

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

Brian Melendez,

Complainant,

vs.

ORDER OF DISMISSAL

Rhonda Bentz, Noah Rouen, Vincent
Curatola, Coalition for a Democratic
Workplace,

Respondents.

On July 24, 2008, Brian Melendez filed a Complaint with the Office of Administrative Hearings alleging the Respondents violated Minn. Stat. § 211B.06 by preparing and disseminating false campaign material. The Chief Administrative Law Judge assigned this matter to the undersigned Administrative Law Judge on July 24, 2008. A copy of the complaint and attachments were sent by U.S. mail to the Respondents on July 24, 2008.

After reviewing the Complaint and attached documents, the undersigned Administrative Law Judge has determined that the complaint does not set forth a prima facie violation of § 211B.06.

Based upon the Complaint and the supporting filings and for the reasons set out in the attached Memorandum,

IT IS ORDERED:

That the Complaint filed by Brian Melendez against Rhonda Bentz, Noah Rouen, Vincent Curatola, and the Coalition for a Democratic Workplace for violation of Minn. Stat. § 211B.06 is DISMISSED WITHOUT PREJUDICE. The Complainant may revise and file a subsequent complaint regarding alleged violations of Minn. Stat. § 211B.06 in connection with the television advertisement at issue without paying an additional filing fee.

Dated: July 29, 2008

s/Barbara L. Neilson

BARBARA L. NEILSON
Administrative Law Judge

MEMORANDUM

The Complaint concerns the Minnesota U.S. Senate race. The Complaint alleges that a television ad produced and distributed by “Respondent” contained false campaign material with respect to candidate Al Franken. Specifically, the ad states “Franken says eliminate the secret ballot for workers.” The Complaint maintains that Mr. Franken “has not made any such statement” and the statement attributed to him is “contrary to the facts.” The ad also states that Al Franken wants “to end worker privacy.” The Complaint maintains that this statement is also false.

Minn. Stat. § 211B.06, subd. 1, prohibits intentional participation:

... [i]n the preparation, dissemination, or broadcast of paid political advertising or campaign material with respect to the personal or political character or acts of a candidate, or with respect to the effect of a ballot question, that is designed or tends to elect, injure, promote, or defeat a candidate for nomination or election to a public office or to promote or defeat a ballot question, that is false, and that the person knows is false or communicates to others with reckless disregard of whether it is false.

In order to be found to have violated this section, a person must intentionally participate in the preparation, dissemination or broadcast of false campaign material that the person knows is false or communicates with reckless disregard of whether it is false.

The term “reckless disregard” was added to the statute in 1998 to expressly incorporate the “actual malice” standard from *New York Times v. Sullivan*.¹ Based on this standard, the Complainant has the burden at the hearing to show by clear and convincing evidence that the Respondents prepared or disseminated the advertisement knowing that it was false or did so with reckless disregard for its truth or falsity. The test is subjective; the Complainant must come forward with sufficient evidence to prove the Respondents “in fact entertained serious doubts” as to the truth of the ad or acted “with a high degree of awareness” of its probable falsity.²

For purposes of a prima facie determination, the Complainant must detail the factual basis to support a claim that the violation of law has occurred.³ Here, the Complainant has not alleged with any specificity why the statements at issue are factually false. The Complaint merely asserts that the statements are false and “contrary to the facts,” without providing any further information.

¹ *New York Times v. Sullivan*, 376 U.S. 254, 279-80 (1964).

² *St. Amant v. Thompson*, 390 U.S. 727, 731 (1968); *Garrison v. Louisiana*, 379 U.S. 64, 74 (1964). See also *Riley v. Jankowski*, 713 N.W. 2d 379 (Minn. App.) review denied (Minn. 2006).

³ Minn. Stat. § 211B.32, subd. 3.

The Complaint also does not identify the named individual Respondents, nor does it allege any facts to support an allegation that they participated in the preparation or broadcast of the material knowing it was false or with reckless disregard of its falsity. A review of the press release issued by the Coalition for Democratic Workplace and attached as an exhibit to the Complaint reveals that Rhonda Bentz and Noah Rouen are contact persons for the group. Vincent Curatola is not identified in the Complaint or its attachments, but he is the actor who stars in the ad.

A complaint claiming a violation of Minn. Stat. § 211B.06 must detail the factual basis of the claimed violation. At a minimum, the Complaint must allege sufficient facts or provide supporting documentation from which knowledge or reckless disregard of the falsity of the statement on the part of the persons who prepared or disseminated the material may be implied. The Complaint in this matter fails to meet that requirement. The Administrative Law Judge concludes that the Complaint does not allege sufficient facts to support a prima facie violation of Minn. Stat. § 211B.06. For these reasons, the Complaint is dismissed without prejudice to re-filing. The Complainant may revise and file a subsequent complaint without payment of an additional filing fee.

B.L.N.