



Alexander M. Hagstrom
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Alex Hagstrom is a Partner at BC Davenport, LLC. The first attorney in his family, Alex was drawn to the legal profession because of his passion for trial advocacy, which developed through years of competing in collegiate mock trial tournaments.

Today, Alex specializes in enforcing the rights of developers and sponsors of affordable housing under the federal Low Income Housing Tax Credit (LIHTC) program. Alex has represented non-profit and for-profit developers in arbitrations, state and federal trial courts, and appellate courts across the country in a wide variety of important “Year 15” cases concerning Section 42 rights of first refusal, purchase options, and sales of LIHTC properties. Drawing upon his extensive litigation experience, Alex also helps clients avoid litigation by serving as a go-to advisor for negotiating resolutions of Year 15 disputes and counseling clients at the front end of new LIHTC transactions to avoid common Year 15 pitfalls.

To each matter, Alex brings a diversity of experience that gives him a unique and well-rounded grasp of the law. Alex began his career in private practice handling a wide variety of commercial litigation matters, including litigation involving construction contracts and defects, business torts, shareholder disputes, and employment disputes. Before private practice, Alex served as a judicial law clerk to The Honorable Chief Justice Lorie Gildea of the Minnesota Supreme Court and a judicial extern to The Honorable Diana Murphy of the Eighth Circuit Court of Appeals.

Outside of work, Alex enjoys golfing, home improvement projects, fitness, and playing the guitar.

REPRESENTATIVE EXPERIENCE – LIHTC “YEAR 15” DISPUTES

- Multi-Housing Tax Credit Partners XXX v. Finlay Interests 40 GP, LLC* (JAMS Arbitration December 14, 2023). Successfully represented affordable housing developer general partner in a dispute where the limited partner challenged the general partner’s distribution of sale proceeds following an agreed upon sale of the partnership’s affordable housing complex to a third-party buyer. Under the partnership agreement, residual sale proceeds were to be distributed 80% to the general partner and 20% to the limited partner. After initially agreeing to these distribution amounts, however, the limited partner demanded that the liquidation and dissolution provisions of the partnership agreement be followed instead, thereby seeking to have an additional \$1.4 million in sale proceeds be redistributed to it according to its positive capital account balance. In resolving the dispute in our client’s favor after a four-day hearing, the retired judge presiding over the arbitration determined: (a) the parties always intended for the general partner to receive “the super-majority of cash-based benefits from the Partnership (*i.e.*, 80 percent of the cash flow and residual proceeds of the sale of the Property) ... as an incentive and in compensation for its 15 years of diligent services; whereas, [the limited partner], a purely passive investor, bargained to receive 99.99% of all the substantial tax-based benefits”; (b) “[t]his has been uniformly confirmed by the growing body of case law on the issue”; (c) while a sale triggers a dissolution and liquidation of the partnership, these events and activities only occur after the sale has been completed and sale proceeds have first been distributed to the parties under the Sale and Refinance Proceeds/Capital Transactions provisions of the partnership agreement; and (d) the limited partner’s interpretation would lead to an absurd result where the general partner would be deprived of the benefits of its bargain, the fruits of its labor, and otherwise give virtually all of the benefits generated by the partnership over 15 years to the limited partner. Because the limited partner was found to have acted “without substantial justification” in pursuing the arbitration, the arbitrator also awarded the client its reasonable attorneys’ fees and costs, as provided for under the partnership agreement.
- SunAmerica Housing Fund 1050 v. Pathway of Pontiac, Inc.*, 33 F.4th 872 (6th Cir. 2022). Successfully represented affordable housing project sponsors/general partners in overturning federal trial court summary judgment decision holding that a Section 42 ROFR had not been properly exercised due to (a) the lack of a bona fide offer, as defined by the common law; and (b) the general partners needed to manifest a true intention to sell the property to a third party. Regarding the receipt of a bona fide offer, which was an express condition in the parties’ agreement, the trial court applied common law principles associated with traditional rights of first refusal (*i.e.*, meet and match rights of first refusal) and held that the offer received was not bona fide because it was: (i) solicited for the purpose of triggering the ROFR, and (ii) not legally enforceable since the offeror could terminate any resulting agreement “for any reason or no reason” during an investigation period. The district court also held that the general partners lacked a true intent to sell the property and merely wanted the ROFR to be exercised by the nonprofit ROFR holder. Based on these determinations, the trial court held that the general partners breached their fiduciary duties to the limited partners. On appeal, our team successfully argued that there are important distinctions between common law rights of first refusal and Section 42(i)(7) ROFRs, and imposing general common law principles on the latter would: (1) contravene the well-understood purpose of Section 42(i)(7) “to make it easier for nonprofits to regain

ownership of the property and continue the availability of low-income housing”; and (2) serve to render the Section 42(i)(7) ROFR negotiated between the parties meaningless. Agreeing, the Sixth Circuit issued several important holdings, including that soliciting an offer from a serious buyer that knew the ROFR-holder would likely exercise its below-market rights under its ROFR may well be the only way to trigger such a ROFR where a bona fide offer requirement existed in the parties’ agreements. Additionally, rather than adopting the trial court’s narrow view that an true intent to sell specifically to a third-party buyer must exist, the Sixth Circuit held that: (i) Section 42(i)(7) “only requires an intent to sell generally and does not, in and of itself, require the existence of a bona fide offer”; and (ii) the general partners must only have a general intent to sell the property, which was already demonstrated, in part, by the fact that they had solicited and entertained an offer from a third-party. The Sixth Circuit also held that the general partners’ knowledge of the ROFR holder’s intention to exercise its special right if a third party makes an offer does not defeat a willingness to sell the property because, this too, would render the ROFR meaningless. Accordingly, the Sixth Circuit reversed and remanded the case back to the trial court so that the parties could resolve their dispute. The case settled shortly thereafter.

- *Opa-Locka Community Development Corp., Inc. v. HK Aswan, LLC et al.*, 2020 WL 4381624 (Fla.Cir.Ct., July 07, 2020), *aff’d*, 335 So. 3d 1200 (Fla. Dist. Ct. App. 2021). Successfully represented a non-profit affordable housing sponsor through the enforcement of a Section 42 ROFR, prevailing over its partners who sought to sell a 216-unit affordable housing development located in Miami-Dade County to a third-party investment firm without honoring our client’s ROFR. On summary judgment, a Florida trial court issued a decisive ruling in favor of our client on all issues presented, including dismissing all claims and defenses presented by the defendants challenging the ROFR, including a claim whereby the client would be obligated to pay millions more to purchase the 216-unit affordable housing development than it would have to pay under its bargained-for ROFR. In ruling in our client’s favor, the trial court instead ordered defendants to specifically perform under the ROFR by transferring the 216-unit affordable housing development to the client for the “minimum purchase price” established by the parties’ agreement and Section 42(i)(7). The Florida Third District Court of Appeal summarily affirmed on appeal.
- *AHC, Inc. et al. v. DLE Investors, LP*, Case No. 211225 (2022). Successfully represented client in connection with exercising Section 42 ROFR and resisting subsequent efforts to overturn the sale. The case was ultimately argued to, and a discretionary appeal was granted by, the Virginia Supreme Court. The case was later dismissed as moot in the client’s favor.

REPRESENTATIVE EXPERIENCE – CONSTRUCTION & REAL ESTATE LITIGATION

- Successfully represented commercial general contractor in complex, multi-party dispute, obtaining summary judgment awarding a money judgment, inclusive of attorneys’ fees and costs, in excess of half a million dollars, granting the foreclosure of a mechanic’s lien for the same amount, and dismissing the owner’s counterclaims based on findings of bad-faith spoliation of evidence and failure to provide an opportunity to cure alleged construction defects.

- Successfully represented real estate developer in complex, multi-party dispute involving the decade-old construction of a large condominium development by numerous contractors, obtaining a fact-intensive summary judgment dismissing a majority of the plaintiff condominium association's construction defect claims on statute of limitations grounds, and thereafter negotiating a favorable settlement.
- Successfully represented and negotiated settlements for a real estate developer in various land use, construction contract, and earnest money disputes.
- Successfully defended, pro bono, a homeowner being sued by a real estate broker and real estate agent for the non-payment of a commission on the cancelled sale of a family cabin, and successfully countersuing for damages based on breach of fiduciary duty and fraud.
- Successfully defended a restaurateur in an eviction action.
- Successfully represented homeowner in construction defect dispute, procuring a settlement whereby the builder agreed to remedy all of the defects free of charge and reimbursed the client for all attorneys' fees and miscellaneous costs incurred in procuring the settlement.

REPRESENTATIVE EXPERIENCE – BUSINESS & COMMERCIAL LITIGATION

- Successfully represented equipment finance arm of national bank, first-chairing a bench trial involving breach of contract and replevin claims that resulted in a settlement in favor of the bank for the full amount of damages sought, plus attorneys' fees.
- *Rodgers v. Silva*, 920 N.W.2d 664 (Minn. Ct. App. 2018). Successfully represented client in appeal of case dismissal.
- Successfully represented an investor in the recovery of a debt, negotiating a complex settlement for the full amount of the debt, plus attorneys' fees incurred in pursuing the debt.
- Successfully represented scrap metal dealer in a putative class action lawsuit, obtaining a denial of class certification that resulted in the reduction of a putative class of more than one hundred persons to a class of one, a reduction of alleged liability in the millions to a nominal amount, and a favorable settlement following shortly thereafter.
- Successfully obtained dismissal of federal lawsuit in which the plaintiff was seeking to freeze more than \$17 million in funds.
- Successfully represented owner of numerous fast-food franchises in various federal and state court litigation matters, including defeating lawsuits asserting various workers' compensation claims, employee discrimination claims, hostile work environment claims, and Immigration Reform and Control Act issues.
- Successfully represented Walmart Stores, Inc. in various matters involving payment and product warranty issues, obtaining favorable, cost-effective settlements.

- Successfully negotiated numerous favorable settlements on behalf of both plaintiffs and defendants and businesses ranging from small to large, in various federal and state court business and commercial disputes, including various business tort claims, non-compete and non-solicitation claims, and employment-related payment and discrimination disputes.
- Successfully negotiated the payment of six-figure judgments through post-judgment procedures and litigation.

EDUCATION

University of Minnesota Duluth, B.A. Political Science, summa cum laude, 2012

- Phi Kappa Phi Honor Society
- Student Legislative Advocate for the University of Minnesota Duluth

University of Minnesota Law School, J.D., magna cum laude, 2015

- Managing Editor, Minnesota Law Review
- Legal Writing Student Instructor
- American College of Trial Lawyers 40th Annual National Trial Competition Regional Champion
- American College of Trial Lawyers Medal for Excellence in Advocacy

BAR ADMISSIONS

Minnesota, 2015

Florida, 2023

U.S. District Court, D. Minn., 2016

U.S. District Court, E.D. Tex., 2017

U.S. Court of Appeals, 6th Cir., 2021

CLERKSHIPS

Clerkship, Hon. Chief Justice Lorie Gildea, Minnesota Supreme Court

Judicial Extern, Hon. Diana E. Murphy, U.S. Court of Appeals, 8th Cir.

PUBLICATIONS

Co-Author of “*Legally Speaking: Evolution of the Aggregator’s Playbook*” NH&RA Tax Credit Advisor, Issue: 05.2023

Co-Author of “Report Investigation Findings and Conclusion” Chapter of *Handling Internal Investigations: Best Practices for Investigating Alleged Fraud, Bribery, Regulatory Noncompliance, and Other Types of Corporate Wrongdoing*. Minnesota CLE. 05.2017

EVENTS

“Preservation Part I: The Triple Threat to Preservation--Volume, Vultures, and Values” / Panelist. Virginia Housing Alliance’s 2023 Housing Credit Conference. 09.19.2023

“Year 15 Roadblocks and Solutions CLE” / Presenter. Cannon Heyman & Weiss, LLP. 03.01.2023

“NHT Quarterly ROFR Working Group” / Presenter. National Housing Trust. 05.22.2022

HONORS

MSBA North Star Lawyer 2017-2019

ASSOCIATIONS

Minnesota State Bar Association, Construction Law Section
Hennepin County Bar Association
American Bar Association
Federal Bar Association
Volunteer Lawyers Network
Innocence Project of Minnesota