



WISCONSIN DEPARTMENT OF
ADMINISTRATION

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SENT VIA E-MAIL AND U.S. MAIL

June 9, 2017

Patrick Fagan
[REDACTED]

Nicole Larsen
Deputy City Attorney
Racine City Hall
730 Washington Avenue, Room 201
Racine, WI 53403

Re: Patrick Fagan – Relocation Complaint
Determination per Wis. Admin. Code § Adm 92.18(3)

Dear Mr. Fagan and Attorney Larsen:

On May 2, 2017, the Department of Administration (“DOA”) received a Relocation Complaint from Patrick Fagan. Pursuant to Wis. Admin. Code § Adm 92.18(3)(b), a copy of the complaint was sent to Deputy City Attorney Nicole Larsen, counsel for the Redevelopment Authority of the City of Racine (“RDA”).

In addition to Mr. Fagan’s written complaint, he provided information via telephone and sent 100+ e-mails between May 2 and May 30, containing various documents, articles, photographs, etc. The RDA submitted a written response to Mr. Fagan’s complaint on May 17. In addition, DOA Attorney Mark Herman spoke with Attorney Larsen to discuss the matter further. Upon review of Mr. Fagan’s complaint, DOA makes the following determination.

Mr. Fagan was a tenant of 615 Marquette Street from June 2008, to December 2015, having rented space from the property owner, Rick Olson. Mr. Fagan had personal property stored at this location related to his business (P & P Products, a sole proprietorship), maintenance work, construction jobs, electrical work, welding, etc. Mr. Fagan’s tenancy of 615 Marquette Street is supported by his Lease Agreement signed in June 2008, and a December 17, 2015, letter from Elaine Sutton Ekes wherein she refers to Mr. Fagan as a tenant, and admits he had personal property at that address as of the date of the letter. (Copies of Mr. Fagan’s Lease Agreement and the December 17, 2015, letter have been provided to Attorney Larsen.) It should be noted that Mr. Fagan never claims to have *resided* at 615 Marquette Street as questioned in the RDA’s May 17 letter.

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A property at 900 Water Street, previously owned by Mr. Olson, was acquired by FDP LLC, as part of the Machinery Row Redevelopment Project ("Machinery Row"). Mr. Olson was not willing to sell 900 Water Street unless his other properties, one being 615 Marquette Street, were also purchased. As stated in the RDA's May 17 letter, 615 Marquette Street "had good potential for future development" so the RDA purchased it in December 2015. The RDA notes that at the time, there was not a specific project or plan for 615 Marquette Street.

Mr. Fagan has provided documentation which clearly shows the City required 615 Marquette Street to be vacant – no tenants or personal property – before a sale would occur. (See December 17, 2015, letter from Sutton Ekes.) On that basis, Mr. Fagan vacated 615 Marquette Street in December 2015, and the RDA purchased it on December 30, 2015.

Because 900 Water Street would not have been acquired for Machinery Row without 615 Marquette Street, the acquisition of 615 Marquette Street was part of a public project. "Public project" means "in addition to a project being carried out directly by a public entity, an activity or program directly receiving public financial assistance including a grant, loan or contribution." Wis. Admin. Code § Adm 92.01(33)(a). The RDA, a public entity, acquired 615 Marquette Street in conjunction with Machinery Row, using public financial assistance. The RDA's May 17 letter indicates that funds for the purchase of 615 Marquette Street came from the City's Intergovernmental Revenue Sharing Fund.

Further, minutes from the RDA's December 12, 2014, meeting (as provided by Mr. Fagan) refer to Mr. Olson's properties – including 615 Marquette Street – as, among other things, "acquisition, financing and developmental framework for the implementation of Phase 1 of the Machinery Row redevelopment project." (RDA Meeting Minutes-Final, December 12, 2014 at 2, 3.) This implies that 615 Marquette Street is part of Machinery Row, even if indirectly.

Mr. Fagan was displaced from 615 Marquette Street due to the City's desire to redevelop that property at some point in the future. The fact that they did not know exactly what that development would be, or when, is irrelevant. The RDA contends that Mr. Fagan's removal from the property was Mr. Olson's doing because the building was vacant when conveyed to the RDA. Documentation clearly shows, however, that the City wanted Mr. Fagan (and other tenants) out.

It should be noted that relocation assistance cannot be waived in this situation. Among the documentation provided by Mr. Fagan was a signed Option Agreement regarding Mr. Olson's properties. The agreement included a provision that at closing there would be a "written waiver by Seller . . . of any rights under the laws of eminent domain or for relocation of any occupants of the Property." While it is unknown whether a waiver was signed at closing, Mr. Olson cannot waive relocation assistance for himself or tenants.

Waiver of relocation benefits is governed by Wis. Admin. Code § Adm 92.12. Relocation can only be waived in specific circumstances. The acquired property must be "an isolated parcel, not included as part of a public project or located within a proposed or previously designated area where it is reasonable to conclude that other acquisitions by the agency will occur in the foreseeable future[.]" Wis.

Admin. Code § Adm 92.12(1)(a). 615 Marquette Street was not an "isolated parcel" – Mr. Olson sold four properties total, not one. The properties were also part of a public project.

In addition, Mr. Fagan provided an unsigned copy of a Purchase Agreement for 900 Water Street, which also includes a provision regarding waiver of relocation assistance. Again, per Wis. Admin. Code § Adm 92.12, relocation cannot be waived.

It does not appear that a relocation plan was ever submitted to DOA for Machinery Row, although it appears there were multiple displaced persons. A relocation plan should have been submitted for approval prior to initiation of negotiations for acquisition of the various properties, and owners and tenants should have been informed of their rights under Wis. Admin. Code ch. Adm 92 and Wis. Stat. ch. 32.

Mr. Fagan meets the definition of a "displaced person" under Wis. Admin. Code § Adm 92.01(14)(a). 615 Marquette Street was acquired as part of a public project and Mr. Fagan was a tenant with personal property at that location. Mr. Fagan should receive relocation payments, as should others who were displaced from the related properties. Because we have not received documentation clearly showing that Mr. Fagan operated his business (P & P Products) from 615 Marquette Street, we are unable to determine whether the operation qualifies as a "business" under Wis. Admin. Code § Adm 92.01(5). As such, the specific categories of relocation payments that Mr. Fagan is entitled to remains undetermined.

Pursuant to Wis. Admin. Code ch Adm 92, payments applicable to the relocation of a tenant's business may include the following: move, search, incidentals, business replacement, and business reestablishment. If it is determined that Mr. Fagan used 615 Marquette Street simply for storage of his personal property (even if the personal property was used for his business), the above categories may be limited. It should be noted that personal injury claims and punitive damages are not within the scope of relocation assistance.

We recommend that the parties work together to remedy the situation. Attorney Larsen indicates in a letter dated June 8, 2017, that the City intends to retain a relocation specialist to assist in its own determination. (A copy of Attorney Larsen's June 8 letter is being provided to Mr. Fagan simultaneously with this letter.) DOA is willing to assist with further resolution of this matter if requested by the RDA. If the parties are unable to come to an agreement as to the specific types of relocation payments that apply, or the amounts thereof, Mr. Fagan has the right to pursue legal action under Wis. Stat. § 32.20.

This determination is made pursuant to Wis. Admin. Code § Adm 92.18(3).

Sincerely,



Tracy Smith
Paralegal-Confidential

