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STATE OF MINNESOTA DISTRICT COURT

COUNTY OF OTTER TAIL SEVENTH JUDICIAL DISTRICT

- -

Stephen Roy Svendsen,

Plaintiff,

vs.

Pamela Joy Minten, Ken Laney, Mikel Bruce Olson, Fergus Falls HRA Christopher Harold Harig, Ryan Muchow, City of Fergus Falls,

Respondent.

Appellate Court File:
District Court File: 56-CV-24-1426

Transcript of Proceedings

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MOTION HEARING

- -

The above-entitled matter came before the Honorable Kevin M. Miller, Judge of District Court, at the Otter Tail County Courthouse, Fergus Falls, Minnesota, on November 21, 2025, via Zoom technology.

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APPEARANCES

For the Petitioner:	Petitioner appeared pro se.
For the Defendants: Pamela Joy Minten Mikel Bruce Olson Fergus Falls HRA	Jack Buck Mackenzie Hertz 218 NP Avenue Fargo, ND 58107
For the Defendants: City of Fergus Falls Ken Laney	No appearances made.

Dana Eifert
Official Court Reporter

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(Proceedings commenced.)

THE COURT: All right. At this time, the Court is going to call the matter set for 10:00 a.m., which is entitled Stephen Svendsen versus Pamela Minten, et al.; 56-CV-24-1425 (sic).

I have Mr. Svendsen present. I have Mr. Buck here on behalf of the Defendants in this matter. We're here on Mr. Svendsen's motions for sanctions and motion for in-camera inspection.

The Court -- oh, and I said the wrong number. I said 1425; it should be 1426. Sorry about that.

And we're here on Mr. Svendsen's motions today. I have had the opportunity to review the motions and all the filings that came with them.

So Mr. Svendsen, I'll turn to you.

THE PLAINTIFF: Thank you, Your Honor.

I'm going to read a brief excerpt from actual request K that's in contention in the motions. It'll take about -- less than a minute.

Request K, for information related to HUD requirements to include good cause in HRA Board of Directors decisions taking on lease non-renewals. Pursuant to Minnesota Government Data Practices Act, I request the letter from Housing and Urban Development referred to in the September 21, 2022, Fergus Falls HRA

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Board of Directors meeting. Minutes are attached for your convenience. The minutes stated on page seven, quote, "The Fergus Falls HRA received correspondence from Housing and Urban Development that non-renewals need to include good cause for it to be an approved action," unquote.

Your Honor, I haven't found this actual request K in the record. And so I'm going to request permission to submit it to the Court afterwards. It is in the Defendant's possession, and has been for some time. So they would not be prejudiced by that. And, so, that is a request, and I'll move on.

I'll --

THE COURT: And Mr. -- oh, and I have Ms. Hertz also present now. Mr. Buck, any response to that?

MR. BUCK: I guess I'm -- I think that we complied with the response or the request. I think the request asked for the meeting minutes, if I'm -- if I heard the request correctly. I don't have it right in front of me, but I believe we did provide those meeting minutes.

THE COURT: Mr. Svendsen?

THE PLAINTIFF: This is the -- the Minnesota Government Data Practices request K. It's a three-page document that went to the HRA, under that Act. So it's

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the actual request K. It's not the minutes. The minutes were attached to this request. But it's the actual request, and the wording is mirrored in Plaintiff Exhibit 86, which is document 184 and -- 148, rather, in the docket. Request number one. But it's not exact. And so I thought it would be helpful for the Court to have the actual data request under that act in the record.

MR. BUCK: Yeah. Sure. Can I respond, briefly? --

THE COURT: You can.

MR. BUCK: -- Your Honor?

Yeah, so the request says, and you know, please, Mr. Svendsen, correct me if I'm, you know, not understanding your request correctly, that you request the letter from -- the alleged letter from Housing and Urban Development referred to in the meeting minutes. And the HRA responded that they are not in possession of the letter. That's my understanding of where we're at with this.

THE PLAINTIFF: Yes. I agree. I agree with that. But I'm simply saying that the actual request K that was sent to the HRA under the act is not in the record. And I would propose to put it into the record after the meeting, if the Court allows.

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THE COURT: And Mr. Buck?

MR. BUCK: I, I, I guess we would object to that. I don't know what the relevance that it has to this motion. The motion has been fully briefed and --

THE COURT: Mr. Svendsen, --

MR. BUCK: -- he's had --

THE COURT: -- it appears that the, you know, we've got the -- cause I went to that 148, index 148, with that request and it appears that -- and I don't think anybody disagrees that the request number one, the letter and everything -- that that has been -- I mean, that was the request. And I don't believe I need that request K from the Minnesota Data Practices Act. I think everything's been fully briefed, and I understand what the issue, I believe, that you're putting forth is, so.

THE PLAINTIFF: Thank you, Your Honor.

THE COURT: Yep. You may continue, sir.

THE PLAINTIFF: Okay. My first comment is on spoilation merits. Existence, control, and -- and I'm going to be reading, Your Honor, from prepared statements -- and materiality of the HUD good cause letter referenced in September 21, 2022 board minutes. The September 2020 -- 21st, 2022 board minutes are an official HRA record stating that HRA provided a quote, "good cause, uncause (sic)" -- "good cause," unquote,

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letter. And that is direct evidence the letter existed. Those minutes operate as an admission that the HRA received the letter and considered it when evaluating tenancy terminations. The HRA cannot rely on good cause authority in its board action while later denying the existence of the HUD guidance it recorded. Because the HRA was the party communicating with HUD and the board formally noted the letter, the letter was within the HRA's possession or control for preservation purposes. No outside party is more likely than the HRA to possess, track, or archive HUD correspondence sent to its board. The HRA's failure to produce the letter, after notice, supports an inference of loss or withholding, not genuine non-existence.

The letter is material because it goes to whether the HRA had lawful good cause and what standards HUD required the HRA to approve -- to apply. It is unlikely -- it is uniquely probative because it would show exactly what HUD told the HRA about termination authority at the time the board discussed enforcement. If the letter supported the HRA's current position, ordinary practice and self-interest would lead the HRA to produce it, rather than disclaim it. The inconsistency between the contemporaneous minutes and later denials creates a credibility dispute that the Court may reasonable --

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reasonably resolve against the HRA. On an existence and content.

The second comment I would have would be on the issue of preservation, search failures, and sanction standard, duty to preserve, bad faith inference, prejudice, and proportional relief. In other words, adverse inference plus sworn search affidavits.

The HRA's duty to preserve attached no late-- to preserved attached no later than the point when the board recorded that HUD guidance affected termination standards, and I began disputing good cause and retaliation. From that moment forward, litigation was reasonably foreseeable, and the HRA was required to take reasonable steps to retain key tenancy termination records, including HUD correspondence.

A public landlord cannot exclude -- cannot excuse non-production by saying we can't find it without showing that it conducted a competent documented search consistent with its retention obligations. Because the board minutes specifically reference the HUD letter, the letter is central to this dispute, and its loss is presumptively prejudicial. Bad faith may be inferred when a party invokes a document's authority to justify action and then cannot produce that document after notice to preserve.

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Even absent an expressed admission, the unexplained loss of the uniquely relevant record supports a permissive adverse inference. The prejudice here is concrete because I cannot evaluate or test the HRA's asserted rationale for good cause without the contemporaneous HUD standard it claims to have received. Their shifting positions on whether they possessed the letter or whether it ever existed further supports an inference of culpability rather than innocent mistake.

The relief I seek is proportional. Sworn search affidavits, record retention testimony, and an inference remedy, not a cause-ending sanction.

If the Court finds spoliation, a permissive adverse inference that the letter was unfavorable to the HRA is the least intrusive remedy that restores a fair evidentiary balance.

And that -- I'll move on to my comment three, Your Honor, and that would be on privilege, in-camera merits.

THE COURT: You may do so.

THE PLAINTIFF: Defects in the privilege log, primary purpose, non-attorney communications, mixed business/legal content, and why in-camera review is necessary, including rebuttal to their fees request.

I reviewed their privilege log, and it includes

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staff-to-staff emails with no attorney involved. So they have not carried their burden to establish attorney-client privilege. These communications appear to be routine business and lease administrative decisions, and under the primary purpose test, they are not privileged simply because counsel would -- was consulted elsewhere. Where an email contains both business directives and legal advice, I'm entitled to the segregable actual and operational content with only genuine legal advice redacted. They asserted privilege over entire email chains without separating discoverable facts from legal counsel. And that overbreadth is reason enough for Court review.

Work product protection is likewise inapplicable where the materials would have been created in the ordinary course of managing the property and tenancy issues. I am not hinging this request on crime fraud. I am asking for an in-camera inspection because there is a concrete, good-faith dispute about improper privilege designations. The response relies on general privilege principles but does not address the specific non-attorney entries I identified.

Whether I plead an independent fraud claim is not relevant to the narrow question of whether these particular documents are properly withheld. In-camera

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review is the least intrusive, most proportional remedy because it preserves legitimate privilege while preventing concealment of discoverable material. Given that, the withheld documents overlap the HUD guidance and non-renewal decisions trail, judicial inspection is the clean and reliable way to resolve the dispute.

And I'll move on, Your Honor, to my comment four with the Court's permission.

THE COURT: You may.

THE PLAINTIFF: Olson, then Mintents (sic) -- Minten's documented same-day discovery of the governing rule for non-renewals. My written request challenging good cause and retaliation went out the morning of September 19th, 2022. Within hours of that request, Olson emailed Minten a bare citation to 24CFR966.4 signaling an immediate need to locate the controlling standard. The email contains no analysis or prior policy reference, which shows it was a quick internal flag rather than a rule they had long known and been applying. That compressed timing supports the inference that management only turned to 966.4 because my challenge forced the issue. Two days later, the minutes assert, on Minten's and/or Olson's representation memorialized by Scheer, that HUD had supplied a good cause letter. Even though the controlling rule was already 24CFR966.4

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subsection L, paragraph 2, subparagraph 4. So the HUD, just told us, line is a knowing, willful attempt to disguise management's failure to follow the government standard. If management had already been applying 96 -- 966.4 there would be no reason to portray the standard to the board as freshly imposed by HUD. That HUD just took that -- quote, "HUD just told us", unquote, framing Scheels, Minten, and Olson from board criticism for not knowing a regulation they were obligated to know. Their later inability to produce any such HUD letter is inconsistent with the letter narrative being a reputational device, not an actual preserved communication.

The sequence, my challenge, the same-day CFR email, then the HUD letter minutes fits a pattern of reactive rule discovery followed by career-saving explanation to the board. Taken together, the timing is strong circumstantial evidence that the board was told a story designed to mask management's earlier non-compliance in the non-renewal of the Svendsen lease.

Either way, spoliation warrants an adverse inference. If the Court accepts the September 21 minutes, it should infer the HUD letter existed and was unfavorable to the HRA. If it accepts the typo story, it should find Minten and Olson misled the board, and infer

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no good cause for non-renewal.

As to the Defendant's request for sanctions, and I'll finish with this. Sanctions for defective meet and confer are improper in this instance because I made a good-faith effort to resolve the dispute. The HRA had clear notice of the issues. And further conferral would have been futile after their categorical denials. Any technical lapse caused no prejudice. And Rule 37 relief should turn on merits, not gamesmanship. It is also not credible to claim I would've accepted a typo explanation -- a typo explanation by the HRA that was relayed through Ms. Hertz.

And I'm finished, Your Honor.

THE COURT: All right. Thank you. And I don't know, Mr. Buck, are you doing the response or Ms. Hertz?

MR. BUCK: Yeah. I'll be handling the response.

THE COURT: All right.

MR. BUCK: Thank you, Your Honor.

I want to start with the procedure, and I think it is disappointing that we're here before the Court, yet again. Usually, the parties are obligated to try and work these discovery issues out before involving the Court. As the Court is well aware, Rule 37 actually requires that, and there is a certification that needs to

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be brought certifying that the movant has in good faith conferred or attempted to confer with the opposing party prior to bringing a discovery motion like these that are before the Court. And that just simply did not happen here. The HRA was not even aware of an allegation that they allegedly destroyed evidence or that there was an issue with the privilege log prior to these motions being brought. The first time that we were actually aware of these issues was when the motions were filed and then reading Plaintiff's briefs. So Plaintiff's motions should both be denied in their entirety for failure to meet and confer under Rule 37.

And then moving on to the substance, Plaintiff seems to try to be shifting the burden here. Plaintiff is the movant, and he does have the burden to prove that the HRA had exclusive possession of this alleged communication with HUD. There simply has not been any evidence presented that this communication ever existed. The HRA has presented sworn testimony to this Court, that -- or an affidavit that that there was simply a typographical error in the meeting minutes and that this communication, again, this alleged communication, never happened. And I guess, even for purposes of this argument, even if it did happen, the HRA would not be in exclusive possession of it. It would be a communication with another party, HUD,

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who would theoretically have possession of the communication as well. And there has not been any -- Plaintiff has not demonstrated that he has either attempted to serve a subpoena or an open records request on HUD, an attempt to obtain this alleged communication through another avenue. The Plaintiff's motion for spoliation should be denied because Plaintiff has failed to demonstrate that this communication ever existed, that HRA had exclusive possession of it, or that the HRA did anything whatsoever to try to destroy evidence.

Moving on to the in-camera review motion, which essentially questions the attorney-client privilege at play here. You know, we're talking about a sacred privilege within our system that allows clients to speak freely with their attorney. And every communication that is either redacted or withheld on that privilege log is a communication directly between an HRA executive and one of their attorneys at the time, whether it be J.J. Cline, Robert Stock, Mackenzie Hertz, or myself. And there's only one communication that is between Mikel Olson, the executive director, and the HRA board of directors that is on that privilege log. And there's also been a sworn affidavit submitted to this Court that that was redacted because Mr. Olson was restating evidence -- legal advice that he had received from Robert Stock at the time of

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December 5th, 2022. And there is case law to support that, and this is in HRA's brief as well, but their attorney-client privilege protects the disclosure communications among employees that reflect advice rendered by counsel. That's exactly what happened here, Your Honor.

Plaintiff does assert the crime-fraud exception, I guess, to the attorney-client privilege in his briefing. He appears to be not asserting that argument in argument here today, but the HRA would take exception to that, that they had to brief that and that there was no facts whatsoever presented to this Court to support that a fraud happened. Let alone that a fraud was committed with the help of one of their attorney's advice. So Plaintiff's motions for an in-camera review should be denied as the privilege law was properly provided to the plaintiff.

Rule -- if a Rule 37 motion, like that has been brought here by Plaintiff, has been denied, Rule 37 authorizes the court to award the party who opposed the motion reasonable expenses, including attorneys' fees incurred in opposing that motion. An award of expenses and attorneys' fees incurred by the HRA in opposing these motions, we believe, is warranted due to the failure to meet and confer with the HRA prior to bringing these

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discovery motions. And bringing these motions without any evidence that this communication ever existed between the HRA and the HUD, and without any evidence whatsoever that some sort of fraud was committed by the HRA with the advice of their counsel. The HRA would respectfully request this Court deny the Plaintiff's motions in their entirety and award the HRA's expenses and attorney's fees incurred in opposing these motions.

THE COURT: All right. Mr. Svendsen, any response?

THE PLAINTIFF: Yes, Your Honor. The third amended complaint, which is repeatedly referenced, does allege fraud. And it alleges fraud and misconduct against two attorneys that were involved in this matter during these disputed facts. And first of all -- that would be the first point.

The second point is evidence that the letter ever existed was provided by the HRA in their board minutes. And so there is contemporaneous proof that the letter existed, and the HRA stated it existed on September 21st, 2022.

The meet and confer that this could of -- the allegation that the meet and confer could have resolved this with the HRA is not substantive. I would never, I don't believe, I don't believe what they are stating

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today is credible. And I certainly wouldn't have believed it was credible because -- before I went to the trouble of researching and addressing these matters and motions.

And I'll finish with that, Your Honor.

THE COURT: And Mr. Buck, any final response?

MR. BUCK: Nothing further, Your Honor. Thank you for your time this morning.

THE COURT: Thank you, everyone. The Court will take this matter under advisement and issue its opinion at the earliest convenience that I can. I know I have another motion already pending in this matter too, so we'll be getting those out as they get processed in our queue of orders due.

All right. And I thank everyone. Have a good weekend, and that will conclude the hearing here today.

THE PLAINTIFF: Thank you, Your Honor.

(Proceedings concluded.)

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Reporter's Certificate

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I, Dana Eifert, hereby certify that I am an official court reporter in the Seventh Judicial District of the State of Minnesota; that as such reporter I digitally recorded the proceedings in the above-entitled action; that I thereafter transcribed to typewriting the foregoing transcript from the digital recordings taken in Otter Tail County, Minnesota on November 21, 2025; and that the foregoing transcript consisting of seventeen (17) pages, constitutes a full, true, and accurate transcription of said proceeding.

Dated: September 27, 2026

/s/ Dana Eifert

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