

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE DEPARTMENT OF REVENUE

In the Matter of the Revocation of the On-Sale including Sunday – County Liquor License of Lost Isle, LLC License Number 17467	FINDINGS OF FACT, CONCLUSIONS, AND RECOMMENDATION
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The above-entitled matter came on for hearing before Steve M. Mihalchick, Administrative Law Judge, on April 26, 2010, at the Office of Administrative Hearings, 600 North Robert Street, St. Paul, Minnesota. The OAH hearing record closed that day.

Joan Tujetsch, Attorney, Minnesota Department of Revenue, Mail Station 2220, 600 North Robert Street, St. Paul, Minnesota 55146-2220, appeared for the Department of Revenue (Department).

Timothy Rogentine appeared on behalf of Lost Isle, LLC, (Respondent) without counsel.

STATEMENT OF ISSUE

Should the Department issue a Notice of License Revocation to Carlton County requiring that Respondent's liquor license be revoked for failure to pay sales and use taxes and for failure to file sales and use tax returns for the period of October 2008 through December 2009?

The Administrative Law Judge concludes that the Department should issue the notice to revoke the license.

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

FINDINGS OF FACT

1. Respondent Lost Isle, LLC, is a restaurant, bar, and event center owned by Timothy and Christine Rogentine and located in Carlton, Minnesota near the Black Bear Casino. Respondent holds an On-Sale including Sunday liquor license (#17467) issued by Carlton County. Respondent has been in business for approximately five years.¹

¹ Testimony of Timothy Rogentine.

2. Respondent hired an accountant to handle its sales and use tax filing and payment during the first couple of years of operation. The accountant filed the returns electronically and the required payments were automatically withdrawn from Respondent's bank account and paid to the state.²

3. In October 2007, Mr. Rogentine noticed that the sales and use tax payments to the state were no longer being withdrawn from Respondent's bank account. Upon further inquiry, Mr. Rogentine discovered that the accountant had not filed sales and use tax returns for Respondent for June, July, August, or September 2007. The Rogentine's fired the accountant and worked with the Department to rectify and pay the tax debt for those four months.³

4. The Minnesota Department of Public Safety (DPS) maintains a liquor posting of businesses/liquor license holders who are ten or more days delinquent in the filing or payment of taxes. Liquor wholesalers and manufacturers are prohibited from selling or delivering alcohol to the businesses listed on the liquor posting.⁴ Between June 2007 and October 2007, Respondent did not appear on the liquor posting, despite its delinquent taxpayer status.

5. Respondent's business declined sharply when the statewide smoking ban went into effect. Business has also suffered from the poor economy. The restaurant and bar is open seven days a week, but because of slow business, Respondent relies on catering and banquets for most of its revenue.⁵

6. In 2008, Respondent began to fall behind on the filing and payment of its sales and use taxes. Because Respondent was not placed on the liquor posting, Mr. Rogentine thought that he could pay the utility bills for the business before addressing Respondent's accumulating tax debt.⁶ For a time, the Department filed returns for Respondent.⁷

7. Between January 5, 2009, and December 28, 2009, the Department sent monthly Demand to File Sales and Use Tax Return letters to Respondent for the period of October 2008 through December 2009.⁸ None of these letters was returned to the Department.⁹ Mr. Rogentine admits that he received most of the Demand to File letters. He did not open most or all of the letters because he was so far behind on Respondent's sales and use tax payments and he could not afford to pay the Department.¹⁰

² Testimony of T. Rogentine.

³ Testimony of T. Rogentine.

⁴ Minn. Stat. § 270C.725.

⁵ Testimony of T. Rogentine.

⁶ Testimony of T. Rogentine.

⁷ Testimony of Barb Hemquist.

⁸ Exhibit (Ex.) 3.

⁹ Testimony of B. Hemquist.

¹⁰ Testimony of T. Rogentine.

8. In July 2009, Respondent was placed on the DPS liquor posting.¹¹

9. Department policy prohibits Department employees from offering a payment plan option to licensees who have been placed on the DPS liquor posting.¹²

10. On December 28, 2009, the Department mailed to Respondent a Notice of Intent to Revoke License. The notice provided that if Respondent wished to avoid the revocation of its On-Sale including Sunday – County liquor license, it would have to pay the taxes due in the amount of \$19,107.19 by January 28, 2010. It also notified Respondent of its right to request a contested case hearing.¹³ The Notice was not returned to the Department.¹⁴

11. Because he ignored mail from the Department, Mr. Rogentine was not aware of the Notice of Intent to Revoke License until mid-January, 2010, when he was called by a representative of Omni Financial, who offered to assist Mr. Rogentine with Respondent's tax issues. Mr. Rogentine asked them to do so.¹⁵

12. By letter dated January 22, 2010, Omni Financial requested a hearing on behalf of Respondent, claiming that Respondent did not receive proper notice of the Department's intent to revoke the liquor license.¹⁶

13. The Commissioner issued a Notice and Order for Hearing on February 12, 2010. Mr. Rogentine discharged Omni Financial and appeared without counsel at the hearing.

14. As of April 26, 2010, the taxes due for the period of October 31, 2008, to December 31, 2009, with penalty and interest, amounted to \$22,764.48.¹⁷

15. Since January 2010, Respondent has been timely filing and paying its sales and use tax obligations.¹⁸

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

CONCLUSIONS

1. The Department and the Administrative Law Judge have authority to consider the issues set out in the Notice and Order for Hearing and to take the action proposed under Minn. Stat. §§ 14.50 and 270C.72, subd. 3.¹⁹

¹¹ Testimony of T. Rogentine.

¹² Testimony of B. Hemquist.

¹³ Ex. 4.

¹⁴ Testimony of B. Hemquist.

¹⁵ Testimony of T. Rogentine.

¹⁶ Letter from Lupe Orozco at Omni Financial, dated January 22, 2010.

¹⁷ Exs. 1 and 2; Testimony of B. Hemquist.

¹⁸ Ex. 2; Testimony of T. Rogentine.

¹⁹ All statutory citations are to the 2009 edition.

2. Minn. Stat. § 270C.72, subd. 2(b), and subd. 3, provide that if an applicant, which is defined to include mean the holder of a license, requests a contested case hearing, the hearing must be held within 45 days of the date the Commissioner refers the case to the Office of Administrative Hearings. In addition, the applicant must receive 20 days' notice in writing of the time and place of the hearing and the allegations.

3. The Department gave proper notice of the hearing in this matter to the Respondent and has complied in all other respects with the procedural requirements of law and rule.

4. Minn. Stat. § 270C.72, subd. 1, provides in relevant part:

The state or a political subdivision of a state may not issue, transfer, or renew, and must revoke, a license for the conduct of a profession, occupation, trade, or business, if the commissioner notifies the licensing authority that the applicant owes the state delinquent taxes, penalties, or interest. The commissioner may not notify the licensing authority unless the applicant taxpayer owes \$500 or more in delinquent taxes, penalties, or interest, or has not filed returns. If the applicant taxpayer does not owe delinquent taxes, penalties, or interest, but has not filed returns, the commissioner may not notify the licensing authority unless the taxpayer has been given 90 days' written notice to file the returns or show that the returns are not required to be filed.

5. The Respondent owed \$22,764.48 as of April 26, 2010, in delinquent taxes, penalties, and interest, and Respondent has failed to file sales and use tax returns for the period October 31, 2008, to December 31, 2009. The Respondent has not demonstrated that it is not liable for the delinquent taxes, penalties and interest and has failed to show that it is not required to file the missing returns.

6. The Department has met the statutory requirements for notifying Carlton County that Respondent's liquor license should be revoked.

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

RECOMMENDATION

IT IS RECOMMENDED: that the Commissioner of Revenue issue a Notice of License Revocation to Carlton County indicating that the County must revoke the Respondent's liquor license.

Dated: May 24, 2010

/s/ Steve M. Mihalchick
STEVE M. MIHALCHICK
Administrative Law Judge

Reported: Digitally recorded (no transcript prepared)

NOTICE

This report is a recommendation, not a final decision. The Commissioner of Revenue will make the final decision after a review of the record. The Commissioner may adopt, reject, or modify the Findings of Fact, Conclusions, and Recommendations. Under Minn. Stat. § 14.61, the final decision of the Commissioner of Revenue 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 Commissioner of Revenue. Parties should contact Wayne L. Sather, Attorney, Legal Services Division, Mail Station 2220, St. Paul, MN 55146-2220 or 651/556-4082 for specifics of how to file exceptions or present argument. The record closes upon the filing of exceptions to the report, or upon the expiration of the deadline for doing so.

If the Commissioner fails to issue a final decision within 90 days of the close of the record, this report will constitute the final agency decision under Minn. Stat. § 14.62, subd. 2a. The Commissioner must notify the parties and the Administrative Law Judge of the date on which the record closes.

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

MEMORANDUM

Respondent makes this appeal on the basis of the Rogentine's inability to pay the tax debt and the Department's failure to follow its own procedures. Mr. Rogentine asserts that he and his wife are currently unable to pay Respondent's sales and use tax obligations due to the poor economy, but he maintains hope that they will be able to satisfy the debt in the future. He claims that he owns no property on which to take a loan. Mr. Rogentine maintains that the Department can waive its policy regarding payment plans in this instance and offer him the option of repaying the tax debt over a period of time without revoking the liquor license.

Mr. Rogentine also suggests that the Department's failure to follow its own procedures should nullify the revocation of the liquor license. Under Minn. Stat.

§ 270C.725, subd. 1, the Commissioner of Revenue shall, by the 15th of each month, submit to the Commissioner of Public Safety a list of all taxpayers who are ten days or more delinquent in either filing a tax return or paying the tax. Mr. Rogentine claims that the Department's failure to add Respondent to the DPS liquor posting in a timely manner caused him to put off paying the tax debt because he perceived no danger of revocation of the liquor license.

The fact that the Department did not timely cause Respondent's placement on the DPS liquor posting does not negate the fact that Respondent was aware of his failure to file sales and use tax returns and pay the debt. Mr. Rogentine ignored the Demand to File letters from the Department and never attempted to contact the Department to arrange a payment plan prior to being placed on the DPS liquor posting. Revocation of Respondent's liquor license is appropriate.

S. M. M.