

STATE OF MINNESOTA

TAX COURT

COUNTY OF MOWER

THIRD JUDICIAL DISTRICT

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Nationwide Health Properties, Inc.,

Petitioner,

vs.

County of Mower,

Respondent.

**ORDER GRANTING COUNTY'S  
MOTION TO COMPEL AND  
MODIFICATION OF SCHEDULING  
ORDER**

File No: 50-CV-12-2936

Filed: January 22, 2016

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This matter came before the Honorable Thomas G. Haluska, Judge of the Minnesota Tax Court, on January 5, 2016, on the County's motion to compel discovery.

Douglass E. Turner, Attorney at Law, appeared on behalf of petitioner Nationwide Health Properties Inc.

R. Lawrence Harris, Special Assistant County Attorney, appeared on behalf of respondent Mower County.

Respondent Mower County timely served its first set of interrogatories and second set of requests for production of documents on August 19, 2015. Petitioner Nationwide failed either to object to the County's discovery requests or to timely respond to them on several extended deadlines. Consequently, the County filed a motion to compel discovery. In response, Nationwide acknowledged its failure to timely respond and simply asked us to extend its response time. Because Nationwide did not substantively oppose the County's motion, we orally granted it during a telephonic hearing on January 5, 2016, stating on the record the terms of our order compelling discovery, which we now memorialize.

Based upon all of the files, records and proceedings herein, the court now makes the following:

**ORDER**

1. Nationwide Health Properties Inc. shall, by January 13, 2016, fully respond to the County's written discovery requests served on August 19, 2015.

2. Failure to comply may warrant sanctions including, but not limited to, those enumerated in Minn. R. Civ. P. 37.

3. Within 30 calendar days of this written order, the County may file and serve an affidavit setting forth its attorney fees, costs, and expenses incurred in connection with its motion to compel.<sup>1</sup> Any opposition to the County's affidavit must be filed and served within 10 days of service of the County's affidavit.

4. The discovery deadline specified in Paragraph 1 of the Scheduling Order is extended to February 5, 2016.

IT IS SO ORDERED.

BY THE COURT:



A handwritten signature in blue ink, appearing to read "Thomas G. Haluska", is written over a horizontal line.

Thomas G. Haluska, Judge  
MINNESOTA TAX COURT

DATED: January 22, 2016

<sup>1</sup> Minn. R. Civ. P. 37.01(d)(1).

## MEMORANDUM

Discovery in this matter was to be served by January 19, 2016.<sup>2</sup> On August 19, 2015, Mower County served Nationwide Health Properties Inc. with its first set of interrogatories and second set of document requests.<sup>3</sup> After the first deadline lapsed, the County agreed to extend the response date to October 9, 2015 at Nationwide's request.<sup>4</sup> Again, Nationwide failed to timely respond.<sup>5</sup> In an October 30, 2015 letter to Nationwide's counsel, the County asked that Nationwide provide the discovery responses no later than November 6, 2015.<sup>6</sup> On November 24, 2015, the County, yet to receive responses, sent an email reminding Nationwide's counsel that it was now six weeks past the extended deadline for discovery responses.<sup>7</sup>

When the County attempted to reach Nationwide's counsel at a scheduled phone call, counsel was unavailable.<sup>8</sup> The County emailed Nationwide's counsel on December 2, 2015, notifying Nationwide that its "failure to provide responses to [discovery] was jeopardizing [the] County's ability to prepare its case and timely complete its appraisal."<sup>9</sup> On December 3, 2015,

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<sup>2</sup> Scheduling Order, dated February 17, 2015.

<sup>3</sup> Affidavit of R. Lawrence Harris ("Aff. Harris") ¶ 2, filed December 14, 2015.

<sup>4</sup> Aff. Harris ¶ 4.

<sup>5</sup> *Id.* at ¶ 6.

<sup>6</sup> *Id.*

<sup>7</sup> *Id.* at ¶ 7.

<sup>8</sup> *Id.* at ¶ 8.

<sup>9</sup> *Id.* at ¶ 9.

Nationwide’s counsel sent the County an email promising a full response by end of day, but Nationwide did not deliver responses.<sup>10</sup>

The County now moves to compel Nationwide to respond to its discovery requests without further delay.<sup>11</sup> In its responsive motion, Nationwide provides no substantive reason for the tardy responses and only requests additional time to respond.<sup>12</sup> Moreover, counsel for Nationwide admitted at the hearing that “[t]he discovery is overdue.”<sup>13</sup>

Parties may obtain discovery by methods including written interrogatories and requests for production of documents.<sup>14</sup> A party seeking discovery may move for an order compelling an answer or production.<sup>15</sup> Additionally, the party whose conduct necessitated the motion to compel may be required to pay to the moving party the reasonable expenses incurred in making the motion, including attorney fees.<sup>16</sup> Based upon the evidence filed by the County, we grant the County’s motion to compel, order Nationwide to fully respond to the County’s discovery requests by January 13, 2016, order Nationwide to pay the County’s attorney fees pending an affidavit by the County’s representation, and extend the discovery deadline specified by Paragraph 1 of the Scheduling Order to February 5, 2016.

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<sup>10</sup> Resp’t’s Mem. Law Supp. Mot. Compel Disc. 3.

<sup>11</sup> Mot. Compel Disc. Resp.’s, filed December 14, 2015.

<sup>12</sup> Pet’s Mem. Resp. Resp’t’s Mot. Compel Disc. 1, filed December 28, 2015.

<sup>13</sup> Tr. 6.

<sup>14</sup> Minn. R. Civ. P. 26.02(b).

<sup>15</sup> Minn. R. Civ. P. 37.01(b)(2).

<sup>16</sup> Minn. R. Civ. P. 37.01(d)(1).