STATE OF MINNESOTA
IN COURT OF APPEALS
A07-298

In the Matter of the Denial of Certain Relocation Benefits to
Steven J. Lang and Pamela S. Lang,
d/b/a Prospect Auto Parts,
Former Owners of 2565 Franklin Ave.,
St. Paul, Minnesota.

Filed May 6, 2008
Affirmed
Worke, Judge

St. Paul Housing and Redevelopment Authority

James A. Yarosh, Siegel, Brill, Greupner, Duffy & Foster, P.A., 100 Washington Avenue South, Suite 1300, Minneapolis, MN 55401 (for relator)

Marc J. Manderscheid, Briggs & Morgan, P.A., 2200 IDS Center, 80 South Eighth Street, Minneapolis, MN 55402 (for respondent St. Paul Housing and Redevelopment Authority)

Considered and decided by Hudson, Presiding Judge; Worke, Judge; and Poritsky, Judge.*

U N P U B L I S H E D O P I N I O N

WORKE, Judge

On appeal in this relocation-benefits dispute, relator argues that the hearing officer erred in determining that (1) the documentation requirement imposed by respondent for

* Retired judge of the district court, serving as judge of the Minnesota Court of Appeals by appointment pursuant to Minn. Const. art. VI, § 10.

reimbursement was reasonable, and (2) relator failed to show that he is entitled to recover moving expenses for personal property. We affirm.

FACTS

When respondent St. Paul Housing and Redevelopment Authority (HRA) commenced a condemnation of the property owned by relator Steven J. Lang and Pamela S. Lang, d/b/a Prospect Auto Parts, relator initially decided to relocate the used-auto-parts business. Relator worked with the HRA's relocation consultant Conworth Inc. to prepare specifications for moving bids, which were used to estimate the cost to relator for a self-move or for the HRA's budgeting purposes. The lowest moving bid—itemized by costs for labor, moving material, equipment, rigging, and miscellaneous material—was $451,707. No bid itemized individual pieces of equipment or inventory. Conworth prepared a summary of all moving costs for an estimated total of $529,539, and the HRA offered relator this amount if he undertook a self-move. When relator failed to respond to the offer, the HRA notified him that it understood that he would be seeking reimbursement for actual moving costs and related expenses and that a relocation-benefits claim must be supported by documentation of expenses incurred, such as "bills, certified prices, appraisals, or other evidence of such expenses." *See* 49 C.F.R. § 24.207(a) (2004).

Relator then opted to discontinue the business and notified the HRA that he intended to seek compensation for his inventory, pursuant to the direct-loss provision. *See* 49 C.F.R. § 24.303(a)(10) (2004). Relator hired an accountant, Stephen Dennis, to determine the direct-loss claim. Because relator had little information to assist Dennis in

determining an item's cost, Dennis used industry data to value the inventory. Dennis concluded that 52.7% of net income for businesses comparable to relator's represents the cost of sales, which is the equivalent of cost of goods to the business. Using an inventory list from the Holander Yard Maintenance System (HYMS), which relator used to inventory parts by price, Dennis concluded that the retail value of the inventory was $1,045,292; thus, the cost of sales was 52.7% of $1,045,292 or $550,869. Relator submitted a claim for moving expenses in the amount of $561,791.42, including a direct-loss claim of $529,539, which was the moving cost prepared by Conworth. The HRA paid only the claim for moving expenses, not the direct-loss amount.

A hearing officer conducted a hearing to determine whether relator was entitled to payment of actual direct loss of personal property. Jerry Bremer, a certified public accountant hired by the HRA to rebut Dennis's testimony, testified regarding Dennis's method for determining the value of the inventory. Bremer concluded that Dennis's method was fatally flawed. Bremer testified that the data were not uniform or verified for accuracy and that Dennis erred by determining that the cost of goods was the potential selling price, rather than the fair market value of goods held for sale, as required by regulation. According to Bremer, Dennis's methodology assumed that all business expenses were attributed to inventory when relator's business actually had sales from inventory, sales of services, and brokerage sales from other yards; thus, it was impossible to segregate the costs associated with inventory. Tom Donohue, a relocation consultant hired by Conworth, testified that he would have approved relator's direct-loss claim. Daniel Wilson, a relocation expert, testified that when a business does not undertake a

self-move, it is entitled to actual reasonable moving expenses, including expenses related to actual direct loss of personal property. Wilson testified that the direct-loss provision is rarely used, and when it is used, it usually arises when a business relocates and does not relocate an item. Wilson testified that the cost of goods to the business is the amount actually paid to acquire the goods for sale. The hearing officer determined that the direct-loss claim should be denied because relator failed to establish direct-loss benefits. This appeal follows.

D E C I S I O N

Disputes involving relocation benefits are processed administratively and are subject to judicial review by writ of certiorari to this court. *See Chanhassen Chiropractic Ctr. v. City of Chanhassen*, 663 N.W.2d 559, 563 (Minn. App. 2003) (outlining the administrative appeals process for relocation-benefits claims), *review denied* (Minn. Aug. 5, 2003). On appeal from a quasi-judicial decision, our review is limited to determining whether the agency exceeded its jurisdiction, and whether the decision was based on an erroneous theory of the law; was without evidentiary support; or was arbitrary, oppressive, or unreasonable. *In re Relocation Benefits of Wilkins Pontiac, Inc.*, 530 N.W.2d 571, 574 (Minn. App. 1995), *review denied* (Minn. June 23, 1995). We defer to the hearing officer's factual findings and credibility determinations. *Reierson v. City of Hibbing*, 628 N.W.2d 201, 204 (Minn. App. 2001). Thus, we will affirm the hearing officer's decision if there is "any legal and substantial basis" to support it. *Id.* (quotation omitted). While we do not retry the facts, we independently review the hearing officer's conclusions on questions of law. *In re Wren*, 699 N.W.2d 758, 761 (Minn. 2005).

Documentation Requirement

Relator argues that he is entitled to payment for the loss of personal property because the cost of the inventory was reasonably documented. The hearing officer determined that relator failed to provide an accurate determination of the cost of inventory, concluding that Dennis's approach was misplaced.

Under the direct-loss provision, a displaced person is entitled to payment for actual moving and related expenses that are determined reasonable and necessary, including:

> Actual direct loss of tangible personal property incurred as a result of moving or discontinuing the business or farm operation. The payment shall consist of the lesser of:
>
> (i) The fair market value of the item for continued use at the displacement site, less the proceeds from its sale. (To be eligible for payment, the claimant must make a good faith effort to sell the personal property, unless the Agency determines that such effort is not necessary. When payment for property loss is claimed for goods held for sale, the fair market value shall be based on the cost of the goods to the business, not the potential selling price.); or
>
> (ii) The estimated cost of moving the item, but with no allowance for storage. (If the business or farm operation is discontinued, the estimated cost shall be based on a moving distance of 50 miles.)

49 C.F.R. § 24.303(a)(10) (2004). Relator contends that the regulation fails to provide for how the "cost of the goods to the business" should be established. Relator asserts that the requirements for documentary support for a relocation-benefits claim are found under 49 C.F.R. § 24.207(a) (2004), which provides: "Any claim for a relocation payment shall be supported by such documentation as may be reasonably required to support expenses incurred, such as bills, certified prices, appraisals, or other evidence of such expenses."

Relator argues that Dennis's report reasonably documented "other evidence of such expenses."

Dennis used the Risk Management Association (RMA) annual-statement studies to determine the cost of the inventory. Dennis compared ten businesses with sales comparable to relator's and found that the businesses' gross profits were on average 47.3% of net sales and that 52.7% of net income was the cost of sales, which he surmised was the equivalent of the cost of goods to the business. Using the HYMS, Dennis concluded the total retail value of the inventory was $1,045,292; thus the cost of sales was $550,869 ($1,045,292 x 52.7%). The hearing officer relied on the testimony of the HRA's expert who testified that reliance on the RMA statement to value the inventory violated the regulatory requirement that the fair market value of goods held for sale be based on the cost of the goods to the business, and "not the potential selling price." *See* 49 C.F.R. § 24.303(a)(10)(i). The hearing officer concluded that Dennis's reliance on the RMA was speculative, and the RMA data did not constitute a statistically random sample; therefore, reliance on the data was statistically invalid. Further, reliance on the RMA was misplaced because relator's sales also included the sale of non-inventory brokerage items and services making it unclear what percentage of income was attributed to inventory. Because brokerage sales are fairly common, it was inappropriate to allocate all of the gross sales to inventory, as Dennis did in preparing his report. The hearing officer's conclusions are supported by the record. The regulation requires that the valuation of the inventory must be the "cost of goods to the business"; Dennis's method premises the value of the inventory on the retail cost and it presumes that the only cost of

the business was the inventory. It was, therefore, not unreasonable for the hearing officer to conclude that relator failed to prove direct-loss benefits.

Moving Expenses

Relator argues that he is entitled to $528,539.[1] Relator contends that his direct loss was $619,558.50—inventory ($550,000) plus equipment ($91,320) less proceeds from sale ($21,761.50)—and because that amount exceeds the estimated moving cost prepared by Conworth, he is entitled to the lesser of the two. Under 49 C.F.R. § 24.303(a)(10),

> The payment shall consist of the lesser of:
>
> (i) The fair market value of the item for continued use at the displacement site, less the proceeds from its sale. . . . ; or
>
> (ii) The estimated *cost of moving the item*, but with no allowance for storage.

(Emphasis added.) Relator relies on the estimated moving cost prepared in the event that relator decided to undertake a self-move. The moving bid upon which relator relies does not provide an estimate of the cost of moving *an* item. *See* 49 C.F.R. § 24.303(a)(10)(ii) (requiring the estimated cost of moving *the* item). The hearing officer concluded that the moving bid did not itemize the cost of moving individual items, making it impossible to determine the cost of moving the items of equipment and inventory. The hearing officer's conclusion is supported by the record and it is not unreasonable.

Affirmed.

[1] The estimated moving cost prepared by Conworth is actually $529,539; we assume relator erred, if not, relator fails to explain the thousand dollar discrepancy.