus 50% = \$390.

²⁴ Minn. Stat. § 626.04 (2009).

²⁵ \$390 for the Panasonic VHS Camcorder plus \$15 for the Minolta bag is \$405.

DECISION

The decision of LMCIT is **AFFIRMED, in part**, and **MODIFIED, in part**, as described above and in the following memorandum. Claimant is entitled to additional compensation of \$405.

Dated: June 23, 2010

s/Manuel J. Cervantes
MANUEL J. CERVANTES
Administrative Law Judge

NOTICE

Pursuant to an Advisory Board 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 a claimant, and by pursuing this administrative review, a claimant has lost no legal right or remedy. A claimant may bring an action in any court with jurisdiction over the claim asserted herein, notwithstanding any decision from this tribunal.

MEMORANDUM

The record reflects that the MGSF was investigating Claimant in 2004 for criminal sexual conduct based on information provided by underage girls. These reports led the MGSF to execute two search warrants: one of a rental dwelling owned by Claimant and the other, Claimant's residence. The MGSF seized some of Claimant's personal property and Claimant alleged that it also seized \$143 in cash, though MGSF records do not reflect that. As a result of the investigation, Claimant was charged with two felony level complaints of Criminal Sexual Conduct involving multiple victims. Claimant was tried on the first complaint in mid-2005 and was acquitted. The second complaint was dismissed in late 2005.

Except for contraband, Claimant was entitled to the return of his personal property. LMCIT acknowledged this and entered into negotiations with Claimant. Claimant claimed \$4,798 as full compensation for the property and cash seized. The parties agreed upon a figure of \$1,800 after depreciation of \$1,595. Not included in this amount was a Panasonic VHS Camcorder based primarily on the fact that it was not documented in the MGSF's official documents.

Claimant submitted a Star Tribune article²⁶ and referred the ALJ to the Minnesota Office of the Legislative Auditor, Metro Gang Strike Force Special Review Audit, dated May 20, 2009. The ALJ takes official notice of the report for the proposition that the MGSF did not have adequate safeguards in place during the audit period, from July 1,

²⁶ Ex. A.

2005, through March 31, 2009, for the protection of seized property and cash. The Star Tribune article discusses the same inadequacies. A review of these documents leaves the ALJ with the clear impression that the MGSF mishandled seized personal property and cash. With this being said, the ALJ will review each case on a claim by claim basis and on its own merit.

Claimant called his father, Cha Tong Xiong, as a witness in support of his Panasonic VHS Camcorder claim. Mr. Xiong credibly testified that he was visited by two police officers in about June 2004 in search of the camera in question; that he turned over the camera to a Hmong and an "American" officer after retrieving it from his eldest son's home. He further testified that no receipt was given to him by the officers. This evidence, in addition to the evidence of the empty Panasonic Camcorder box taken from Claimant's home establishing its existence, leads the ALJ to conclude that Claimant is entitled to compensation therefor.

The other remaining items in controversy not on the MGSF inventory list were a Minolta camera bag, \$143 in cash, and a Sony cell phone. On the inventory list were the Minolta camera and a 200 mm lens. The ALJ is of the reasonable opinion that these items were taken in the Minolta bag. The ALJ awards \$15 of compensation therefor.

As part of the negotiations between Claimant and LMCIT, LCMIT offered Claimant \$135 to settle the cash and Sony cell phone issues. It is sound judicial policy to encourage parties to resolve their differences by negotiations, thereby relieving the courts from their involvement. Courts are reluctant to interfere with settlements once reached by the parties. In this case, the parties struck a balance on the cash and cell phone issues. The ALJ will not disturb that agreement; therefore, Claimant is not entitled to any additional relief for those items.

Finally, Claimant challenges the depreciation that was taken on the seized items. Claimant argued at the hearing, in effect, that if his property had been returned to him, depreciation would not have been relevant or taken. This analysis, however, does not take into account that the property was taken pursuant to an appropriate search and seizure order issued by a Ramsey County District Court Judge as part of a criminal investigation --- property which may have been used in the commission of a crime.

The property was seized in mid-2004 and both criminal complaints against Claimant were not resolved until the end of 2005. Claimant was probably not entitled to the return of his property until sometime in 2006 at the earliest. It is not clear from the record when Claimant made a demand for the return of his property. There is no evidence that he made a written demand. When there is a belief that seized property is being wrongfully withheld by the police, a citizen must make a written demand and can then avail him or herself of the process afforded by Minn. Stat. § 626.04. This did not occur in this case.

The LMCIT claims adjuster took approximate depreciation on items because Claimant did not provide ages of the property to LMCIT. Moreover, older electronic

technology depreciates faster than other items. The ALJ agrees with LMCIT that the depreciation taken for Claimant's property was reasonable under the circumstances. Claimant is entitled to additional compensation in the amount of \$405.

M. J. C.