

*This opinion is nonprecedential except as provided by
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A20-0434**

Madison Equities, Inc., et al.,
Appellants,

v.

Office of Attorney General,
Respondent.

**Filed January 11, 2021
Affirmed in part and reversed in part
Slieter, Judge**

Ramsey County District Court
File No. 62-CV-19-7917

Kelly S. Hadac, Michael S. Mather, HKM, P.A., St. Paul, Minnesota (for appellants)

Keith Ellison, Attorney General, Jonathan D. Moler, Jason Pleggenkuhle, Assistant
Attorneys General, St. Paul, Minnesota (for respondent)

Considered and decided by Slieter, Presiding Judge; Gäitas, Judge; and Smith, John,
Judge.*

NONPRECEDENTIAL OPINION

SLIETER, Judge

Appellants Madison Equities, Inc., et al. (Madison Equities) challenge a district
court order compelling compliance with a civil investigative demand (CID) issued by

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

respondent, the Office of the Attorney General (attorney general). Because we conclude that the district court abused its discretion in failing to narrow the scope of the discovery demands to those entities that the attorney general has reasonable grounds to suspect may have violated the law, we affirm in part and reverse in part.

FACTS

In August and October 2019, the attorney general received complaints of wage theft from individuals employed by Madison Equities as security guards. In summary, the complainants alleged that, after reaching 40 hours in a particular pay period, they were instructed by their supervisor to work additional hours at different properties associated with Madison Equities and received paychecks from entities other than Madison Equities for time worked in excess of 40 hours. The complainants alleged they received paychecks from Madison Equities, First Bank Building LLC, U.S. Bank Center LLC, and Alliance Center LLC despite being solely hired as employees of Madison Equities. The attorney general, pursuant to Minn. Stat. § 8.31 (2018), served a CID on Madison Equities in October 2019 to conduct further investigation into the complaints.

In November 2019, Madison Equities, pursuant to Minn. R. Civ. P. 26.03, moved for a protective order to quash the CID in its entirety. The attorney general moved to compel compliance. In an affidavit in support of its motion to compel, counsel for the attorney general indicated that the information requested from Madison Equities' affiliates was "reasonably related to the employee complaints it received" to determine "whether Madison Equities is so interrelated with the affiliate LLCs that they should be considered

one entity and/or joint employers for purposes of determining whether overtime premiums are owed to employees.”

The district court issued a written order denying the protective order and granting the attorney general’s motion to compel compliance. This appeal follows.

DECISION

“A Civil Investigative Demand (CID) is a discovery tool provided by statute to aid the state in the investigation of suspected violations of Minnesota laws.” *In re GlaxoSmithKline*, 699 N.W.2d 749, 752 (Minn. 2005). Minnesota Statutes section 8.31 states that the attorney general has the power to investigate violations of law when it has “a *reasonable ground* to believe that any person has violated, or is about to violate, any of the laws of this state” referenced in the statute. Minn. Stat. § 8.31, subd. 2 (2018) (emphasis added). According to the statute, the attorney general:

may obtain discovery from any person regarding any matter, fact or circumstance, not privileged, which is relevant to the subject matter involved in the pending investigation, in accordance with the provisions of this subdivision. The discovery may be obtained without commencement of a civil action.

Id. The attorney general does not, however, have unlimited power to seek information. Instead, the attorney general’s office must have “reasonable grounds” to request the information sought in its investigation. *Kohn v. State*, 336 N.W.2d 292, 296 (Minn. 1983). This means the information requested must be “reasonably relevant” and the demands in the CID cannot be “too indefinite.” *Id.* at 297 (quoting *United States v. Morton Salt Co.*, 338 U.S. 632, 652, 70 S. Ct. 357 (1950)). Appellate courts review a district court’s ruling

on a request for a protective order for an abuse of discretion. *See In re Paul W. Abbott Co.*, 767 N.W.2d 14, 17-18 (Minn. 2009).

Madison Equities argues the CID is overbroad with respect to the number of entities and employees it requests information from and the scope of the time for which the information is sought. Because we conclude that the attorney general established a reasonable basis for investigating only the four entities named by the complainants as having paid wages to them, the district court abused its discretion by failing to limit the scope of the CID accordingly. We therefore affirm only the portions of the CID that seek information related to those four entities. For the reasons described below we also limit the CID's definition of "worker" to security guards from those four entities.

Number of Entities

The CID requests information from several entities purportedly affiliated with Madison Equities. According to its cover letter, the CID was directed to Madison Equities and nine entities who, like Madison Equities, maintained principal office addresses at 29 S. Deep Lake Rd, North Oaks, MN 55127 or 375 Jackson Street, Suite 700W, Saint Paul, MN 55101.¹ The CID refers to these entities as "M.E. Property Companies" and states it has reasonable grounds to believe based on the complaints that the M.E. Property Companies have violated or were about to violate Minn. Stat. §§ 177.25, 181.101, 181.13, 181.14, and 181.032 (2018), which are wage theft statutes. The CID classifies the M.E.

¹ These nine entities are First Bank Building, LLC, Alliance Center LLC, 375 Jackson Courtly LLC, 375 Jackson Willow LLC, Jackson Street Building LLC, Lowry Building LLC, Park Square Court Building LLC, Stadium Ramp LLC, and U.S. Bank Center LLC.

Property Companies as places where “Madison Equities security guards worked,” and states the attorney general has reasonable grounds to believe that the M.E. Property Companies failed to pay workers “all wages required by state and federal law, including overtime wages.”

The CID requested responses to seventeen interrogatories and fourteen document requests, which also sought information beyond the four entities identified by the complainants. Interrogatories numbered six and seventeen ask for information regarding “M.E. Related Companies.” In the “Definitions” section of the CID, “M.E. Related Companies” is defined as:

“M.E. Related Companies” means the companies that maintain their principal office address at either 29 S. Deep Lake Rd., North Oaks, MN 55127 or 375 Jackson Street, Suite 700W, Saint Paul, MN 55101, except for the 9 limited liability companies listed on page one of this CID. The term “M.E. Related Companies” also includes all present and former directors, officers, members, managers, employees, independent contractors, and agents of such companies.

In its brief on appeal, the attorney general describes these affiliated entities as “at least thirty other LLCs associated with Madison Equities.”

The district court denied Madison Equities’ motion for a protective order on the ground that the CID was appropriate to Madison Equities and all affiliates because “the [CID was] sufficiently tailored for the level of pre-complaint discovery that the Legislature contemplated under Minnesota Statutes § 8.31.” The record shows that the complainants allege they were hired by Madison Equities and that four of the entities listed in the CID— Madison Equities, First Bank Building LLC, Alliance Center LLC, and U.S. Bank Center

LLC—paid them wages. The complainants made no allegations they received wages from any other affiliate listed in the CID. The CID is, therefore, overbroad with respect to those entities.

As an example, Interrogatory No. 6 asks Madison Equities to “[d]escribe with particularity any relationship between Madison Equities or the M.E. Property Companies with any of the M.E. Related Companies, including agreements, transactions, or shared workers.” The complainants, however, make no allegations of wage theft against any of the M.E. Related Companies. Interrogatory No. 17 asks “whether Madison Equities, the M.E. Property Companies, or the M.E. Related Companies employ any workers who are paid on any basis besides a salary basis who work for more than one of Madison Equities, a M.E. Property Company, or a M.E. Related Company.” The attorney general received no allegation of wage theft against any but four of these entities, which means there were approximately 36 entities that the attorney general had no reasonable basis to investigate.

Minnesota caselaw provides that “a government agency is not licensed to engage in a general fishing expedition into the affairs of private parties on the mere hope that some useful information will be disclosed.” *Roberts v. Whitaker*, 178 N.W.2d 869, 877 (Minn. 1970). Seeking information from entities other than Madison Equities, First Bank Building LLC, Alliance Center LLC, and U.S. Bank Center LLC amounts to the type of fishing expedition prohibited by *Roberts*. The district court therefore abused its discretion by not limiting the scope of the interrogatories, and the scope of the interrogatories in the CID must therefore be narrowed to seek information from only those four entities.

Definition of Worker

Madison Equities also alleges that the CID is overbroad with respect to its definition of worker. The “Definitions” section of the CID states:

“Worker” means any person with an address in the State of Minnesota or a telephone number with one of the following prefixes: 218, 320, 507, 612, 651, 763, or 952. For purposes of this CID, the term “worker” includes any individual who performed any work or service for Madison Equities and/or the M.E. Property Companies, whether classified as an employee or independent contractor.

The district court did not address this issue in its order. The record shows that the attorney general received complaints from individuals employed by Madison Equities as security guards. Despite this limited complaint, the CID seeks information from all employees and independent contractors of the affiliates. We conclude, therefore, that the district court abused its discretion by not limiting the scope of the definition of worker. This definition is overbroad and should be limited to individuals who are, or were, employed by or performed work as security guards for Madison Equities, First Bank Building LLC, Alliance Center LLC, and U.S. Bank Center LLC.

Time

Madison Equities also alleges the CID is overbroad with respect to time. It alleges that “the district court erred by failing to narrow the time period of the CID to align with the [attorney general’s] stated reasonable grounds, which would limit the [attorney general’s] investigation to wages due and payable on or after January 1, 2018.” The district court determined that “the [attorney general] requests data from the Entities going back

three years, consistent with the maximum applicable time for an overtime wage claim.” The district court did not abuse its discretion in defining the time scope of the investigation.

Interrogatory No. 9 asks for information for employee-wage information “for the past 36 months.” Pursuant to Minn. Stat. § 541.07(5) (2018), the statute of limitations for wage claims is three years “if the nonpayment is willful and not the result of mistake or inadvertence.” Madison Equities contends that because the attorney general has not established that any alleged wage theft was willful, the CID is subject to the more limited two-year statute of limitations provided by the statute. *See id.* (“Except where . . . this section . . . otherwise prescribes,” actions “for the recovery of wages or overtime shall be commenced within two years”). This matter is, however, in the investigative stage and the attorney general is not required to prove each element of the statute it believes was violated. *See Kohn*, 336 N.W.2d at 296 (“The purpose of the state’s investigation is not to prove pending charges, for the state has made none, but to ascertain if there is any substance to the customer complaints so that charges should or should not be brought.”) Because of the investigative nature of a CID, we conclude the scope of the CID is appropriate as it relates to time.²

In summary, the CID is affirmed in part though limited as follows:

- 1) The attorney general may obtain information related to the following entities: Madison Equities, First Bank Building LLC, Alliance Center LLC, and U.S. Bank Center LLC.

² Similarly, we also agree with the district court’s conclusion that the attorney general need not establish at this early stage of the proceedings whether the entities are joint employers.

2) The attorney general may obtain information related only to those individuals who were or are employed by Madison Equities as security guards.

3) The attorney general may obtain information dating back three years from the filing of the CID.

Affirmed in part and reversed in part.