

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS  
FOR THE CITY OF MINNEAPOLIS

In the Matter of the Class E Liquor License  
with Sunday Sales held by Starmac, Inc.  
and Richard P. Nelson d/b/a Champions  
Saloon & Eatery

**ORDER DENYING  
RESPONDENTS' THIRD MOTION  
FOR SUMMARY DISPOSITION**

This matter is before Administrative Law Judge Jeanne M. Cochran on Respondents' Third Motion for Summary Disposition. Respondents filed their motion on September 9, 2013. The City of Minneapolis filed its Response in Opposition to Respondents' Third Motion for Summary Disposition on September 23, 2013. The motion record closed on that date.

Edward T. Matthews, Matthews Law Office, PLLC, appeared on behalf of Starmac, Inc. and Richard P. Nelson d/b/a Champions Saloon & Eatery (Respondents). Joel M. Fussy, Assistant Minneapolis City Attorney, appeared on behalf of the City of Minneapolis (City).

Based on the submissions of the parties, and for the reasons set forth in the Memorandum attached hereto, the Administrative Law Judge makes the following:

**ORDER**

IT IS HEREBY ORDERED THAT:

1. Respondents' Third Motion for Summary Disposition is **DENIED**.
2. The evidentiary hearing slated to begin on Monday, October 7, 2013 will proceed as scheduled.

Dated: October 1, 2013

s/Jeanne M. Cochran  
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JEANNE M. COCHRAN  
Administrative Law Judge

## MEMORANDUM

### I. Factual and Procedural Background

The City first issued a liquor license to Starmac, Inc. d/b/a Champions Saloon & Eatery (Champions) on September 9, 1981.<sup>1</sup> Champions' liquor license has been renewed annually by the City since it was first issued. Champions' current liquor license was issued on July 1, 2012, to Starmac, Inc. and Richard P. Nelson, the sole owner and shareholder of Starmac, Inc.<sup>2</sup> Champions is located at 105 West Lake Street in Minneapolis, Minnesota.<sup>3</sup>

On January 28, 2013, the City of Minneapolis issued a Notice and Order for Hearing in the above-captioned proceeding. The Notice and Order for Hearing provides that the City has initiated an adverse action against Champions' license. The purpose of the proceeding is to determine whether good cause exists for the City to immediately revoke, refuse to renew, or otherwise take adverse action against the Class E on-sale liquor license held by Respondents.<sup>4</sup> The Notice and Order for Hearing has since been amended several times, most recently on September 5, 2013.<sup>5</sup>

On July 1, 2013, Respondents filed their first Motion for Summary Disposition (First Motion). The First Motion requested that summary disposition be granted in favor of Respondents on the grounds that the City has not established a legal or factual basis for revocation of Champions' liquor license.<sup>6</sup> The City opposed the Respondents' motion on legal, but not factual, grounds.<sup>7</sup> By an Order dated September 3, 2013, the undersigned Administrative Law Judge granted the First Motion on the issue of license revocation, but denied the motion in all other respects.<sup>8</sup> The undersigned ruled that the evidentiary hearing in this matter would proceed on the issue of whether the City should refuse to renew Champions' current on-sale liquor license and on whether the City should take other adverse action against Champions' liquor license. The undersigned denied summary disposition of those issues because the First Motion failed to address those issues.

On August 27, 2013, Respondents filed their Second Motion for Summary Disposition (Second Motion). The Second Motion requested that the City's cause of action for nonrenewal be dismissed.<sup>9</sup> On September 9, 2013, the City filed its Response in Opposition to Respondents' Second Motion for Summary Disposition. By

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<sup>1</sup> Affidavit (Aff.) of Richard P. Nelson at ¶¶ 1, 3.

<sup>2</sup> *Id.* at ¶ 3; Aff. of Grant Wilson, City of Minneapolis Business Licensing Manager, at ¶ 3.

<sup>3</sup> *Id.* at ¶ 2.

<sup>4</sup> Notice and Order for Hearing at 1 (January 28, 2013).

<sup>5</sup> See Third Amended Notice and Order for Hearing (September 5, 2013).

<sup>6</sup> Respondents' Motion for Summary Disposition (filed on July 1, 2013).

<sup>7</sup> See City of Minneapolis' Response in Opposition to Respondents' Motion for Summary Disposition (filed July 12, 2013) (City's Response).

<sup>8</sup> ORDER GRANTING IN PART AND DENYING IN PART RESPONDENTS' MOTION FOR SUMMARY Disposition (September 3, 2013).

<sup>9</sup> Respondents' Second Motion for Summary Disposition at 1.

an Order dated September 19, 2013, the undersigned Administrative Law Judge issued an Order denying Respondents' Second Motion.

On September 9, 2013, Respondents' filed their Third Motion for Summary Disposition (Third Motion). The Third Motion argues that the City of Minneapolis does not have the legal authority or factual basis to impose conditions on Champions' liquor license and, on that basis, requests that the City's "adverse license action" be dismissed.<sup>10</sup> On September 23, 2013, the City of Minneapolis filed its Response in Opposition to Respondents' Third Motion for Summary Disposition. On September 26, 2013, Respondents filed their Reply Brief in Support of Third Motion for Summary Disposition.

## II. Summary Disposition Standard

Summary disposition is the administrative equivalent of summary judgment.<sup>11</sup> Summary judgment is appropriate when there is no genuine issue of material fact and a party is entitled to judgment as a matter of law.<sup>12</sup> A genuine issue is one that is not a sham or frivolous, and a material fact is one which will affect the outcome of the case.<sup>13</sup> The Office of Administrative Hearings has generally followed the summary judgment standards developed in judicial courts in considering motions for summary disposition regarding contested case matters.<sup>14</sup>

The moving party must demonstrate that no genuine issues of material fact exist.<sup>15</sup> If the moving party is successful, the nonmoving party then has the burden of proof to show specific facts are in dispute that can affect the outcome of the case.<sup>16</sup> It is not sufficient for the nonmoving party to rest on mere averments or denials. The non-moving party must present specific facts demonstrating a genuine issue for trial.<sup>17</sup> When considering a motion for summary judgment, the Judge must view the facts in the light most favorable to the non-moving party.<sup>18</sup> All doubts and factual inferences must be resolved against the moving party.<sup>19</sup> If reasonable minds could differ as to the import of the evidence, judgment as a matter of law should not be granted.<sup>20</sup>

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<sup>10</sup> Respondents' Third Motion for Summary Disposition at 1.

<sup>11</sup> Minn. R. 1400.5500(K).

<sup>12</sup> Minn. R. Civ. P. 56.03 and Minn. R. 1400.5500(K).

<sup>13</sup> *Highland Chateau v. Minnesota Dep't of Pub. Welfare*, 356 N.W.2d 804, 808 (Minn. Ct. App. 1984), rev. denied (Minn. Feb. 6, 1985).

<sup>14</sup> Minn. R. 1400.6600.

<sup>15</sup> *Theile v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988).

<sup>16</sup> *Highland Chateau*, 356 N.W.2d at 808.

<sup>17</sup> Minn. R. Civ. P. 56.05.

<sup>18</sup> *Ostendorf v. Kenyon*, 347 N.W.2d 834 (Minn. Ct. App. 1984).

<sup>19</sup> *Thiele*, 425 N.W.2d at 583.

<sup>20</sup> *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 250-51 (1986).

### III. Respondents' Third Motion for Summary Disposition

Respondents' Third Motion for Summary Disposition asserts that the Administrative Law Judge should dismiss the City's claim that grounds exist to impose conditions on Champions' liquor license.<sup>21</sup> Respondents assert that the Minnesota Court of Appeals decision *In re: On Sale Liquor License, Class B*, 763 N.W.2d 359 (Minn. Ct. App. 2009) (hereinafter "*Gabby's*") holds that the City of Minneapolis does not have express or implied authority to impose conditions on an existing liquor license. Based on the *Gabby's* decision, the Respondents argue that the City cannot impose conditions on Champions' liquor license.<sup>22</sup>

In addition, the Respondents claim that Minneapolis Code of Ordinances (M.C.O.) § 362.365, which became effective after the *Gabby's* decision and which authorizes the City to impose conditions on a liquor license for "good cause," is *not* applicable in this case. The Respondents argue that the new ordinance does not provide the City authority to impose conditions on Champions' license because the ordinance became effective in February 2013 after the City filed its original Notice and Order for Hearing in this matter, and after the alleged incidents at Champions occurred.<sup>23</sup>

Finally, Respondents argue that, even if the City has the authority to impose conditions on Champions' liquor license, there are no facts in the record to support such action.<sup>24</sup>

### IV. The City's Response

The City argues that M.C.O. § 362.365 provides the City with legal authority to issue conditions on Champions' liquor license as part of the current proceeding. The City notes that its Third Amended Notice and Order for Hearing filed on September 5, 2013, includes a number of the alleged incidents that occurred after February 22, 2013, the date M.C.O. § 362.365 was enacted.<sup>25</sup>

The City also argues that, even without the express authority granted by M.C.O. § 362.365, it has the authority to impose conditions on Champions' liquor license because "the law is clear that lesser remedies (specifically inclusive of license conditions) may be considered by a city council when a more serious remedy (such as nonrenewal or revocation) is authorized."<sup>26</sup> In support of its position, the City cites *Bohn v. City of Minneapolis*, 2002 WL 173148 (Minn. Ct. App. Feb. 5, 2002).

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<sup>21</sup> Respondents' Third Motion for Summary Disposition at 1.

<sup>22</sup> *Id.* at 2 (citing *In re: On Sale Liquor License, Class B*, 763 N.W.2d 359, 365 (Minn. Ct. App. 2009) .

<sup>23</sup> *Id.*

<sup>24</sup> *Id.* at 4.

<sup>25</sup> City of Minneapolis' Response in Opposition to Respondents' Third Motion for Summary Disposition at 2.

<sup>26</sup> *Id.* at 2-3.

## V. Legal Analysis

After careful consideration of the parties' positions, for the reasons discussed below the Administrative Law Judge concludes that Respondents' motion must be denied.

### A. Authority to Impose Conditions

The Respondents' position that the City lacks the authority to impose conditions on Champions' liquor license is erroneous. The Respondents' position is based on an overly broad interpretation of the Minnesota Court of Appeals decision in *Gabby's*.<sup>27</sup> That case involved a decision by the City of Minneapolis to impose conditions on the existing liquor license of Gabby's Saloon and Eatery. The City took the action approximately 10 months after it had renewed Gabby's liquor license for one year without any conditions.<sup>28</sup> In *Gabby's*, the Court of Appeals held that the City did not have the authority to impose conditions on an existing license, absent a valid basis to suspend or revoke the license.<sup>29</sup> The Court of Appeals concluded that the City lacked the authority to do so because no statutory provision or municipal code provision granted the City the authority to impose conditions on an existing license.<sup>30</sup>

The *Gabby's* decision, however, is not applicable in this case because the City is not attempting to impose conditions on an existing license, as it did in *Gabby's*. Rather, the City is considering imposing conditions as part of the renewal process. The Court of Appeals in *Gabby's* did not address the separate question of whether the City has the authority to impose conditions when renewing a license, much less hold that the City lacks the authority to do so.<sup>31</sup>

In addition, the Court of Appeals recognized in *Gabby's* that the City could properly impose conditions on an existing liquor license if a city ordinance authorized it to do so, but no such ordinance was in existence at the time.<sup>32</sup> The City now has the express authority to impose conditions on liquor licenses. M.C.O. § 362.365, which became effective in February 2013, provides:

When the city council makes a finding that good cause exists to impose reasonable conditions or restrictions upon a license issued

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<sup>27</sup> Respondents' Third Motion for Summary Disposition at 2.

<sup>28</sup> *Gabby's*, 763 N.W.2d at 364-65 (stating that the City of Minneapolis renewed Gabby's liquor license for one year without conditions in April 2007, and, in February 2008, imposed a number of conditions on Gabby's license).

<sup>29</sup> The Court of Appeals concluded that the City lacked both "express and implied authority to impose conditions on Gabby's license because it was undisputed that the city had no basis to suspend or revoke the license." 763 N.W.2d at 371. In this statement, the Court of Appeals suggests that if there were a basis for the City to suspend, revoke or not renew a license, the Court's analysis of the City's authority to impose conditions would be different.

<sup>30</sup> See, 763 N.W.2d at 368-71.

<sup>31</sup> *Id.*

<sup>32</sup> *Id.* at 368-69.

pursuant to this title, the council, upon issuing a new license or renewing an existing license, or upon and as part of any adverse license action against an existing license, may impose such conditions or restrictions pertaining to the manner and circumstances in which the business shall be conducted to preserve the public peace and protect and promote good order, livability and security. These reasonable conditions or restrictions may pertain to:

1. A limitation as to the hours when intoxicating liquor may be sold or consumed on the licensed premises.
2. A limitation and restriction as to the exact location within a building where intoxicating will be served, sold or consumed.
3. A limitation and restriction as to the means of ingress to or egress from the licensed establishment.
4. A limitation as to the patron occupancy level of the entire premises or portions thereof.
5. A limitation or restriction as to the admittance of persons under the age of twenty-one (21) years to those areas of the premises where alcohol is not sold, possessed or consumed; or a prohibition on the admittance of any persons under the age of twenty-one (21) years except for those purposes expressly recognized pursuant to Minn. Statute Section 340A.503.
6. Reasonable conditions limiting the operation of the licensed premises so as to ensure that the licensed business will comport with the character of the district in which it is located or to prevent the occurrence and establishment of public nuisances.

The authority granted to the city council pursuant to this section shall be in addition to any other authority otherwise provided by this Code and applicable law.<sup>33</sup>

This ordinance expressly grants the City broad authority to impose conditions on a new liquor license, an existing liquor license, or a liquor license being renewed when it finds “good cause.”

Moreover, this ordinance applies to the renewal of Champions’ liquor license in this case. While the City filed its original Notice and Order for Hearing in January 2013, the City has since filed three amendments to its Notice and Order and for Hearing. The first was filed on May 6, 2013, the second on July 12, 2013 and the third on September 9, 2013. These amended notices were filed consistent with Minn.

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<sup>33</sup> 2013-Or-013, § 2, 2-22-13

R. 1400.5600, subp. 5. The amended notices include a number of alleged incidents, including a murder, that occurred after February 22, 2013, the effective date of M.C.O. § 362.365. Thus, there is no basis to the Respondents' claim that the City seeks to impose conditions based solely on incidents that occurred prior to the enactment of M.C.O. § 362.365. For these reasons, the City has the authority to impose reasonable conditions on Champions' license as part of the current renewal process if there is "good cause" to do so.

## **B. Genuine Issue of Material Fact Regarding Grounds For Imposing Conditions**

Respondents argue that even if the City has the authority to impose conditions on Champions' license, summary disposition should be granted because there are no facts in the record to support such action.<sup>34</sup> In support of their position, Respondents cite to the Affidavit of Richard Nelson, the owner of Champions, which was filed with Respondents' First Motion.<sup>35</sup> Mr. Nelson states that Champions has a zero tolerance for drugs and has a robust security program designed to prevent illegal activity.<sup>36</sup>

Respondents' argument fails, however, because there is a disputed issue of material fact regarding whether "good cause" exists to impose conditions on Champions' license as part of the renewal process. The City has presented evidence showing that Champions has been the site of "ongoing nuisance, narcotics and violent criminal activity."<sup>37</sup> This evidence is relevant to the question of whether "good cause" exists to impose conditions on Champions' liquor license and contradicts Respondents' claim that there are no facts to support the imposition of conditions.<sup>38</sup> Thus, there is a genuine issue of material fact in dispute to be resolved at hearing.<sup>39</sup>

For these reasons, Respondents' Third Motion for Summary Disposition is denied.

**J. M. C.**

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<sup>34</sup> Respondents' Third Motion for Summary Disposition at 4.

<sup>35</sup> *Id.*

<sup>36</sup> Affidavit of Richard Nelson at ¶¶ 4-5.

<sup>37</sup> Affidavit of Grant Wilson, Manager of Business Licensing, City of Minneapolis, at ¶ 5 (filed with the City's Response in Opposition to Respondents' Second Motion for Summary Disposition).

<sup>38</sup> See *Hard Times Café, Inc. v. City of Minneapolis*, 625 N.W.2d 165, 171-72 (Minn. Ct. App. 2001). (holding that "good cause" to revoke a liquor license includes illegal drug transactions occurring on and around the licensed premises).

<sup>39</sup> See *Highland Chateau v. Minnesota Dep't of Pub. Welfare*, 356 N.W.2d 804, 808 (Minn. Ct. App. 1984), rev. denied (Minn. Feb. 6, 1985) (a material issue of fact is one that will affect the outcome of the proceeding).