OAH 23-6020-39016

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE CITY OF ST. PAUL

In the Matter of the Cigarette/Tobacco License held by Zakariya Abukhudeer d/b/a The One Stop Market LLC for the premises located at 1541 Maryland Avenue in Saint Paul	**ORDER DENYING MOTION TO CERTIFY**

This matter is pending before Administrative Law Judge Suzanne Todnem.

Therese Skarda, Assistant City Attorney, appears on behalf of the City of St. Paul (City). Mark K. Thompson, MKT Law, PLC, appears on behalf of Zakariya Abukhudeer d/b/a The One Stop Market LLC (Respondent).

On January 29, 2024, the City filed a Motion to Certify the City's Motion for Summary Disposition (Motion) to the Saint Paul City Council (City Council) pursuant to Minn. R. 1400.7600 (2023).[1] Respondent filed an objection to the Motion on February 8, 2024, and the Motion record closed on that date.

Based upon the hearing record and for the reasons explained in the memorandum below,

IT IS HEREBY ORDERED:

1. The Department's Motion to Certify is **DENIED**.

2. The deadline to request subpoenas for the attendance of witnesses or the production of documents is **EXTENDED** to **4:30 p.m.** on **February 26, 2024**.

3. The hearing set for **March 6, 7, and 8, 2024**, will proceed as scheduled.

4. Unless amended herein, the terms of prior orders remain in effect.

Dated: February 22, 2024

SUZANNE TODNEM
Administrative Law Judge

[1] The City filed a request to have this matter certified to the Saint Paul City Counsel; the Administrative Law Judge accepted this filing as a motion under Minn. R. 1400.6600 (2023) and will refer to it as such.

MEMORANDUM

I. Factual Background

On January 12, 2024, the Administrative Law Judge issued a Recommendation and Order on Motion for Summary Disposition (Order) that recommended granting the City's Motion for Summary Disposition in part and denied in part.[2] Following the Order, the remaining issues to be decided at the evidentiary hearing are:

1) Did Respondent violate license condition #2 regarding the requirement to take reasonable steps to discourage loitering on the property of the licensed premises?

2) Did Respondent violate license condition #3 relating to the requirement to maintain the video cameras on the licensed premises?

3) Did Respondent violate St. Paul Legislative Code (SPLC) § 324.07(j) relating to the prohibition of offering for sale flavored tobacco products by Respondent on January 18, 2021?

4) Did Respondent violate SPLC §§ 310.06(b)(6)(a), 310.06(b)(6)(c), 310.06(b)(7), and 310.06(b)(8) (2021)?

The Administrative Law Judge determined that there are sufficient facts in dispute to warrant a hearing and the Motion was denied in part.

The City's Motion is based on the Administrative Law Judge's recommendation to grant summary disposition for one of the five allegations, for which the City may take disciplinary action against Respondent's license. Importantly, as explained in the Order, the Administrative Law Judge determined that there are material issues of fact still in dispute so the City's motion for upward departure of the penalty is premature. For a third time, the City is attempting to bypass due process and expedite revocation of Respondent's license through upward departures, including duplicative upward departure, from the City's penalty matrix.

II. The Motion for Certification

Minn. R. 1400.7600 instructs: "In deciding what motions should be certified, the judge shall consider the following:

A. whether the motion involves a controlling question of law as to which there is substantial ground for a difference of opinion; or

[2] Recommendation and Order on Motion for Summary Disposition (Jan. 12, 2024).

B. whether a final determination by the agency on the motion would materially advance the ultimate termination of the hearing; or

C. whether or not the delay between the ruling and the motion to certify would adversely affect the prevailing party; or

D. whether to wait until after the hearing would render the matter moot and impossible for the agency to reverse or for a reversal to have any meaning; or

E. whether it is necessary to promote the development of the full record and avoid remanding; or

F. whether the issues are solely within the expertise of the agency."

There is no controlling question of law upon which there is a substantial ground for a difference of opinion. The dispute in this case is heavily fact-dependent. The parties have not expressed a difference in legal interpretation. Here, the issues are what facts occurred and how the law applies to them. It is essential that the City Counsel have a fully developed record of the facts to make its final determination. Therefore, it is premature to refer this matter to the City Council. This factor does not weigh in favor of certification.

A final determination by the City Council on the City's Motion for Summary Disposition will not materially advance the ultimate termination of the hearing. Only one of five allegations is recommended for disciplinary action as a result of the City's Motion for Summary Disposition. Even if the City Council made a final determination as to the one violation, four other allegations remain unresolved and unsubstantiated. And importantly, as explained in the Order, an upward departure of the City's penalty matrix is premature. This factor does not weigh in favor of certification.

The City prevailed on one allegation while Respondent prevailed insofar as summary disposition was denied on the remaining four allegations. In regard to the City, any delay between the ruling and the Motion would not adversely affect the City. In regard to Respondent, the Administrative Law Judge surmises that any certifying the Motion to the City Council would result in a delay, thereby extending Respondent's need for counsel and related costs. These parties have been involved in drawn out legal entanglements for over three years already. Any further delay is not justified. As a result, this factor does not weigh in favor of certification.

Waiting until after the hearing would not render the matter moot nor impossible for the City Counsel to reverse or for a reversal to have any meaning. The City argues that because it prevailed on one allegation, the City Council could or would revoke Respondent's license if the certification were granted. However, again, this position presumes multistep upward departure of the penalty matrix, all before the facts of the case have been determined. The City fails to recognize that even as to the one allegation on which it prevailed, the record must be developed as to whether upward departure is warranted by the facts surrounding the established violation. This factor does not weigh in favor of certification.

Full development of the record is necessary to avoid the cost and delay of a possible remand. This factor does not weigh in favor of certification.

Neither party asserts that the issues are solely within the expertise of the City Council. The certification procedure is not required to build a hearing record that reflects the special expertise of the City Council on licensing enforcement. In fact, Respondent contends that the Office of Administrative Hearings (OAH) has as much experience in deciding licensing cases as the City Council does. The Administrative Law Judge agrees that the issues here are not solely limited to the expertise of the City Council. Rather, the fact-dependent issues here are best addressed with the full development of a record, which is the one of the main functions of OAH. This factor does not weigh in favor of certification.

III. Conclusion

For all these reasons, granting the City's Motion is inappropriate. The evidentiary hearing will proceed as scheduled.

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