

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE CITY OF ST. PAUL, MINNESOTA

In the Matter of
Anne Marie Bragicevich,
d/b/a Snelling Avenue
Fine Wines.

FINDINGS OF FACT,
CONCLUSIONS AND
RECOMMENDATION

The above-captioned matter came on for hearing before
Administrative Law
Judge Jon L. Lunde at 1:00 P.M. on Monday, October 17, 1988 at 1503
City Hall
Annex in St. Paul, Minnesota, pursuant to a Notice of Hearing dated
September
22, 1988.

Philip B. Byrne, Assistant City Attorney, City of St. Paul, 647
City Hall,
St. Paul, Minnesota 55102, appeared on behalf of the City of St. Paul
(City).
Anne Marie Dragicevich (Licensee), Snelling Avenue Fine Wines, 500
North
Snelling Avenue, St. Paul, Minnesota 55104, was present, appearing
pro se.
The record closed on Tuesday, October 18, 1988 when the City filed a
copy of
Section 409.26 of the St. Paul Legislative Code. That filing was made
pursuant to agreement made at the time of the hearing.

This Report is a recommendation, not a final decision. The St.
Paul City
Council will make the final decision after a review of the record which
may
adopt, reject or modify the Findings of Fact, Conclusions, and
Recommendations
contained herein. Pursuant to Minn. Stat. S 14.61, the final
decision of the
Council shall not be made until this Report has been made available
to the
parties to the proceeding for at least ten days. An opportunity must
be
afforded to each party adversely affected by this Report to file
exceptions
and present argument to the Council. Parties should contact Albert
B. Olson,
City Clerk, 386 City Hall, St. Paul, Minnesota 55102, to ascertain the
procedure for filing exceptions or presenting argument.

STATEMENT OF ISSUE

The issue in this case is whether or not the St. Paul City Council should take adverse action against the off-sale liquor license held by the Licensee because she sold beer to a minor on June 23, 1988 and her clerk sold strong beer to two minors on August 4, 1988.

Based upon all of the proceedings herein, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. The Licensee, Anne Marie Dragicevich, owns and operates an off-sale liquor store at 500 North Snelling Avenue in St. Paul, Minnesota under the trade name of Snelling Avenue Fine Wines. She has held an off-sale liquor license for the liquor store since July 1986. The liquor store is open from 8:00 A.M. to 8:00 P.M. Monday through Thursday and from 8:00 A.M. to 10:00 P.M. on Friday and Saturday. It is managed by the Licensee's husband who

generally is on the premises during the hours it is open for business. The Licensee has one other employee, Craig Lee Anderson.

2. The City's police department investigates complaints regarding the illegal sale of alcoholic beverages by liquor stores. Since the police department had received a prior complaint alleging that a minor had purchased liquor at the Licensee's establishment, an investigation was undertaken by Richard L. Klein, a sergeant in the police department's vice unit. Sergeant Klein used an investigatory technique commonly used to investigate such complaints. It involves the use of underage volunteers who, under police supervision, attempt to purchase alcoholic beverages from the liquor establishment under investigation.

3. On Thursday, August 4, 1988, Sergeant Klein was working with two minors who had volunteered to work as "testers" for the police department: T.M.C., born [Month and Date REDACTED], and [Name REDACTED], born [Date of Birth REDACTED], . T.M.C. and [Name REDACTED] were instructed to purchase some beer at the Licensee's establishment. Sergeant Klein specifically instructed the testers not to make any attempt to appear older than they are and to dress as they usually do. They were also instructed not to use any persuasion in order to make the purchase and to inform the individual making the sale that they had no identification, in the event they were asked to verify their age.

4. At approximately 6:30 P.M. on Thursday, August 4, 1988, the Licensee's employee, Craig Anderson, was working at the liquor store. At that time [Name REDACTED] and T.M.C. entered the store and T.M.C. purchased a 12-pack of strong beer. Anderson did not request any identification from them before making the sale.

5. After the sale was made, T.M.C. and [Name REDACTED] left the liquor store and gave the beer to Sergeant Klein, who was waiting outside. After obtaining the beer, Sergeant Klein returned to the liquor store where he issued a citation to Anderson and recovered the marked bill the testers used to purchase the

beer.

6. On June 23, 1988, a police officer for the City came to the Licensee's establishment during the course of an investigation involving the sale of liquor to a minor. At that time the Licensee was on duty at the liquor store. The police officer advised the Licensee that a minor who had been arrested for the possession of beer, had advised the officer that the beer was purchased at the Licensee's establishment. The Licensee could not recall selling beer to a minor and did not know if the person who had been apprehended by the officer was the same person who had purchased beer at her establishment some 15 minutes earlier. Later that evening, the officer advised the Licensee that the person he had arrested was not, in fact, a minor.

7. On September 22, 1988 a Notice of Hearing was mailed to the Licensee advising her that the City Council might take adverse action against her license for the illegal sales of beer to minors that occurred in her liquor store on June 23 and August 4, 1988.

8. The Licensee's liquor store does have some problems with minors who attempt to purchase alcoholic beverages. This problem is due, in part, to the store's proximity to Hamline University. The usual practice followed at the

store is to request identification if there is any doubt about the purchaser's age.

9. No adverse action has previously been taken against the Licensee for liquor law violations.

Based on the foregoing Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS

1. The St. Paul City Council and the Administrative Law Judge have authority to consider the issues raised in the Notice of Hearing and to take adverse action against the liquor license held by the Licensee under Minn. Stat. SS 340A.415 and 14.50 (1988) and Chapters 310 and 409 of the St. Paul Legislative Code.

2. That the Licensee did not receive 30-day's prior notice of the hearing as required by Minn. Rule pt. 1400.5600 (1988), but the Licensee has waived her objection to the 30-day notice requirement in that rule by her appearance at the hearing on October 17, 1988.

3. That the City has complied with all other substantive and procedural requirements of statute and rule governing this matter.

4. On August 4, 1988 two minors were sold alcoholic beverages consisting of a 12-pack of strong beer at the Licensee's establishment by the Licensee's clerk, Craig Anderson, in violation of Minn. Stat. S 340A.503, subd. 2 and 409.08(2) of the St. Paul Legislative Code.

5. That the City has failed to show that the Licensee sold beer to a minor in violation of Minn. Stat. sec. 340A.503, subd. 2 and sec. 409.08(2) of the St. Paul Legislative Code on June 23, 1988.

6. That the City has the burden of proof to establish liquor license violations for which adverse action is proposed by a preponderance of the evidence.

7. That the City met its burden of proof with respect to the illegal sale of strong beer that occurred on August 4, 1988, but did not meet its burden of proof with respect to the illegal sale that was alleged to have occurred on June 23, 1988.

B. That the charge alleging that the Licensee sold beer to a minor on June 23, 1988 should be dismissed.

9. That the presumptive penalty for the sale of alcoholic beverages to underage persons under sec. 409.26(b) of the St. Paul Legislative Code is five (5) consecutive days for the first violation.

10. That under sec. 409.26(a) of the St. Paul Legislative Code, deviations from the presumptive penalty set forth in clause (b) are appropriate if substantial and compelling reasons for doing so exist.

11. The Licensee has failed to establish any substantial or compelling

reasons for a departure downward from the presumptive 5-day suspension required the first time a sale to a minor is made, and the City has admitted that a longer suspension is not justified.

12. That the Licensee is responsible for the illegal acts of her employees under Section 409.08(5) of the St. Paul Legislative Code.

Based upon the foregoing Conclusions, the Administrative Law Judge makes the following:

RECOMMENDATION

IT IS HEREBY RECOMMENDED:

- (1) That the charge alleging a violation of the liquor laws on June 23, 1988 be DISMISSED.
- (2) That the charge alleging a violation of the liquor laws on August 4, 1988 be AFFIRMED.
- (3) That the Licensee's off-sale liquor license for Snelling Avenue Fine Wines be suspended for a period of five (5) consecutive days.

Dated this day of October, 1988.

JON L. LUNDE
Administrative Law Judge

NOTICE

Pursuant to Minn. Stat. sec. 14.62, subd. 1, the agency is required to serve its final decision upon each party and the Administrative Law Judge by first class mail.

Reported: Taped.

MEMORANDUM

There is no question that a clerk at the Licensee's establishment sold strong beer to two minors on August 4, 1988 contrary to the express prohibitions contained in the statutes and rules cited in the Conclusions herein. However, the City has failed to establish that the Licensee sold beer

to a minor on June 23, 1988, as charged. The only evidence the City presented to show that an illegal sale to a minor occurred on June 23 was elicited from the Licensee. However, the Licensee did not have any reliable information concerning the identity of the person arrested for the illegal possession of beer that day, and did not know if he was the same person to whom she had made a sale. Moreover, she had no reliable information concerning that

individual is age, even if it is assumed that the person who was arrested is the same person who purchased beer at her store. It is quite clear, therefore, that the City failed to make a prima facie showing that the Licensee sold alcoholic beverage to a minor on June 23, 1988. The identity of the person to whom she sold beer that evening, as well as that individual's age, is not known. Consequently, the June 23, 1988 violation charged by the City must be dismissed.

Since the Licensee did, however, make an illegal sale of strong beer to a minor on August 4, 1988, the City should take adverse licensing action. Under the penalty matrix in Section 409.26(b) of the St. Paul Legislative Code, a suspension of her off-sale license for five consecutive days is warranted. Although a 5-day suspension is merely presumptive, there are no facts in the record demonstrating substantial and compelling reasons for departing from the presumptive 5-day suspension period. The City did not argue that a longer suspension would be appropriate and the Licensee herself presented no reasons why 5 days is too long. The Licensee admitted that the testers who purchased beer on August 4 do not appear to be of legal age, and she admitted that she would have requested identification from them. Therefore, even though her policy is to require identification from a customer when there is any doubt about the customer's age, that policy certainly was not followed in this case. Since the Licensee has had problems with minors, she should have taken greater care in making sure that minors are not permitted to purchase alcoholic beverages. Under all the circumstances, therefore, it is concluded that no reasons exist for reducing the duration of the presumptive suspension and that a suspension for five consecutive days is appropriate.

J.L.L.

