16-6220-21140-3

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE DEPARTMENT OF TRANSPORTATION

In the Matter of the Claim of Dr. Greg Olson for Relocation Benefits	**ORDER ON MOTION** **FOR SUMMARY DISPOSITION**

The above-entitled matter is before Administrative Law Judge Manuel J. Cervantes (ALJ). On May 17, 2010, Dr. Greg Olson (Claimant) filed a Motion for Summary Disposition in this matter. On May 21, 2010, Hennepin County filed a Memorandum of Law Opposing Claimant's Motion for Summary Disposition. No further pleadings were filed and the ALJ determined that no oral argument was needed regarding this matter. The motion record closed with the filing of the last pleading on May 21, 2010.

Kirk A. Schnitker and Jon W. Morphew, Schnitker & Associates, 1330 81st Avenue Northeast, Spring Lake Park, MN 55432, represent Claimant. Rick Sheridan, Assistant Hennepin County Attorney, 2000A Government Center, Minneapolis, MN 55487, filed the reply on behalf of Hennepin County.

Based upon the pleadings filed by the parties and for the reasons set out in the following Memorandum,

IT IS HEREBY ORDERED:

(1) That the Claimant's Motion for Summary Disposition is DENIED.

(2) That this matter shall be scheduled for an evidentiary hearing to resolve any genuine issues of material fact remaining regarding actual and reasonable moving expenses of Claimant arising from the relocation of his chiropractic practice. If no genuine issues can be identified, Hennepin County may move for summary disposition. The parties shall confer regarding the date of an evidentiary hearing, if one is needed, and shall submit a proposed schedule to the ALJ within ten days.

Dated: June 14, 2010

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

MEMORANDUM

Claimant is appealing a decision by Hennepin County regarding the amount of relocation benefits paid arising from the condemnation of property by Hennepin County for highway right-of-way. The issue presented in the Claimant's motion for summary disposition is whether the claimed advertising expense is allowable as moving expenses or whether that expense is properly categorized as a business re-establishment expense. The latter category is capped at $50,000 and Claimant has received that amount from Hennepin County in this proceeding. Hennepin County contends that the claimed expenses are not allowable under the former category.

Stipulated Facts

The parties have agreed to stipulated facts for the purposes of this motion.[1] Claimant owns and operates the Northside Chiropractic Clinic, formerly located at 2305 Lowry Avenue North, Minneapolis, Minnesota. Hennepin County acquired that property as part of the reconstruction and improvement to Lowry Avenue North.[2]

Claimant's chiropractic business engaged in television advertising on the Black Entertainment Television network ("BET"). This BET advertising consisted of a thirty-second spot which showed the exterior of Claimant's business premises at 2305 Lowry Avenue North and referred to that address as the location of the business.[3]

Hennepin County's agent, Evergreen Land Services, Inc., issued to Claimant a Notice of Eligibility for relocation benefits pursuant to the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 as amended ("URA"), and the Minnesota Uniform Relocation Act, Minn. Stat. §§ 117.50-117.56 ("MURA").[4]

Claimant relocated from 2305 Lowry Avenue North to 3107 Penn Avenue North, Minneapolis, where he reestablished his business. Claimant submitted numerous expenses to Hennepin County for reimbursement. These expenses included moving expenses under 49 C.F.R. 24.301(g), and business re-establishment expenses under 49 C.F.R. 24.304(a). Under Minn. Stat. § 117.52, subd. 1a, there is a $50,000 maximum for allowed business re-establishment expenses. [5]

Claimant submitted for approval the setup costs for production of new letterhead, envelopes, medical reports, and other related forms displaying the new address of Claimant's clinic, 3107 Penn Avenue North. Claimant submitted this expense under 49 C.F.R. 24.301(g)(13), as a moving and related expense. Hennepin County approved a

[1] These facts were provided in the pleading entitled Stipulated Facts, filed on May 17, 2010.
[2] Stipulated Facts, ¶ 1.
[3] Stipulated Facts, ¶ 3.
[4] Stipulated Facts, ¶ 2.
[5] Stipulated Facts, ¶¶ 4-5.

payment in the amount of $541.42 for the costs to setup Claimant's new stationery displaying the Penn Avenue address, along with the first batch of that new stationery.[6]

Claimant also submitted for approval the estimated costs related to the production of a new television commercial to replace the existing spot running on BET. The new spot would feature exterior views of Claimant's new location and references to the new Penn Avenue address and was projected to cost $10,500. As with the claim for stationery, Claimant submitted the new commercial spot setup expense as a moving and related expense under 49 C.F.R. 24.301(g)(13).[7]

Hennepin County determined that an expense for production of a new television commercial was an eligible re-establishment expense under 49 C.F.R. 24.304(a)(5), which allows for reimbursement of re-establishment expenses actually incurred by a displaced business for "[a]dvertisement of the replacement location." Hennepin County determined that the expense Claimant would incur for the production of a new television commercial was not eligible as a moving expense under the uncapped category established by 49 C.F.R. 24.301(g)(13).[8]

Hennepin County paid to Claimant the maximum allowable amount, $50,000, for his re-establishment claim pursuant to 49 C.F.R. 24.304 and Minn. Stat. § 117.52, subd. 1a. Claimant agreed that all items that were the basis of the $50,000 re-establishment payment he received were eligible expenses pursuant to 49 C.F.R. 24.304. Hennepin County denied Claimant's request for the commercial set-up expenses related to the new location as being in excess of the maximum $50,000 payment allowed for that category of expenses. This appeal followed.[9]

Motion Standard

Claimant has moved for summary disposition. Summary disposition is the administrative equivalent of summary judgment.[10] Summary disposition is appropriate when there is no genuine dispute about the material facts, and one party must necessarily prevail when the law is applied to those undisputed facts.[11] When considering a motion for summary disposition, the decision maker must view the facts in the light most favorable to the non-moving party, in this case, Hennepin County.[12] The moving party carries the burden of proof and persuasion to establish that no genuine issues of material fact exist.[13] The non-moving party cannot rely upon general

[6] Stipulated Facts, ¶ 6.
[7] Stipulated Facts, ¶¶ 7-8.
[8] Stipulated Facts, ¶¶ 9-10.
[9] Stipulated Facts, ¶¶ 11-13.
[10] *Pietsch v. Mn. Bd. of Chiropractic Examiners*, 683 N.W.2d 303, 306 (Minn. 2004).
[11] *Sauter v. Sauter,* 70 N.W. 2d 351, 353 (Minn. 1955).
[12] *Ostendorf v. Kenyon,* 347 N.W. 834 (Minn. Ct. App. 1984), *Carlisle v. City of Minneapolis*, 437 N.W. 2d 712, 715 (Minn. Ct. App. 1988).
[13] *Theile v. Stich*, 425 N.W. 2d 580, 583 (Minn. 1988).

statements or allegations, but must show the existence of specific material facts which create a genuine issue.[14]

Arguments of the Parties

The Uniform Relocation and Real Property Acquisition Policies Act of 1970 (URA), as amended,[15] and associated federal regulations provide that a business displaced as a direct result of a federally-assisted project is entitled to payment for certain actual reasonable moving and related expenses.[16] The URA is remedial in nature and its primary purpose is to ensure that persons displaced as a direct result of federally assisted projects are treated fairly, consistently, and equitably, so that such persons will not suffer disproportionate injuries as a result of projects designed for the benefit of the public as a whole.[17] Because Claimant's relocation claims arise from a federally-funded project, the URA applies.

There is no dispute that Claimant is eligible for relocation benefits. Claimant maintains that, as a matter of law, the expenses he will incur for the production of a new television commercial are eligible as a moving expense under 49 C.F.R. 24.301(g)(13). That rule states, in pertinent part:

> (g) Eligible actual moving expenses.
>
> (13) Relettering signs and replacing stationery on hand at the time of displacement that are made obsolete as a result of the move.[18]

Hennepin County points out that the expense in dispute is neither relettering a sign nor replacing obsolete stationery.[19] Claimant contends that:

> Traditionally, these expenses have been thought of in regards to the setup costs for new business cards, letterhead, envelopes and invoices, as well as the production costs for those items on hand at the time of the move that are rendered obsolete because they have the business' old address and phone numbers on them.
>
> However, in this age of new media in which many businesses have websites, Facebook pages, Twitter accounts and online blogs, the traditional notions of stationary (*sic*) do not always apply. While businesses will likely always have traditional stationary (*sic*) items, to be competitive in these modern times, businesses are always looking for new and more effective ways to promote their goods and services. When a

[14] *Murphy v. Country House, Inc*., 307 Minn. 344, 351-52, 240 N.W. 2d 507, 512 (Minn. 1976).
[15] 42 U.S.C. § 4601 *et seq*.
[16] 42 U.S.C. § 4622; 49 C.F.R. § 24.303(a). (Title 49 of the Code of Federal Regulations was amended in February of 2005. Citations in this decision are to the version of the regulations in effect at the time Duininck made its claim.)
[17] 42 U.S.C. § 4621; 49 CFR § 24.1(b).
[18] 49 C.F.R. 24.301(g)(13).
[19] Hennepin County Reply, at 3.

> business moves, all of their new media advertising, just like their traditional stationary items, will have to be updated to reflect their new address, phone numbers and fax numbers. It takes time and potentially a significant amount of expense to make address and phone number updates to commercials, websites and to make changes to Facebook pages and Twitter accounts that are the (*sic*) directly caused by the displacement. As long as those expenses are reasonable and determined to be necessary as a result of the move, they should be reimbursed.[20]

In addition, Claimant cites the *Advanced Relocation Participant Workbook and Reference Manual*, U.S. Department of Transportation, Federal Highway Administration, Publication No. FHWA-NHI-06-073 (June 2006), which states:

> i. *Re-lettering Signs*
>
> This relates to re-lettering signs and replacing stationery on hand at the time of displacement made obsolete as a result of the move. This payment is generally limited to stock on hand or the minimum print run. It includes letterhead, invoices, truck signage, advertising materials, and other items made obsolete by change in location or phone number.

Claimant contends that his television commercial, which ran regularly on BET, is now obsolete in the same fashion as other advertising material. Since his television spot showed the exterior of the former location and listed the former address, the Claimant contends that the costs related to the production of the new commercial should be classified as a moving expense, rather than a reestablishment expense.[21]

Hennepin County responded that the rule language is "plain and unambiguous." Hennepin County noted that "the production cost of a television commercial is not the relettering of a sign, and it is not the replacement of stationary (*sic*)." To include the cost of producing a television commercial would, in Hennepin County's view, "add an eligible expense to this provision that simply does not exist."[22]

Analysis

When interpretation of the meaning of a statute or rule is at issue, the relevant statutory guidance states in pertinent part:

> The object of all interpretation and construction of laws is to ascertain and effectuate the intention of the legislature. Every law shall be construed, if possible, to give effect to all its provisions.

---

[20] Claimant Brief, at 8-9.
[21] Claimant Brief, at 9.
[22] Hennepin County Reply, at 3. Hennepin County also notes that television advertising existed at the time the rules were established, and no provision was made for including such costs as moving expenses under 49 C.F.R. 24.301(g)(13).

> When the words of a law in their application to an existing situation are clear and free from all ambiguity, the letter of the law shall not be disregarded under the pretext of pursuing the spirit.
>
> * * * *[23]

In this instance, the rule language is unambiguous. Signs and stationery are eligible expenses. The agency interpretation of the rule language extends the meaning of "signs" to "advertising materials, and other items made obsolete …."[24] The agency manual does not purport to extend scope of the category to intangible things, such as television or radio spots.[25] Since the rule is unambiguous, there is no interpretation needed to determine the reach of the rule.[26]

The Administrative Law Judge concludes that Hennepin County properly treated the expenses sought to be recovered as allowable reestablishment expenses under 49 C.F.R. 24.304 and Minn. Stat. § 117.52, subd. 1a. Further, Hennepin County was correct in determining that these claimed expenses are not appropriately considered a moving and related expense pursuant to 49 C.F.R. 24.301(g)(13). As Claimant has received his maximum allowable amount for reestablishment expenses under 49 C.F.R. 24.304 and Minn. Stat. § 117.52, subd. 1a, Hennepin County appropriately denied Claimant's request for the television advertising expenses.

Under the Stipulated Facts, the Administrative Law Judge has not been able to identify any issue remaining for hearing. Since Hennepin County did not file a cross-motion for summary disposition, no such resolution can be made at this time. If the parties cannot identify any remaining evidentiary issues, Hennepin County may consider filing such a motion. Otherwise, counsel should confer regarding potential evidentiary hearing dates.

M. J. C.

---

[23] Minn. Stat. § 645.16

[24] Claimant Brief, Attachment 6.

[25] Neither does the rule language extend to websites, Facebook pages, Twitter feeds, online blogs, or other intangible means of advertisement.

[26] *See also*, *State v. Loge*, 608 N.W.2d 152, 155 (Minn. 2000)(where text is unambiguous, "letter of the law shall not be disregarded under the pretext of pursuing the spirit.").