

4-2101-8480-3

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

In the Matter of the Emergency Restaurant Closure of Serena
Restaurant by the City of St. Paul

FINDINGS OF FACT,
CONCLUSIONS OF
LAW AND ORDER

The above-entitled matter came on for hearing before Administrative Law Judge Peter C. Erickson at 1:30 p.m. on Tuesday, January 11, 1994 in the Landmark Tower Building, St. Paul, Minnesota. There was an initial hearing on this matter on December 29, 1993, at which time two individuals appeared on behalf of the owner of the Serena Restaurant. At that time, the owner was out-of-town so this matter was continued to January 11, 1994 to allow the owner to be present at the hearing or enter into a settlement agreement with the City.

Philip B. Byrne, Assistant St. Paul City Attorney, 800 Landmark Tower, 345 St. Peter Street, St. Paul, Minnesota 55102, appeared on behalf of the St. Paul Division of Environmental Health. The restaurant owner, Pat Lee, 984 Kettle Creek Road, Eagan, Minnesota 55123, did not appear at the hearing or contact any representative of the City of St. Paul concerning this action.

These Findings and Conclusions may be appealed by any aggrieved person to the St. Paul City Council by filing a notice with the City Clerk. The appeal will then be scheduled for hearing at the next City Council meeting. These appeal provisions are contained in section 331.05(m)(5) of the St. Paul Legislative Code.

STATEMENT OF ISSUE

The issue to be determined in this proceeding is whether grounds exist to support the emergency closure of the Serena Restaurant.

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

FINDINGS OF FACT

1. The Serena Restaurant is located at 501 University Avenue

West, St. Paul, Minnesota 55104. At the current time, the restaurant has a license to sell wine; a license to sell strong beer; a class B restaurant license; and a class 2 entertainment license. All of these licenses are due to expire on February 4, 1994.

2. On December 14, 1993, Donald Cheney, an Environmental Health Specialist II, conducted an inspection of the Serena Restaurant. At that time, Mr. Cheney noted 28 deficiencies in the food preparation and storage areas. These deficiencies included hot and cold foods not being maintained at appropriate temperatures; a partially inoperable dishwashing machine; and mice droppings present in the storage areas.

3. On December 17, 1993, Mr. Cheney sent Mr. Lee an itemized list of the deficiencies noted during the December 14 inspection. Mr. Lee was informed that he was to make the required corrections immediately and that the next regular inspection would occur on December 27, 1993. Additionally, Mr. Lee was informed by another letter dated December 17, 1993 written by Frank Staffenson, Environmental Health Director, that a physical review of the Serena Restaurant would be conducted on December 27, 1993 to determine whether continued operation of the restaurant was appropriate.

4. On December 27, 1993, the Serena Restaurant was inspected by Environmental Health Specialist II Steven J. Olson. At that time, Mr. Olson found mice and mice droppings throughout the establishment; hot foods not maintained at at least 150 degrees Farenheit; perishable foods which were stored at a temperature above 55 degrees Farenheit; and the dishwashing machine was still in need of repair. Specifically, the dishwashing machine was operating at only an 85-degree-Farenheit temperature rather than the required 140 degrees. A mouse nest was found in a box containing macaroni with baby mice in it that were only a few hours old. Mice and mice droppings were found throughout the establishment.

5. After the physical review was conducted on December 27, Frank Staffenson issued an Emergency Closure Order requiring that the restaurant be closed as of 2:30 p.m. on December 27. The Order further provided that a hearing would be held on December 29, 1993 for the purpose of determining whether the emergency closure should be maintained or the restaurant allowed to reopen.

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

CONCLUSIONS OF LAW

1. The Administrative Law Judge has jurisdiction in this matter pursuant to section 331.05(m)(4) of the St. Paul Legislative Code. The Notice of Hearing was proper and the City has complied with all other substantive and procedural requirements of law or rule.

2. Section 331.05(m)(1) lists, inter alia, the following grounds for emergency restaurant closure:

(1) Grounds for emergency closure. It shall be a violation of this chapter and sufficient cause to summarily close after a minimum of twenty-four (24) hours or longer prior notice any licensed food establishment in which any one (1) or more of the following conditions are found to exist on the licensed premises or resulting from the operation of the licensed premises:

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a. The presence of readily perishable food held in either refrigerator equipment at fifty-five (55) degrees Fahrenheit or higher or hot-holding equipment at one hundred thirty-five (135) degrees Fahrenheit or lower.

* * *

f. Lack of an approved and presently operable dishwashing system on the premises.

* * *

i. An infestation of rodents to such an extent that one (1) live mouse or rat is observed in the food preparation area or storage areas, or there is the accumulation of fresh mouse droppings in more than one (1) location in either the food preparation or storage areas, or the presence of fresh rat droppings in one (1) location in the food storage or preparation areas.

* * *

Section 331.05(m)(4) requires that grounds for an emergency restaurant closure be proved by clear and convincing evidence.

3. The Judge concludes that the City has shown violations of paragraphs a., f., and i., by clear and convincing evidence. The Emergency Closure Order was appropriately issued.

4. Pursuant to section 331.05(m)(4), a full hearing will be held on February 17, 1994 at 1:30 p.m. at a location to be determined by the City to consider adverse action against the licenseholder's licenses. The City is directed to inform all parties and the Judge as to the location of the hearing at least five days prior to February 17.

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

ORDER

The Emergency Closure Order shall remain in effect until the

hearing is held on February 17, 1994 with respect to the
licenseholder's licenses.

Dated this 13th day of January, 1994.

s/ Peter C. Erickson

PETER C. ERICKSON
Administrative Law Judge

Reported: Taped.