

NO. A10-2211

State of Minnesota
In Court of Appeals

In the Matter of the Rental Dwelling License
held by Mahmood Khan for the Premises at
3223 Bryant Avenue N. Minneapolis, Minnesota

**RESPONDENT'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 FOR REVIEW

I. Whether the City of Minneapolis' Administrative Hearing Process is unconstitutional under the Due Process Clause of the Fourteenth Amendment of the United States Constitution?

The constitutionality of the Administrative Hearing Process was not before the administrative hearing officer as the hearing officer does not possess the authority to rule on the constitutionality of city ordinances.

Apposite Authority

Goldberg v. Kelly, 397 U.S. 254, 90 S. Ct. 1011, 25 L. Ed. 2d 287 (1970)

Buchwald v. Univ. of Minn., 573 N.W.2d 723, (Minn. App. 1998)

Russell v. Special School District No. 6, 366 N.W.2d 700, (Minn. App. 1985)

II. Whether the Minneapolis City Council's quasi-judicial decision to revoke Relator's rental dwelling license was arbitrary and capricious; made upon unlawful procedure or unsupported by any substantial evidence in the record?

The City's decision to revoke Relator's rental dwelling license is supported by substantial evidence in the record, was not arbitrary or capricious, and was not made upon unlawful procedure.

Apposite Authority

Senior v. City of Edina, 547 N.W.2d 411 (Minn.App. 1996)

Arcadia Dev. Corp. v. City of Bloomington, 125 N.W.2d 846 (Minn. 1964)

In re Excess Surplus Status of Blue Cross & Blue Shield, 624 N.W.2d 264 (Minn. 2001)

STATEMENT OF THE CASE

Relator, Mahmood Khan, is the owner of a single family home, located at 3223 Bryant Avenue N. (the Property), in the City of Minneapolis. On November 5, 2008, Relator applied for a rental dwelling license for the Property and was issued a rental dwelling license by the City of Minneapolis. Relator's Appendix (Rel. Appx.) A.18. On March 12, 2009, inspectors, from the City of Minneapolis Housing Inspections Division, issued Relator an order to discontinue the unlawful occupancy of the non-habitable basement space, in the Property, as a habitable room or dwelling unit. Rel. Appx. A.25. On March 16, 2009, a Director's Determination of Non-Compliance was issued to Relator, notifying him that the Property was in violation of Minneapolis, Minn. Code of Ordinances § 244.1910 (3), which states: 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. Rel. Appx. A.29. The violation was abated by inspectors on April 27, 2009.

On May 25, 2010, City inspectors conducted an inspection at the Property and discovered that the basement was again being used as a sleeping room. Rel. Appx. A.30. On June 14, 2010, Relator was sent a Notice of Revocation, Denial, Non-Renewal or Suspension of Rental License or Provisional License. Rel. Appx. A.40-A.42. Relator filed a timely appeal of the notice of revocation and the matter was heard on August 6, 2010, before Administrative Hearing Officer Fabian Hoffner.

On September 27, 2010, A.H.O. Hoffner issued Findings of Fact, Conclusions of Law and Recommendation which found that Relator had been in violation of Minneapolis, Minn., Code of Ordinances § 244.1910 (3) on March 12, 2009, and on May 25, 2010, and recommended that Relator's rental license for the Property be revoked. Rel. Appx. A.3-A.8. On October 14, 2010, the matter came before the Minneapolis City Council's Regulatory, Energy, and Environment Committee (REEC) and the committee recommended that the City Council adopt the AHO's findings, conclusions and recommendation to revoke the rental license. On October 22, 2010, the City Council voted to revoke the rental license for the Property. Rel. Appx. 52. On December 16, 2010, Relator filed this certiorari appeal, challenging the October 22, 2010, quasi-judicial decision of the Minneapolis City Council to revoke Relator's rental license for the Property.

Assante issued written orders to Relator, at his listed address of 2972 Old Highway 8, Roseville, MN 55113. The written orders directed Relator to discontinue the unlawful occupancy of the non-habitable basement space as a habitable room or dwelling unit. *Id.* at A.25-A.26. Relator was given until March 22, 2009, to comply with the orders. *Id.*

On March 16, 2009, Inspector Assante issued a Notice of Director's Determination of Non-Compliance. *Id.* at A.29. The Notice informed Relator that the Property failed to meet a licensing standard under M.C.O. § 244.1910, specifically, the Notice stated that the property was in violation of subdivision (3) for a dwelling unit being over or illegally occupied. *Id.* The Notice gave Relator until March 22, 2009, to bring the building into compliance. *Id.* Upon inspection April 30, 2009, at the property Housing Inspector Rod Thomas abated the order as having been complied with. *Trans.* p. 60.

On May 25, 2010, the Department of Inspections received a tenant complaint, regarding the Property, from Minneapolis 311. *Id.* at p. 6. Pursuant to Department policy, an inspection was to be completed at the Property in response to the tenant complaint. *Id.* Housing Inspector Sheila Rawski arrived at the Property and was allowed entry by one of the tenants. *Id.* Upon entry Inspector Rawski completed an inspection and observed that a room in the basement of the Property was being illegally occupied as a bedroom as there was no egress window. *Id.* at p. 7. In the basement room, Inspector Rawski observed a bed, mattress, bedding, a dresser and clothes. *Id.* at p. 7-8. Upon her return to the

STATEMENT OF THE FACTS

Relator is the owner of a single family home, located at 3223 Bryant Avenue N. (the Property), in the City of Minneapolis. On November 5, 2008, Relator applied for a rental dwelling license for the Property and was issued a rental dwelling license by the City of Minneapolis. Relator's Appendix (Rel. Appx.) A.18. The rental license application personally filed by Relator, lists himself as the owner of the property as well as the property manager responsible for the maintenance and management of the rental property. The contact address listed by Relator on the rental license application was 3972 Old Highway 8, Roseville, MN 55113.

On March 12, 2009, Housing Inspector Valerie Assante conducted an inspection at the Property. Transcript (Trans.) p. 58. During the inspection Inspector Assante observed that a non-habitable basement room was being used as habitable space, specifically the room was being used as a bedroom. Id. at 58-59. Inspector Assante observed a bed in the room along with bedding, pillows and the tenant admitted to using the room as a bedroom. Id. The room did not meet the requirements of a bedroom as there was no egress window and did not have proper ventilation. Id. Inspector Assante posted the property for unlawful occupancy with the placard stating that the violation was "unlawful basement occupancy-cannot use as a sleeping room." Rel. Appx. A.27. On March 18, 2009, Inspector

office, Inspector Rawski reviewed the record for the property and observed that the Property had been “flagged” for illegal occupancy in March of 2009. *Id.* at p. 10-11. Due to the prior occurrence of illegal occupancy, Inspector Rawski notified Manager Janine Atchison of the second occurrence of illegal occupancy at the Property. *Id.*

Janine Atchison, District Manager with the Department of Housing inspections, oversees the rental license revocation process for the Department. *Id.* at p. 25. Upon receiving the information regarding the second incident of illegal occupancy at the Property, Ms. Atchison reviewed the evidence and found that two qualifying incidents of illegal occupancy had occurred at the Property and began the license revocation process by sending, on June 14, 2010, a Notice of Revocation, Denial, Non-Renewal, or Suspension of Rental License or Provisional License. *Trans.* at p. 30. The Notice stated that the property failed to meet the licensing standard M.C.O. § 244.1910 (3). *Rel. Appx.* at A.40. Minneapolis, Minn. Code of Ordinances § 244.1910 (3) states that “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.”

Relator filed a timely appeal of the notice of revocation and the matter was heard on August 6, 2010, before Administrative Hearing Officer Fabian Hoffner pursuant to Minneapolis, Minn., Code of Ordinances § 1960, Appeals procedure. Section 1960 states:

244.1960. Appeals procedure. (a) Any person wishing to appeal a determination of the director recommending denial, nonrenewal, revocation, or suspension of a license or provisional license shall file a written notice of appeal with the department of inspections within fifteen (15) days after receipt of the notice of denial, nonrenewal, revocation, or suspension. The notice shall contain a statement of the grounds for the appeal. The notice of appeal shall be accompanied by a fee of three hundred dollars (\$300.00). All appeals shall be heard by an administrative hearing officer pursuant to Title 1, Chapter 2 of this Code.

- (b) At the hearing, the hearing officer shall hear all relevant evidence and argument. The hearing officer may admit and give probative effect to evidence that possesses probative value commonly accepted by reasonably prudent persons in the conduct of their affairs. The hearing officer shall record the hearing and keep a record of documentary evidence submitted.
- (c) The hearing officer shall render a decision in writing within thirty (30) days after the close of the hearing. The decision shall determine whether the building, or dwelling units therein, meets the licensing standards of sections 244.1910, 244.1920, or 244.2020, and shall specify the factual and legal basis for the determination.
- (d) The hearing officer shall mail a copy of the decision to the license holder or applicant and to each licensed dwelling unit.
- (e) The hearing officer shall refer the decision to the city council, which shall have final authority to issue, deny, renew, revoke, or suspend the license. The city council may hear argument from the license holder/applicant, but shall take no further evidence. The city council may affirm, modify, or reverse the decision of the hearing officer.
- (f) The final decision of the city council shall be mailed to the license holder or applicant.
- (g) A notice to tenants of the final decision shall be mailed to each occupant and prominently posted on the building. The notice shall indicate the date upon which tenants must vacate the building and shall clearly indicate which dwelling units are affected. The notice shall indicate that further information and relocation assistance can be obtained from the City of Minneapolis Housing Services Office.

On September 27, 2010, A.H.O. Hoffner issued Findings of Fact, Conclusions of Law and Recommendation which found that Relator had been in violation of Minneapolis, Minn., Code of Ordinances § 244.1910 (3) on March 12, 2009, and on May 25, 2010, and recommended that Relator's rental license for the Property be revoked. Rel. Appx. A.3-A.8. On October 14, 2010, the matter came before the Minneapolis City Council's Regulatory, Energy, and Environment Committee (REEC) and the committee recommended that the City Council adopt the AHO's findings, conclusions and recommendation to revoke the rental license. On October 22, 2010, the City Council voted to revoke the rental license for the Property. Rel. Appx. 52.

Minneapolis, Min., Code of Ordinances § 2.100 sets forth the administrative hearing procedures used by the City of Minneapolis in its Administrative Enforcement and Hearing Process. With regards to the administrative hearing officers, subdivision (b) states:

Hearing officers. 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. The alleged violator requesting a hearing will have the right to request, no later than five (5) days before the date of the hearing, that the assigned hearing officer be removed from the case. One request for removal for each case will be granted automatically by the city attorney. A subsequent request will be directed to the assigned hearing officer, who will decide whether the hearing officer cannot fairly and objectively review the case. If such a finding is made, the hearing officer will remove himself or herself from the case, and the city attorney will assign another hearing officer. The hearing officer is not a judicial officer, but is a public officer as defined by Minnesota Statutes, Section 609.415. The hearing officer must not be a current employee of the City of Minneapolis.

Minneapolis, Minn., Code of Ordinances § 2.100 (b).

In its process for selecting a panel of attorneys, the City Council authorized the City Attorney's Office to issue a Request for Proposals (RFP) to establish an administrative hearing officer and enforcement panel to provide legal services to the Department of Regulatory Services for conducting code enforcement hearings and issuing orders. (Respondent's Appendix p.1-11) To establish the panel the City sought proposals from individual attorneys and law firms qualified and experienced in providing such services. *Id.* The City Attorney's Office has approved a list of six (6) lawyers who serve as Administrative Hearing Officers in administrative hearings requested pursuant to Minneapolis, Minn., Code of Ordinances Chapter 2, Administrative Enforcement and Hearing Process and rental license revocation appeals pursuant to Minneapolis, Minn., Code of Ordinances § 244.1960. *Id.* at 12-13. The administrative hearing officers signed contracts to provide services for a three (3) year period and are compensated at a rate of \$250.00 per each half/day session. *Id.*

ARGUMENT

I THE CITY'S ADMINISTRATIVE HEARING PROCEDURE USED IN THE RENTAL LICENSE REVOCATION PROCESS MEETS THE DUE PROCESS REQUIRMENTS OF THE FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION

On June 14, 2010, a Notice of Revocation, Denial, Non-Renewal, or Suspension of Rental License or Provisional License was issued to Relator for his rental license at the Property. Rel. Appx. A.40. Relator filed a timely appeal and the matter was heard, pursuant to Minneapolis, Minn., Code of Ordinances § 244.1960, before A.H.O. Fabian Hoffner on August 16, 2010. On September 27, 2010, A.H.O. Hoffner issued Findings of Fact, Conclusions of Law and Recommendation which found that Relator had been in violation of Minneapolis, Minn., Code of Ordinances § 244.1910 (3) on March 12, 2009, and on May 25, 2010, and recommended that Relator's rental license for the Property be revoked. Rel. Appx. A.3-A.8. On October 14, 2010, the matter came before the Minneapolis City Council's Regulatory, Energy, and Environment Committee (REEC) and the committee recommended that the City Council adopt the A.H.O.'s findings, conclusions and recommendation to revoke the rental license. On October 22, 2010, the City Council voted to revoke the rental license for the Property. Rel. Appx. 52.

Relator claims that the Administrative Hearing Process used by the City of Minneapolis in conjunction with the City's rental license revocation process violates his Fourteenth Amendment due process rights.

The United States Supreme Court has stated that due process is a flexible notion and that the process that is required is a process that is reasonable under the circumstances. *Mathews v. Eldridge*, 424 U.S. 319, 334, 96 S. Ct. 893, 902, 47 L. Ed. 2d 18 (1976). When reviewing cases concerning due process in the context of hearing officers, courts have held that an impartial decision maker is essential to due process. See *Goldberg v. Kelly*, 397 U.S. 254, 271, 90 S. Ct. 1011, 1022, 25 L. Ed. 2d 287 (1970) (an impartial decision-maker is essential to due process); *Humenansky v. Minn. Bd. Of Med. Examiners*, 525 N.W.2d 559, 565 (Minn. App. 1994) (due process protections include the right to an "impartial" decision maker).

The right to an impartial hearing officer has been extended to both criminal and civil contexts. See *Tumey v. Ohio*, 273 U.S. 510, 47 S. Ct. 437 (1927) (finding that Mayor acting as judge on misdemeanor offenses where City received one-half of money from fines and forfeitures violated defendant's due process rights); see also *Buchwald v. Univ. of Minn.*, 573 N.W.2d 723, 727 (Minn. App. 1998) (Parties to an administrative proceeding are entitled to a decision by an unbiased decision maker).

While an impartial decision maker is essential to due process, prior involvement in some portions of a case will not prevent an official from acting as a decision-maker. *Goldberg v. Kelley*, 397 U.S. 254, 271, 90 S. Ct. 1011, 1022, 25

L. Ed. 2d 287 (1970). Furthermore, the “rule of necessity” may allow a person to serve as a decision maker despite bias. *Ginsberg v. Minn. Dept. of Jobs & Training*, 481 N.W.2d 138, 141 (Minn. App. 1992). Minnesota courts have held that while administrative proceedings require an unbiased decision-maker, there is a presumption of administrative regularity, and the party claiming otherwise has the burden of proving a decision was reached improperly. *Buchwald v. Univ. of Minn.*, 573 N.W.2d 723, 727 (Minn. App. 1998). To disqualify a hearing examiner, an independent showing of bias, lack of qualification or neutrality is necessary. *Bates v. Independent School Dist. No. 482*, 379 N.W.2d 239, 241 (Minn. App. 1986). “In short, whether hearing officer is impartial is a fact specific inquiry that depends on the context in which the appeal is heard.” *Chanhassen Chiropractic Center, P.A., v. The City of Chanhassen*, 663 N.W.2d 559, 562-63 (Minn. App. 2003).

Appellant claims that the hearing officers used by the City for hearing rental license revocation are impermissibly biased due to the fact that the hearing officers are selected and compensated by the City. Appellant cites to *Hass v. County of San Bernardino*, 27 Cal 4th 1017, 45 P.3d 280, 119 Cal Rptr.2d 341 (2002) to bolster his position. Mr. Hass operated a massage clinic under a license issued by San Bernardino County. The County Board of Supervisors revoked Hass’ license after a deputy sheriff reported that a massage technician had exposed her breasts and proposed a sex act. Hass appealed and a hearing was scheduled for the matter. The notice of the hearing indicated that a local attorney was to be the

hearing officer. Hass objected to the county hiring its own hearing officer, arguing that the process of choosing and paying the hearing officer created an actual or potential conflict of interest violating his due process rights. At the hearing in the matter the county's attorney stated that he had never used the hearing officer in cases before but anticipated that he may use the hearing officer in the future on an ad hoc basis. The county's attorney admitted that the hearing officer was aware that she may be hired for future cases.

The court in *Hass* reversed the revocation of the license, finding that “[T]he hearing officer in this case had an impermissible financial interest in the outcome of the litigation arising from the prospect of future employment with the County, measured against the applicable constitutional standard of a ‘possible temptation to the average man as a judge.... not to hold the balance nice, clear and true’”. *Hass*, 27 Cal 4th at 1031 (quoting *Tumey, supra*, 273 U.S. at 532 [47 S. Ct. at 444]). The court did not hold that a government entity is prohibited from paying, selecting or paying and selecting hearing officers. Specifically the court found that “due process does not forbid the government to pay an adjudicator when it must provide someone with a hearing before taking away a protected liberty or property interest. Indeed, the government must pay the adjudicator in such cases to avoid burdening the affected person’s right to a hearing”. *Id.* at 1031.

The *Hass* court’s concern was with the risk that the hearing officer would be rewarded with future work for decisions favorable to the county. *Id.* at 1037. The court stated “[T]he requirements of due process are flexible, especially where

administrative procedure is concerned, but they are strict in condemning the risk of bias that arises when an adjudicator's future income from judging depends on the goodwill of frequent litigants who pay the adjudicator's fee". *Id.*

The *Hass* court then suggested options for the use of ad hoc hearing officers that would not violate the due process clause. The court stated that a rule where a hearing officer would be ineligible for a predetermined period of time long enough to eliminate any temptation to favor the county would pass muster or the appointing a panel of attorney's that would hear cases on a pre-established system of rotation. *Id.*

Appellant's reliance on *Hass* is faulty for several reasons. First, the *Hass* decision does not set precedent for Minnesota law. Minnesota courts, reviewing the possible bias of hearing officers selected and paid by a party, have not adopted such a strict approach as the *Hass* court has. In *Russell v. Special School District No. 6*, Kenneth Russell appealed his termination from the school district and argued that the hearing examiner, hired by the school board to conduct his pre-termination hearing, was biased because he was hired and paid by the school district. The Court of Appeals held that the hearing examiner was not biased just because he was hired and paid by the school district. *Russell v. Special School District No. 6*, 366 N.W.2d 700, 705 (Minn. App. 1985). The Court stated that although the Court of Appeals and the Minnesota Supreme Court had recommended that independent hearing examiners be hired in the pre-termination

cases, neither court had held that such an examiner is automatically biased because they were hired by the school district. *Id.* at 706.

The Court of Appeals followed this reasoning in an unpublished opinion where another teacher argued that his due process rights were violated because he was given no input in the selection of the hearing officer and that the hearing officer was not neutral where it is unilaterally selected and paid by the district. *Queen v. Minneapolis Public Schools, Special School District No. 1*, 1990 Minn. App. LEXIS 974. The Court of Appeals held that to disqualify a hearing officer an independent showing of bias, lack of qualification or neutrality is necessary and found that there had been no showing of bias or lack of neutrality in Queen's hearing despite the hearing officer being selected and paid by the school district. *Id.* at p. 5-6.

In the present case Relator, has made no independent showing of bias or lack of neutrality, but merely argues that the fact that the City selects the hearing officers and pays them for their services is enough to scrap the entire process used by the City in hearing appeals to rental license revocations. Under established Minnesota case law, Relator's argument is wrong.

Additionally, Relator's reliance on *Hass* is faulty in that the present case is factually distinguishable from *Hass*. In *Hass* the hearing officer at question was hired on an ad hoc basis, the county could choose to hire or not hire her in the future thus creating the risk of being rewarded with future work if the county was pleased with her decision, a risk the California Supreme Court found

unacceptable. *Hass*, at 1037. The City's retention of hearing officers in the present case does not carry the same risk. Chapter two of the Minneapolis, Minn., Code of Ordinances provides the details with regards to the City's administrative enforcement and hearing process. Selection of hearing officers is covered by Minneapolis, Minn., Code of Ordinances § 2.100(b) which states:

Hearing officers. 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. The alleged violator requesting a hearing will have the right to request, no later than five (5) days before the date of the hearing, that the assigned hearing officer be removed from the case. One request for removal for each case will be granted automatically by the city attorney. A subsequent request will be directed to the assigned hearing officer, who will decide whether the hearing officer cannot fairly and objectively review the case. If such a finding is made, the hearing officer will remove himself or herself from the case, and the city attorney will assign another hearing officer. The hearing officer is not a judicial officer, but is a public officer as defined by Minnesota Statutes, Section 609.415. The hearing officer must not be a current employee of the City of Minneapolis.

In its process for selecting a panel of attorneys, the City Council authorized the City Attorney's Office to issue a Request for Proposals (RFP) to establish an administrative hearing officer and enforcement panel to provide legal services to the Department of Regulatory Services for conducting code enforcement hearings and issuing orders. (Respondent's Appendix p.1-11). To establish the panel the City sought proposals from individual attorneys and law firms qualified and experienced in providing such services. *Id.* The City Attorney's Office has approved a list of six (6) lawyers who serve as Administrative Hearing Officers in

administrative hearings requested pursuant to Minneapolis, Minn., Code of Ordinances Chapter 2, Administrative Enforcement and Hearing Process and rental license revocation hearings requested pursuant to Minneapolis, Minn., Code of Ordinances § 244.1960. *Id.* at 12-13. The administrative hearing officers signed contracts to provide services for a three (3) year period and are compensated at a rate of \$250.00 per each half/day session. *Id.*

The hearing officers hired by the City are not presented with the same risk of bias that the California Supreme Court condemned. The *Hass* court found unacceptable the risk that arises when an adjudicator's future income from judging depends on the good will of frequent litigants who pay for the adjudicator's fee. *Hass*, at 1037. The process used by the City is analogous to the procedure suggested as acceptable by the *Hass* court. *Id.* at footnote 22 ("A county needing more hearing officers might, under similar rules, appoint a panel of attorneys to hear cases under a pre-established system of rotation"). The hearing officers used by the City have a contract, to provide services as a hearing officer, with the City for a three year period. The procedure used by the City allows the hearing officer the ability to provide independent adjudication without the risk that their future income, for adjudicative work, depends entirely on the City's goodwill. The hearing officer's decision on a single case will not be rewarded with future work or punished by the lack of future work.

The administrative hearing process provided by the City of Minneapolis, for appeals of rental license revocations, provides due process to appellants as the

hearing officers are impartial decision makers and therefore the process must be upheld.

II THE DECISION OF THE MINNEAPOLIS CITY COUNCIL TO REVOKE RELATOR'S RENTAL DWELLING LICENSE FOR THE PROPERTY LOCATED AT 3223 BRYANT AVENUE NORTH WAS NEITHER ARBITRARY, CAPRICIOUS NOR UNREASONABLE, WAS SUPPORTED BY THE EVIDENCE AND WAS NOT AN ABUSE OF DISCRETION

On June 14, 2010, a Notice of Revocation, Denial, Non-Renewal, or Suspension of Rental License or Provisional License was issued to Relator for his rental license at the Property alleging that Relator had been in violation of Minneapolis, Minn., Code of Ordinances § 244.1910 (3) on March 12, 2009, and on May 25, 2010. Rel. Appx. A.40. On September 27, 2010, A.H.O. Hoffner issued Findings of Fact, Conclusions of Law and Recommendation which found that Relator had been in violation of Minneapolis, Minn., Code of Ordinances § 244.1910 (3) on March 12, 2009, and on May 25, 2010, and recommended that Relator's rental license for the Property be revoked. Rel. Appx. A.3-A.8.

On October 14, 2010, the matter came before the Minneapolis City Council's Regulatory, Energy, and Environment Committee (REEC) and the committee recommended that the City Council adopt the A.H.O.'s findings, conclusions and recommendation to revoke the rental license. On October 22, 2010, the City Council voted to revoke the rental license for the Property. Rel.

Appx. 52. Relator claims that the evidence, in the record, is insufficient to justify the revocation of Relator's rental license for the Property.

This case, as an appeal of a municipal quasi-judicial decision, is reviewable by writ of certiorari. *Larson v. New Richland Care Ctr.*, 538 N.W.2d 915, 918 (Minn. Ct. App. 1995). It is not the function of the appellate court to either resolve conflicting evidence or to assume the role of a city council in weighing appropriate policy considerations. *Village of Medford v. Wilson*, 230 N.W.2d 458 (Minn. 1975). Municipalities and agencies enjoy a broad presumption of propriety in their quasi-judicial decisions, to which a reviewing court must defer. *In re Excess Surplus Status of Blue Cross & Blue Shield*, 624 N.W.2d 264, 278 (Minn. 2001). This Court may not substitute its own judgment, retry the facts, or weigh credibility and must affirm if there exists "any legal and substantial basis" supporting the decision. *Senior v. City of Edina*, 547 N.W.2d 411, 416 Minn. Ct. App. 1996).

Furthermore, if the reasonableness of the action of a municipal governing body is at least doubtful, or fairly debatable, a reviewing court must not interject its own conclusions as to the more preferable action. *Arcadia Dev. Corp. v. City of Bloomington*, 125 N.W.2d 846 (Minn. 1964). Most importantly, decisions of administrative agencies, including cities, are presumed to be correct, and this court will reverse or modify an agency decision only if a party's substantial rights have been prejudiced because the decision exceeded the agency's authority, was made upon unlawful procedure, was affected by error of law, or was arbitrary or

capricious. *Blue Cross* at 278. The agency or municipal decision is given a presumption of correctness and must be upheld if the action has a legal basis demonstrated by substantial evidence in the record even if the reviewing court would have reached a different result if it had been the decision maker. *Cable Communications Bd. v. Now-West Cable Communications P'shp.*, 356 N.W.2d 658, 668-669 (Minn. 1984).

In the present case the facts are undisputed that on March 12, 2009, Housing Inspector Valerie Assante conducted an inspection at the Property. Trans. p. 58. During the inspection Inspector Assante observed that a non-habitable basement room was being used as habitable space, specifically the room was being used as a bedroom. *Id.* at 58-59. Inspector Assante observed a bed in the room along with bedding, pillows and the tenant admitted to using the room as a bedroom. *Id.* The room did not meet the requirements of a bedroom as there was no egress window and did not have proper ventilation. *Id.* Inspector Assante posted the property for unlawful occupancy with the placard stating that the violation was "unlawful basement occupancy- cannot use as a sleeping room." Rel. Appx. A.27. On March 16, 2009, Inspector Assante issued a Notice of Director's Determination of Non-Compliance. *Id.* at A.29. The Notice informed Relator that the Property failed to meet a licensing standard under M.C.O. § 244.1910, specifically, the Notice stated that the property was in violation of subdivision (3) for a dwelling unit being over or illegally occupied. *Id.*

On May 25, 2010, Inspector Rawski completed an inspection and observed that a room in the basement of the property was being illegally occupied as a bedroom as there was no egress window. Trans. p. 7. In the basement room, Inspector Rawski observed a bed, mattress, bedding, a dresser and clothes. Id. at p. 7-8. After the second incident of illegal occupancy, a revocation action was commenced pursuant to Minneapolis, Minn., Code of Ordinances § 244.1940 which states in part:

If after any period for compliance under section 244.1930 has expired, the director determines that the dwelling fails to comply with any of the licensing standards in sections 244.1910 or 244.1920, or the director has initiated an action to deny, revoke, suspend, or not renew a license pursuant to section 244.2020, the director shall mail the owner a notice of denial, non-renewal, revocation, or suspension of the license or provisional license.

Emphasis added.

Based upon the language in M.C.O. § 244.1940, the Department of Inspections has instituted a policy of instituting a revocation action for a second violation of illegal occupancy in violation of the zoning or maintenance code. Trans. p. 30. Specifically, District Manager Janine Atchison, who is in charge of the rental license revocation actions, stated:

The illegal occupancy policy is, that we will notify you one time, through Director's 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.

Id.

Ms. Atchison further testified that Minneapolis, Minn., Code of Ordinances § 244.1940 was amended to specifically allow for a revocation action to begin after a second incident of illegal occupancy. *Id.* at 54-55

Relator does not dispute that the Property was found to be illegally occupied on two separate occasions but rather contends that the violations of the licensing standard cannot be held against him because he did not knowingly permit the occupancy of the illegal basement unit at the Property. Relator argues, incorrectly, that the use of the phrase “No person shall occupy or let or allow another to occupy any building or other structure for the purpose of living therein” as set forth in Minneapolis, Minn., Code of Ordinances §§ 244.410 and 244.790, is indistinguishable from the word “permit” as used by this Court in a case involving charges against an alcohol establishment regarding the sale of alcohol to minors. *See State v. Wohsol*, 670 N.W.2d 292 (Minn. App. 2003) (concluding the meaning of the word “permit” as used in Minn. Stats. § 340A.503, subd. 1(a)(1), requires an element of knowledge of a violation indicating that a licensee authorized, tolerated or ratified sales of alcohol to minors prior to a criminal conviction).

Relator’s argument regarding the definition or use of the term “permit” as used in the cases cited by Relator is clearly distinguishable from the way the term “let” is used in the present matter. Individuals, like Relator, that choose to operate rental property in the City of Minneapolis are required to obtain a rental license from the City prior to renting out their property. *See Minneapolis, Minn., Code of Ordinances § 244.1810*, which states: 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. Emphasis added. The term “let” in this context clearly falls under the following definition found in Webster’s Online Dictionary which states: Let, **12**. To allow to be used or occupied for a compensation; to lease; to rent; to hire out; -- often with out; as, to let a farm; to let a house; to let out horses. Usage: Lease, **Let**, Rent, Hire. We may lease to or from. "I leased the farm to my neighbor." "I leased this house from Brown." We **let** to another; as, "I **let** my house to my cousin." *Webster’s Online Dictionary*. This is the way the term must be interpreted in its use elsewhere in Chapter 244, specifically in the sections pertaining to the basement occupancy in question, Sections 244.790 and 244.410, where almost identical language is used “no person shall occupy, or let or allow another to occupy any building...” It is a stretch for Relator to claim that the term “let” as used in Minneapolis, Minn., Code of Ordinances Chapter 244 has the same meaning and requirement of knowledge/permission/ratification as the term “permit” in the alcohol sales/use case he cites, thus requiring a landlord to ratify or allow the illegal occupancy of non-habitable space in a property.

A further review of the rental licensing ordinances also discredits Relator’s position that his rental license should not be revoked because he did not ratify or knowingly allow the occupancy of the basement on the two dates in question. In addition to the requirement to obtain a rental license prior to the occupancy or letting of a rental dwelling, landlords and potential landlords are put on notice of

the minimum standards and conditions that must be met *in order to hold a rental dwelling license* in the City of Minneapolis. Minneapolis, Minn., Code of Ordinances § 244.1910. Landlords, like Relator, are also put on notice that failure to comply with any of these standards and conditions shall be adequate grounds for the denial, refusal to renew, revocation, or suspension of a rental dwelling license or provisional license. See, Minneapolis, Minn., Code of Ordinances § 244.1910 (a). The licensing standards apply directly to persons, such as Relator, who wish to hold and retain a rental license in the City of Minneapolis and can not be transferred tenants. See, *City of Minneapolis v. Ellis*, 441 N.W.2d 134, (Minn. App. 1989), (holding that a landlord could not transfer to tenants the ultimate responsibility for complying with city health and safety laws).

In *Ellis*, the landlord was charged with a petty misdemeanor for failing to comply with written orders which directed the owner/landlord to make repairs to his rental property. *Id.* at 135. The landlord did not make the required repairs but notified the Department of Inspections that the tenants were responsible for making the repairs and that the orders should be issued to the tenants. *Id.* at 135-136. After his conviction for failing to make the require repairs the landlord appealed and argued that because he had contracted with the tenant for the tenant to maintain the premises in compliance with applicable health and safety laws that he was not responsible for and should not be held accountable for the challenged code violations. *Id.* at 137-138. This Court disagreed and found that the law did not allow lessor/licensor's contract away their duties regarding compliance with

health and safety laws and that landlords retained ultimate responsibility for compliance. *Id.* at 138.

As in *Ellis*, the responsibility for complying with the rental licensing standards set out in Minneapolis, Minn., Code of Ordinances § 244.1910, falls directly on Relator as the holder of the rental license. If this Court were to adopt Relator's reasoning, a landlord could simply turn a blind eye to the occupancy occurring in his rental dwellings and claim that he did not know or allow the occupancy that was occurring, as it appears happened in this case. Relator did not file an eviction action against the tenants for illegally occupying the property but only for unpaid rent. Rel. Appx. 45-50. Relator's property manager testified that he only would go to the properties if the tenants called with a complaint stating, "No, I don't even show up if they don't call me." Trans. p. 79. The property manager further testified, when asked about the new tenants at the property and if he observed mattresses in the basement, "I did not see none" and when asked if he looked for the mattresses stated, "No. No. I mean, I didn't, I went downstairs and I looked at the boiler room and I did a couple of things and I came back up. I did not pay attention." *Id.* at 80.

Relator testified that he did not have in his lease any section indicating that it would be a violation of the lease to occupy the basement room as a bedroom. *Id.* at 89. Relator further testified that if he or his property manager do not receive calls from the tenants they would not go into the rental properties, would just stop by to pick up the rent and would not know if the basement room was being used as

a bedroom. *Id.* at 90. Relator also testified that he did not know of the illegal occupancy of the basement until he received the violation letter from the Department. *Id.* at 84. Under Minneapolis, Minn., Code of Ordinances §244.1910, Relator has a responsibility to maintain the Property in accordance with the licensing standards and can not pass that responsibility onto his tenants and claim ignorance when confronted with violations placing the blame on his tenants. There is sufficient evidence in the record to uphold the City Council's action to revoke Relator's rental license based upon the violations of Minneapolis, Minn., Code of Ordinances § 244.1910 (3).

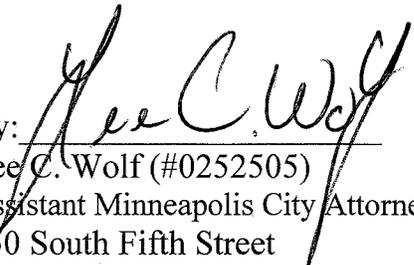
CONCLUSION

The Minneapolis City Council's decision to revoke Relator's rental license for the property located at 3223 Bryant Avenue N. was supported by substantial evidence was neither arbitrary nor capricious and was made upon lawful procedure. The administrative hearing process used by the City of Minneapolis in the license revocation process does not violate due process rights of appellants as the hearing officers provided are impartial decision makers. Because of this the City Council's decision to revoke Relator's rental license must be upheld.

Date: 5-11-11

Respectfully submitted,

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STATE OF MINNESOTA

IN COURT OF APPEALS
NO. A10-2211

**In the Matter of the Rental Dwelling
License held by Mahmood Khan for the
Premises at 3223 Bryant Avenue N.,
Minneapolis, Minnesota**

**CERTIFICATE OF BRIEF
LENGTH**

Case No. A10-2211

I hereby certify that this brief conforms to the requirements of Minn. R. Civ. App. P. 132.01, Subds. 1 and 3, for a brief produced with proportional font. The length of the brief is 6,714 words. This brief was prepared using Microsoft Word 97-2003.