

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

Ken Orttel,

Complainant,

v.

ORDER OF DISMISSAL

Andover High Road,

Respondent.

On November 4, 2004, Complainant Ken Orttel filed a Complaint with the Office of Administrative Hearings alleging violations of two sections of Minn. Stat. Chap. 211B by Andover High Road. In the complaint, Mr. Orttel acknowledged that the website about which he complains, www.andoverhighroad.org, does not bear the name or address of a responsible person. Mr. Orttel could only state that he has been told by unnamed person(s) or heard rumors that Julie Trude is the "prime force" behind the website. Accordingly, this complaint was served on Ms. Trude at her home address. The Chief Administrative Law Judge assigned the matter to the undersigned Administrative Law Judge on November 4, 2004, under Minn. Stat. § 211B.33. A copy of the complaint was sent by facsimile transmission and United States mail to Ms. Trude the same day.

After reviewing the complaint and supporting materials, the Administrative Law Judge finds that the complaint does not adequately set forth a claim against Ms. Trude because there is no evidence that she is, in fact, responsible for the Andover High Road website. Therefore, based upon the Complaint and the supporting filings and for the reasons set out in the attached Memorandum,

IT IS HEREBY ORDERED:

That the complaint filed by Ken Orttel against Andover High Road is **DISMISSED.**

Dated: November 5, 2004.

/s/ Barbara L. Neilson

BARBARA L. NEILSON
Administrative Law Judge

NOTICE

Under Minn. Stat. § 211B.36, subd. 5, this order is the final decision in this matter and a party aggrieved by this decision may seek judicial review as provided in Minn. Stat. §§ 14.63 to 14.69.

MEMORANDUM

The Complainant was a candidate for the Andover City Council who apparently was, in fact, elected to the City Council on November 2. He alleges in his complaint that three cards were delivered to his home and, based upon his understanding, most homes in Andover between October 28 and October 31, 2004. Copies of these cards are attached to the complaint. The front of each card states, "Take the High Road. Andover politics with integrity." A reference to a website (www.andoverhighroad.org) appears in the upper right corner of the front side of each card. The language on the reverse side of the cards varies. One card states:

The High Road launches its new website at www.andoverhighroad.org to address concerns surrounding the upcoming council and mayoral elections.

With a disturbing growth in campaigns comprised of smear tactics and mis-information, The High Road is formed to serve Andover residents by providing...the rest of the story. We will publish only items that can be proven true and are backed by the public record or personally signed statements.

(Emphasis in original.) The second card states:

Don't be fooled by the politics of slander and lies. Our City is facing an important election for Mayor and council and some candidates have shown they will say or do anything to get elected.

SAVE OUR CITY FROM THE THREAT OF THEIR DECEITFUL TACTICS!

(Emphasis in original.) The third card states:

It is disturbing, as Andover Residents, to see the brutal smear tactics return to our city government. The most recent attacks by several of the candidates to pile on false claims and reference the unproven allegations of a disgruntled former City employee have set the bar at an all new low.

A recent mailer delivered to your homes by a resident calling himself "ACT" is another example of the lies and mis-statements being used. These are **UNFOUNDED allegations** quoted from a lawsuit currently being vigorously defended by our City. They are easily proven false in most instances by reading the public record. Something they trust you will not bother to do.

(Emphasis in original.) The reverse side of each card ends with an instruction to “[v]isit www.andoverHIGHROAD.org for more information.” None of the cards bears any other information identifying who sent them.

The Complainant asserts that the cards do not include the disclaimer language required by the statute stating who paid for or prepared them. Moreover, he contends that the referenced website is also anonymous, supports the candidacy of Mike Knight (one of his opponents for the city council race) and Don Jacobson (a mayoral candidate in Andover), and lacks the proper disclaimer language. The Complainant further asserts that the website contains several false statements, which he details at length in the complaint.

The website at issue, www.andoverhighroad.org, does not identify any person responsible for the site or provide an address, but simply indicates that it is “paid for by Citizen Volunteers” and states that questions or comments should be directed to “webmaster@andoverhighroad.org.” The Complainant acknowledges in his complaint that he has been unsuccessful in trying to find out who is responsible for the website. He asserts in the complaint that “[i]t is rumored that Julie Trude, a lawyer, who is also a city council member in Andover (but not currently up for re-election) was a major force behind the site.” The Complainant points out that motion papers that were filed in a Federal court proceeding on October 29 had been posted on the website since October 30, and alleges that, besides defense counsel and the clerk of court, “the only people I know who had copies of the motion at that time were Trude, Knight, and Jacobson.” For those reasons, the Complainant gave Ms. Trude’s address and phone number on the complaint form after identifying Andover High Road.org as the entity about which he was complaining. The Complainant emphasized in the complaint that he does not wish to impugn the integrity of anyone who he may mistakenly be naming as a potentially responsible party.

Under these circumstances, the Administrative Law Judge finds that the complaint does not state a sufficient basis to determine, as a threshold matter, that Ms. Trude is responsible for the cards that were distributed in Andover or for the Andover High Road website. Because Ms. Trude is the only person who has been notified of the complaint in this matter, there is no proper basis for proceeding. Unspecified rumors that Ms. Trude is a “major force” behind the website are not a sufficient basis upon which to determine that she is responsible for the site. Moreover, anyone who had access to the court file of the Federal District Court action possibly could have supplied copies of the motion papers for posting on the website, and an individual who merely supplied copies of court papers is not necessarily responsible for alleged false statements on the site. Because the complaint is not sufficient to allege a prima facie violation of 211B.04 or 211B.06 for which Ms. Trude is responsible, it must be dismissed.

B.L.N.