



STATE OF MINNESOTA  
IN COURT OF APPEALS  
Appellate Court Case No. A10-2211

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Mahmood Khan,  
  
Relator,

vs.

City of Minneapolis,  
  
Respondent.

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RELATOR'S BRIEF AND APPENDIX

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The appendix to this brief is not available for online viewing as specified in the *Minnesota Rules of Public Access to the Records of the Judicial Branch*, Rule 8, Subd. 2(e)(2).

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## STATEMENT OF ISSUES

1. Is the administrative hearing officer system employed by the City of Minneapolis unconstitutional as a deprivation of due process of law as guaranteed by the Fourteenth Amendment to the United States Constitution?

Because the hearing officer lacked subject matter jurisdiction over this issue, it was not addressed below.

2. Was the evidence sufficient to support revocation of Relator's license, despite the fact that there was no evidence that Relator "let or allowed" his tenants to violate the city's ordinances.

The hearing officer and the City Council held in the affirmative.

## STATEMENT OF PROCEDURAL HISTORY

Relator is the owner of a single family home, located at 3223 Bryant Ave. N., Minneapolis, which Relator rented to tenants, pursuant to a rental license issued by Respondent City of Minneapolis.<sup>1</sup>

On March 12, 2009, City inspectors issued Relator an order, a copy of which is set forth in Relator's Appendix at A. 25-26, because the basement of the subject premises was being used as a sleeping room, in violation of city ordinances.

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<sup>1</sup>Relator's ownership of the subject property is set forth in Relator's Appendix at A. 22. His rental license application is set forth at A. 18-19.

The problem was remedied by Relator on April 27, 2009.<sup>2</sup>

More than one year later, another inspection took place in the same house, and city inspectors found a bed, dresser and other furniture in a basement room, indicating that it was being used as a sleeping room.<sup>3</sup> As a result, the City Department of Regulatory Services issued Relator a notice, a copy of which is set forth in Relator's Appendix at A. 40-A.42, seeking to revoke his rental license for a second violation of the occupancy standards in the city's ordinances.

From that notice, Relator took a timely appeal.<sup>4</sup> Relator's administrative appeal was heard on Aug. 16, 2010 before Fabian Hoffner, an Administrative Hearing Officer for the City. On Sept. 27, 2010, Hearing Officer Hoffner issued Findings of Fact, Conclusions and Recommendation, set forth in Relator's Appendix at A. 3-A.9, recommending that Relator's rental license be revoked.

On Oct. 22, 2010, the Minneapolis City Council adopted Hearing Officer Hoffner's recommendation and revoked Relator's rental license.<sup>5</sup>

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<sup>2</sup>See Relator's Appendix at A. 24.

<sup>3</sup>See *Id.* at A.30.

<sup>4</sup>Relator's Appeal Application is set forth at *Id.* at A.43.

<sup>5</sup>*Id.* at A. 52.

From that decision, Relator sought timely *certiorari* review in this Court.<sup>6</sup>

### STATEMENT OF THE CASE

Minneapolis Code of Ordinances Sec. 244.1810 provides, in pertinent part:

No person shall allow to be occupied, let or offer to let to another for occupancy, any dwelling unit unless the owner has first obtained a license or provisional license under the terms of this article.<sup>7</sup>

M.C.O. Sec. 244.1910 sets forth the standards for denial, nonrenewal, or revocation of a rental license. Among the standards is the one set forth in subparagraph (3), “No rental dwelling or rental dwelling unit shall be over occupied or illegally occupied in violation of the zoning code or the housing maintenance code.”<sup>8</sup> At issue in the instant case are the provisions of Secs. 244.840 and 244.850, which provide as follows:

244.840. No cellar space shall be used as a habitable room or dwelling unit, except such cellar space which now, or at the time of its habitation, conformed with the applicable building code provisions regulating the use of such space.

244.850. No basement space shall be used as a habitable room or dwelling unit unless:

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<sup>6</sup>Relator’s Petition for writ of *certiorari* is set forth *Id. at* A.54-A.55 and the writ is set forth at A. 56-A.57.

<sup>7</sup>A copy of the ordinance is set forth in Relator’s Appendix at A.16.

<sup>8</sup>*Id. at* A. 11.

- (a) The floors and walls are impervious to leakage of underground and surface runoff water and are insulated against dampness;
- (b) The total window area in each room is equal to at least the minimum window area sizes as required in Sec. 244.410.<sup>9</sup>
- (c) The total openable window area or mechanical ventilation in each room is equal to at least the minimum as required in Sec. 244.410<sup>10</sup>

In the hearing before Hearing Officer Hoffner, City Inspector Sheila Rawski testified that, upon a complaint from a tenant, she conducted of Relator's premises at 3223 Bryant Ave. N. on May 25, 2010 (T. 6).<sup>11</sup> In that inspection, she testified that she found a "bed, dresser, couch and chair" in the basement, suggesting that the basement was being illegally occupied as a bedroom. *Id.*

However, Inspector Rawski testified that, upon reinspection of the premises on July 6, 2010, the bed had been removed and a new tenant was occupying the premises (T.22).

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<sup>9</sup>Sec. 244.410 is set forth in Relator's Appendix at A.60 and required habitable rooms to have windows of a size equal to no less than 8 per cent of the floor area for rooms greater than eight square feet in size.

<sup>10</sup>The ordinances are set forth in Relator's Appendix at A. 59. These are the ordinances relied upon by the city in its violation notices to Relator. See *Id.* at A. 25.

<sup>11</sup>The record in this case consists of three verbatim transcripts: A transcript of the evidentiary hearing before Hearing Officer Hoffner; a transcript of the proceedings before the Regulatory, Energy & Environment Committee of the Minneapolis City Council; and a transcript of the proceedings before the full City Council. All references to the transcript in this brief will be to the transcript of the evidentiary hearing before Hearing Officer Hoffner.

City Inspector Valerie Asante testified that on May 12, 2009, more than a year earlier, she conducted an inspection at the subject property and found “a bed down there and pillows and the tenant’s (sic) also agreed that they were illegally occupying that (T.59).” She testified that she sent to Relator a Director’s Notice of Non-Compliance directing Relator to correct the illegal occupancy (T.60). She stated that another inspector, Rod Thomas, conducted a subsequent inspection and that Relator had put the premises into compliance (T. 61).

The following exchange took place between Relator’s attorney and Inspector Asante on cross-examination:

Q. Did the tenants tell you that they made the decision to sleep in the basement on their own or did they tell you that the landlord had directed them to sleep in the basement?

A. They didn’t tell me.

T. 61-T. 62.

Neither inspector offered any evidence that the tenants’ illegal occupancy of the basement area of the house was done with Relator’s knowledge or consent; quite to the contrary, both testified that, when the illegal occupancy was brought to Relator’s attention, he saw to it that the illegal occupancies ended.<sup>12</sup>

Janine Atchison, the City’s District Manager for Housing Inspection

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<sup>12</sup>See T. 22, T. 61.

Services, testified that it is the City's policy to revoke a rental license upon a second incident of illegal occupancy (T. 27). She stated:

The illegal occupancy policy is, is that we will notify you one time, through Directors Determination of Non-Compliance, that the building is not in compliance, that if a second incident occurs or if the building does not come immediately into compliance, that we will pursue revocation because it is a violation of the rental licensing standard.

T. 30.

The following exchange took place between Relator's attorney and Ms.

Atchison on cross examination:

Q. So if [Relator] does this in 20 years, this is after you retire and your granddaughter has your job, he's going to be revoked again, the way you interpret this?

A. I would interpret it that they has to be a—that we probably would not not follow through after five years. We have a policy in-house that we wouldn't follow this after five years or ther was—unless there was, you know, an incident within that time frame.

T. 35.<sup>13</sup>

Melvin Snooky, Relator's manager, testified that he had confronted the tenants concerning occupancy of the basement, stating:

I told the people in the residence, when I went there, told them that

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<sup>13</sup>Although Ms. Atchison testified that this was a written policy (T. 36), no such policy was introduced into evidence, and no such written policy is part of the record in this case. Ms. Atchison admitted that nothing on the face of the City's licensing standards, Sec. 244.1910 supports the policy she testified to. See T. 42.

they're not allowed to have any furniture or anything in the basement like beds, 'cause the city code inspection's not going to allow us to have that in our properties. They told me they were going to remove the property. I told them okay, remove it, and I left. So then I came back two days later, I seen (sic) it again, and that's when I told them, personally myself, I'm the manager of the properties, please remove it or I'm going to have you evicted. That's when I told my supervisor, Mahmood Kahn, or whatever, that they cannot have this, we need to get rid of this situation. We filed charges against them and removed them.

T. 68.

Snoodly denied ever approving or letting tenants place a mattress in the basement of the property (T. 69). He testified that, after the eviction, he told the new tenants, "[T]here better not be no (sic) mattresses down there or there's going to be a problem (T. 80)."

Relator testified that he owns some 40 residential rental properties in the city of Minneapolis (T. 82). He testified that, after the first occupancy violation occurred in May of 2009, nobody from the city ever told him that a second violation within five years would result in the revocation of his rental license (T.83).

Relator testified that, because of serious rental delinquencies and because of the number of people going in and out, he decided to evict the tenants at 3223 Bryant Ave. N. on May 13, 2010. He added:

Then when the eviction was completed, I gave the paper to the sheriff's office to formally move them out of the property. The sheriff posted

the paper that they had 24 hours to move out, and that's probably when they called the inspection.<sup>14</sup>

Relator objected to being subject to a license revocation based solely on his tenants' conduct, stating:

[I]f I give somebody my car to rent, license—really, it's my car, but if somebody's speeding down the freeway, should I be getting the ticket or the person who's driving the car should be getting the ticket?

T. 92.

The hearing at which Relator's rights and obligations in the instant case were determined took place before an administrative hearing officer, whose appointment and authority are governed by M.C.O. Sec. 2.100, set forth in Relator's Appendix at A. 64-A. 65. The selection of hearing officers is governed by subparagraph (b) of the ordinance, which provides, in pertinent part, "The city attorney will periodically approve a list of lawyers from which the city attorney will select a hearing officer to mediate and hear a matter for which a hearing is requested." *Id.* at A. 64.

Not only does the city attorney, who represents city agencies in administrative appeals such as Relator's, select the hearing officer, but the city

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<sup>14</sup>The record of the eviction, set forth in Relator's Appendix A.48-A.50, supports Relator's testimony as to timing. Judgment in the eviction proceeding was rendered on May 21. The inspection occurred four days later, likely coinciding with the sheriff's service of a writ of recovery.

attorney's office compensates the hearing officer, and that compensation is substantial. Set forth in Relator's Appendix at A. 67 is a Request for City Council Committee Action to compensate Fabian Hoffner, the hearing officer who heard Relator's appeal, the amount of \$175,000.00 over a three-year period.<sup>15</sup>

Based upon these facts, Relator seeks reversal of the city's decision.

## **ARGUMENT**

### **I. THE ADMINISTRATIVE HEARING PROCEDURE UNDER WHICH RELATOR LOST HIS LICENSE IS UNCONSTITUTIONAL.**

#### **A. RELATOR MAY CHALLENGE THE CONSTITUTIONALITY OF THE CITY'S HEARING OFFICER PROCEDURE, NOTWITHSTANDING HIS FAILURE TO DO SO IN PROCEEDINGS BELOW.**

Although appellate courts generally do not consider constitutional questions on appeal when those questions are not raised below,<sup>16</sup> a different standard applies when reviewing a decision of an administrative agency, which does not have subject

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<sup>15</sup>To be sure, this document was not part of the record below. However, it is a public record of which this Court may take judicial notice. See Minn.R.Evid. 201. See also *In Re: Welfare of T.D.*, 732 N.W.2d 548, 553 (Minn. App. 2007): "Judicial notice expedites litigation because it avoids the time and expense required to formally prove factual matters determinable from unquestionable sources of information. [Citation omitted.] A court may take judicial notice of a fact at any stage of the proceeding and may do so on its own initiative and when requested by a party that supplies the court with the information. Minn.R.Evid. 201(c)-(d)-(f)." Judicial notice can also be taken by a court on appeal. See *Nelms v. Civil Service Commission*, 220 N.W.2d 300, 303 (Minn. 1974).

<sup>16</sup>See *Egelund v. State*, 408 N.W.2d 848, 852 (Minn. 1987).

matter jurisdiction to consider constitutional issues. In such circumstances, appellate courts will consider constitutional challenges for the first time on appeal where the issues are fully briefed on a complete record. See *Holmberg v. Holmberg*, 578 N.W. 2d 817, 820 (Minn. 1998). Consequently, it is clear that the constitutional challenge raised by Relator is properly before this Court.

**B. THE CITY'S HEARING OFFICER PROCEDURE DEPRIVES RELATOR OF DUE PROCESS OF LAW, IN VIOLATION OF THE FOURTEENTH AMENDMENT TO THE U.S. CONSTITUTION.**

Numerous court, including the United States Supreme Court, have repeatedly held that it is a violation of the Due Process Clause of the Fourteenth Amendment to the U.S. Constitution for an adjudicative agency to have a direct financial interest in the outcome of an adjudication before it. Instructive is the decision of the United States Supreme Court in *Tumey v. Ohio*, 273 U.S. 210, 47 S.Ct. 437 (1927), in which the Court reversed a criminal conviction of a Defendant found guilty of unlawfully possessing intoxicating liquor, under a system where the town mayor was permitted to act as a judge on misdemeanor offenses. Under the system adopted by the State of Ohio and the town in question, one-half of the money paid from fine and forfeitures was paid to the state treasury and one-half to the municipality where the prosecution was held. *Id.* at 515, 47 S.Ct. at 439. The

municipality, in turn, adopted an ordinance whereby the deputy marshals charged with enforcing the law received 15 per cent of the fine money, the prosecutor 10 per cent, the detectives in the secret service 15 per cent, and the mayor, who acted as the judge, received the right to retain the amount of his costs, in addition to his regular salary. *Id.*

The United State Supreme Court noted:

The fees which the mayor and the marshal received in this case came to them by virtue of the general statutes of the state applying to all state cases, liquor and otherwise. The Mayor was entitled to hold the legal fees taxed in his favor. [Citation omitted.] Moreover, the North College Hill Village Council sought to remove all doubt on this point by providing [Citation omitted.] that he should receive or retain the amount of his costs in each case in addition to his regular salary in compensation for hearing such cases. But no fees or costs in such case are paid him, except by the Defendant, if convicted. There is, therefore, no way by which the Mayor may be paid for his service as a judge, if he does not convict those before him; nor is there any fund from which the marshals, inspectors, and detectives can be paid for their services in arresting and bringing to trial and furnishing evidence to convict these cases except it be from the initial \$500 which the village may vote from its treasury to set the court going or from a fund created by fines thereafter collected from convicted Defendants. *Id.* at 520, 47 S.Ct. at 440.

In holding that the foregoing financial arrangements deprived Defendants of due process of law, the Court stated:

All questions of judicial qualifications may not involve constitutional validity. Thus, matters of kinship, personal bias, state policy, remoteness of interest would generally seem to be matters of legislative discretion. [Citations omitted.] But it certainly violates the Fourteenth

Amendment and deprives the Defendant in a criminal case of due process of law to subject his liberty or property to the judgment of a court, the judge of which has a direct, substantial pecuniary interest in reaching the conclusion against him in a case.

The Mayor of the Village of North College Hill, Ohio, had a direct personal pecuniary interest in convicting the Defendant, who came before him for trial, in the \$12 of costs imposed on his behalf, which he would not have received if the Defendant had been acquitted. This was not the exceptional, but was the normal operation of the law and ordinance. *Id.* at 523, 47 S.Ct. at 444.

The Court went on to say that it did not matter whether the mayors were men of honor for whom the financial incentive would not compromise their integrity, stating:

There are doubtless mayors who would not allow such a consideration as \$12 costs in each case to affect their judgment in it, but the requirement of due process of law in judicial procedure is not satisfied by the argument that men of this highest honor and the greatest self-sacrifice could not carry it on without danger of injustice. Every procedure which would offer a possible temptation to the average man as a judge to forget the burden of proof to convict the Defendant, or which might lead him not to hold the balance nice, clear and true between the state and the accused denies the latter due process of law. *Id.* at 523, 47 S.Ct. at 444.

More recently, in *Aetna Life Ins. Co. v. LaVoie*, 475 U.S. 813, 106 S.Ct. 1580, 89 L.Ed.2d 823 (1986), the Court held the principle in *Tumey* to apply even in a civil case, where the judge in question had a pecuniary interest in the outcome. In that case, the United States Supreme Court reversed a 5-4 decision of the Alabama Supreme Court, which found that an insurance company had acted in bad

faith in refusing to pay a valid claim, recognizing, for the first time, an intentional tort of bad faith in refusing to pay a valid claim in first party insurance actions. *Id.* at 816, 106 S.Ct. at 1582.

However, at the time he voted in the majority, one of the Alabama Supreme Court justices had filed two actions in state courts against insurance companies, alleging a tort of bad faith failure to pay a valid insurance claim. The United States Supreme Court concluded:

We conclude that Justice Embry's participation in this case violated Appellant's due process rights as explicated in *Tumey*; [*In Re: Murchison*, [349 U.S. 133, 75 S.Ct. 623, 99 L.Ed. 942 (1955)]; and *Ward [v. City of Monroeville*, 409 U.S. 57, 93 S.Ct. 80, 34 L.Ed.2d 267(1972)]. We make it clear that we are not required to decide whether in fact Justice Embry was influenced, but only whether sitting on a case then before the Alabama Supreme Court "would offer a possible temptation to the average...judge to...lead him not to hold the balance nice, clear and true." [Citation to *Tumey* omitted.] The Due Process Clause "may sometimes bar trial by judges who have no actual bias and who would do their very best to weigh the scales of justice equally between the contending parties. But to perform at its high function in the best way, justice must satisfy the appearance of justice." [Citation omitted.] *Id.* at 825, 106 S.Ct. at 1587.

Most recently, the California Supreme Court addressed the same issue in a civil context in a case indistinguishable from the instant case. In *Haas v. County of San Bernardino*, 24 Cal.4th 1017, 119 Cal.Rptr.2d 341, 45 P.3d 280 (2002), the court reversed the revocation of a massage parlor license, based upon the due

process violation in the administrative procedure by which license revocations were reviewed. In California, when a license holder challenged the revocation of his or her business license, municipalities routinely referred the matters to ad hoc hearing examiners, who were selected by the municipalities and compensated on a case-by-case basis. In *Haas*, the license holder challenged the validity of this procedure, pointing out that the county, by both paying and selecting the hearing examiners, created a financial incentive for the hearing examiners to rule in the county's favor, since any hearing examiner consistently ruling against the county would run the risk of not obtaining future business. In declaring the system to be unconstitutional under the Due Process Clause, the California Supreme Court stated:

The compensation system at issue in this case before us is functionally similar to the system condemned in *Brown [v. Vance]*, 637 F.2d 272 (5<sup>th</sup> Cir. 1981)] and other fee system cases. [Citations omitted.] Here, as there, the prosecuting authority may elect its adjudicator at will, the only formal restriction being that the person must have been licensed to practice law for at least five years. [Citation and footnote omitted.] Here, as there, while the adjudicator's pay is not formally dependent upon the outcome of the litigation, his or her income as an adjudicator is entirely dependent on the good will of the prosecuting agency that is free to select its adjudicators and it must, therefore, be presumed to favor its own rational self-interest by preferring those who tend to issue favorable rulings. Finally, adjudicators selected and paid in this manner, for the same reason here as there, have a "possible temptation...not to hold the balance nice, clear and true." [Citation to *Tumey* omitted.]

119 Cal.Rptr. 2d at 350-351.

The system set forth in M.C.O. Sec. 2.100 is essentially identical to that found unconstitutional by the California Supreme Court in *Haas*. As in *Haas*, the administrative hearing officers are selected exclusively by the Minneapolis City Attorney. As in *Haas*, the hearing officers are compensated exclusively by the City. The hearing officers in Minneapolis have the identical financial incentive to rule in the City's favor, in order to secure future business.

The extent of that financial incentive is plainly set forth in Relator's Appendix at A. 67. As that document notes, the hearing officer who heard Relator's appeal was compensated to the tune of \$175,000 over three years by the City of Minneapolis. Clearly, as in *Tumey*, the prospect of a \$12 cost award was a sufficient temptation for the average judge "not to hold the balance, nice, clear, and true," imagine the temptation posed by \$175,000.00.<sup>17</sup>

This Court should hold such a system inherently violative of due process.

## **II. THE EVIDENCE BEFORE THE HEARING OFFICER WAS INSUFFICIENT TO JUSTIFY THE REVOCATION.**

To be sure, this Court is deferential to administrative decisions upon

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<sup>17</sup>To be sure, the Minneapolis system is distinguishable from *Haas* in that the hearing officer in Minneapolis are selected for three-year terms, rather than on an ad hoc basis as in *Haas*. However, this is a distinction that exacerbates the financial incentive to the adjudicator rather than alleviates it. Instead being tempted by the prospect of a few future ad hoc hearings, hearing officers in Minneapolis are tempted by the prospect of continuing a \$175,000 income stream over three years.

*certiorari* review. In *Radke v. St. Louis County Board*, 558 N.W.2d 282, 284 (Minn.App. 1997), this Court held that, upon *certiorari* review, this Court is limited to considering (a) the jurisdiction of the inferior tribunal; (b) whether the proceedings were fair and regular; and (c) whether the decision was unreasonable, oppressive, arbitrary, fraudulent, without any evidentiary support, or based upon an incorrect theory of law.

However, a review of this record plainly indicates that, while the factual testimony was essentially undisputed,<sup>18</sup> the legal theory under which both the City and the hearing officer proceeded was fundamentally flawed and should be reversed by this Court.

According to the testimony of witness Atchison, the City sought revocation under the theory that Relator had committed two violations of the city's ordinances governing occupancy of the basement area in his rental housing unit. See T. 30. The ordinances governing the use of cellars and basements as habitable rooms and dwelling units are Secs. 244.840, 244.850, and 244.410, all of which are quoted,

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<sup>18</sup>The parties did dispute whether the City ever advised Relator, after the first incident of illegal occupancy, that a second incident would result in the revocation of his rental license. Janine Atchison, director of the City's license revocation process, testified that "we" told Relator, after this first incident of illegal occupancy, that if there was a second violation, his license would be subject to revocation (T.35). Relator denied ever having been so advised (T. 83). This small discrepancy in testimony is not outcome-determinative here.

largely verbatim, *supra*, and all of which are set forth in Relator's Appendix at A. 58-A. 61. However, what is missing from anything submitted by the City is the ordinance's requirements for a violation thereof to occur. Sections 244.840 and 244.850 are preceded by M.C.O. Sec. 244.790, which provides, "No person shall occupy or *let or allow another to occupy* any building or other structure for the purpose of living therein which does not comply with the requirements set forth in this article (Emphasis supplied)."<sup>19</sup> Likewise, Sec. 244.410 is preceded by Sec. 244.400, which provides, "No person shall occupy as an owner-occupant or *let or allow another to occupy* any building or structure for the purpose of living therein which does not comply with the requirements set forth in this article (Emphasis supplied)."<sup>20</sup>

In other words, in order for Relator to have violated the ordinances concerning basement occupancy, it is not enough that the illegal occupancy occurred; Relator must have either engaged in such occupancy himself, or he must have "let or allowed" another to engage in such occupancy.

It is clear from prior decisions of this Court that the words "let or allow" require a knowing act of permission on the part of Relator. Obviously, the words

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<sup>19</sup>Relator's Appendix at A. 58.

<sup>20</sup>*Id.* at A.60.

“let or allow” are indistinguishable from the word “permit,” as used by this Court in *State v. Wohsol*, 670 N.W.2d 292, 297 (Minn. App. 2003), which considered the meaning of a statute prohibiting a bar from permitting the sale of alcohol to minors.

This Court stated:

We conclude that the meaning of the word “permit” as used in Minn. Stats. Sec. 340A.503, subd. 1(a)(1), is clear and requires an element of knowledge of the violation such that the licensee authorized, tolerated or ratified the sale of intoxicating liquor to minors before the licensee may be found criminally liable under the statute.

While *Wohsol* involved a criminal statutes, the same result was reached by this Court in its unpublished decision in *Norshor Experience, Inc. v. City of Duluth*, Appellate Court Case No. A09-1392 (Minn. App. 2010), a copy of which is set forth in Relator’s Appendix at A. 68-A. 76. As in the instant case, *Norshor Experience* involved *certiorari* review of disciplinary action taken against a license, in that case, a liquor license. One of the ordinances at issue in that case was one that stated that a bar may not “permit” liquor to be removed from the premises.

This Court stated:

[T]he [Alcohol Tobacco and Gaming Commission] likely did not have evidence that relator “permitted” alcohol to be consumed in public. As the police officer agrees, there is no evidence that relator or its employees permitted the patron to take a drink outside, or even knew he did so. And the record shows that there was a sign by relator’s back door stating that alcohol was not permitted outside.

Relator's Appendix at A. 73.

Such an interpretation of the city's ordinances is also consistent with the presumptions contained in Minn. Stats. Sec. 645.17(1) that the legislature "does not intend a result that is absurd, impossible of execution or unreasonable."

To hold, as the City in this case would, that a landlord is absolutely liable for the unlawful acts of his or her tenants, as far as license revocation is concerned, regardless of the landlord's knowledge or intent, clearly leads to unjust, absurd and unreasonable results, as the facts of this case clearly illustrate. In this case, Relator sought eviction of the very tenants who had engaged in the unlawful occupation. The day the tenants were served with the writ of recovery, they call the city inspectors and point out the beds they had put in the basement. Any tenant seeking revenge on a landlord who evicts him can simply move furniture into a basement room, call the inspectors and cost the landlord his rental license. A more absurd or unreasonable result could hardly be imagined.

Judged by the correct legal standard, the evidence against Relator is non-existent. Not a shred of evidence was offered by the city that Relator "let or allowed" either of the illegal occupancies. Obviously, if, upon receiving notice of either illegal occupancy, he had taken no action to correct it, that would constitute letting or allowing. However, that is not what the evidence in this case shows.

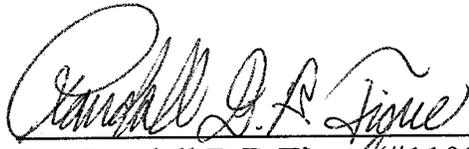
Quite to the contrary, on both occasions in which tenants moved furniture into the basement, Relator put an end to the illegal occupancy within the time given him by the City. Moreover, as noted, *supra*, Inspector Asante, with respect to the first incident, could not testify that the tenants had engaged in their illegal occupation with Relator's knowledge or consent (T. 61-T.62). The testimony of Relator and his manager Melvin Snoody that they advised tenants not to occupy the basement rooms as sleeping quarters was uncontradicted.

Thus, absolutely no evidence supports this revocation, if judged by the proper legal standard.

### **CONCLUSION**

For all of the foregoing reasons, the City's revocation of Relator's rental license should be reversed.

**RANDALL TIGUE LAW OFFICE, P.A.**

A handwritten signature in cursive script, reading "Randall D.B. Tigue", positioned above a horizontal line.

By: Randall D.B. Tigue (#110000)

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