

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' SECOND MOTION  
FOR SUMMARY DISPOSITION**

This matter is before Administrative Law Judge Jeanne M. Cochran on Respondents' Second Motion for Summary Disposition. Respondents filed their motion on August 27, 2013. The City of Minneapolis filed its Response in Opposition to Respondents' Second Motion for Summary Disposition on September 9, 2013. On September 16, 2013, the Respondents filed their Reply Brief in Support of Second Motion for Summary Disposition. The motion record closed on September 16, 2013.

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

Dated: September 19, 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>

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>5</sup> The City opposed the Respondents' motion on legal, but not factual, grounds.<sup>6</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>7</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 motion failed to address the issues.

On August 27, 2013, Respondents filed their Second Motion for Summary for Disposition ("Second Motion"). The Second Motion requests that the City's cause of action for nonrenewal be dismissed.<sup>8</sup> On September 9, 2013, the City filed its Response in Opposition to Respondents' Second Motion for Summary Disposition.

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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). The Notice and Order for Hearing has since been amended several times, most recently on September 5, 2013. See Third Amended Notice and Order for Hearing.

<sup>5</sup> Respondents' Motion for Summary Disposition (filed on July 1, 2013).

<sup>6</sup> See City of Minneapolis' Response in Opposition to Respondents' Motion for Summary Disposition (filed July 12, 2013) (City's Response).

<sup>7</sup> ORDER GRANTING IN PART AND DENYING IN PART RESPONDENTS' MOTION FOR SUMMARY Disposition (September 3, 2013).

<sup>8</sup> Respondents' Second Motion for Summary Disposition at 1.

## II. Summary Disposition Standard

Summary disposition is the administrative equivalent of summary judgment.<sup>9</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>10</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>11</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>12</sup>

The moving party must demonstrate that no genuine issues of material fact exist.<sup>13</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>14</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>15</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>16</sup> All doubts and factual inferences must be resolved against the moving party.<sup>17</sup> If reasonable minds could differ as to the import of the evidence, judgment as a matter of law should not be granted.<sup>18</sup>

## III. Respondents' Second Motion for Summary Disposition

Respondents' Second Motion for Summary Disposition asserts that the City's nonrenewal claim should be dismissed.<sup>19</sup> Respondents argue that Minn. Stat. § 340A.412, subd. 2(a), the statute governing renewal of liquor licenses, requires the City to conduct a "background and financial investigation of the applicant" before it can consider nonrenewal of the liquor license.<sup>20</sup> Respondents maintain that Richard P. Nelson, not Starmac, Inc., is the "applicant" within the meaning of the statute and that the City has failed to conduct an investigation into Mr. Nelson's background and finances.

In support of its argument, Respondents filed the Second Affidavit of Richard P. Nelson. Attached as Exhibit A to the affidavit is a "License Renewal Application." The Application lists "Richard P. Nelson" under "Applicant's Name" and "Starmac, Inc. d/b/a

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<sup>9</sup> Minn. R. 1400.5500(K).

<sup>10</sup> Minn. R. Civ. P. 56.03 and Minn. R. 1400.5500(K).

<sup>11</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>12</sup> Minn. R. 1400.6600.

<sup>13</sup> *Theile v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988).

<sup>14</sup> *Highland Chateau*, 356 N.W.2d at 808.

<sup>15</sup> Minn. R. Civ. P. 56.05.

<sup>16</sup> *Ostendorf v. Kenyon*, 347 N.W.2d 834 (Minn. Ct. App. 1984).

<sup>17</sup> *Thiele*, 425 N.W.2d at 583.

<sup>18</sup> *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 250-51 (1986).

<sup>19</sup> Respondents' Second Motion for Summary Disposition at 1.

<sup>20</sup> *Id.* at 2.

Champions Saloon and Eatery” under the “Name of Business.”<sup>21</sup> The Application form is signed by “Richard P. Nelson” as “Owner, President.”<sup>22</sup> In addition, in his affidavit, Mr. Nelson states that “to the best of his knowledge, the City of Minneapolis has not conducted a background and financial investigation of me personally at any time in 2013.”<sup>23</sup> Based on this evidence, Respondents argue the City has failed to conduct the investigation of Mr. Nelson that is required to support nonrenewal of Champions’ liquor license, and, therefore, the City’s nonrenewal cause of action should be summarily dismissed.<sup>24</sup>

#### **IV. The City’s Position**

The City opposes Respondents’ Second Motion for Summary Disposition on legal and factual grounds. First, the City argues that the language of Minn. Stat. § 340A.412 requiring a “background and financial investigation of the applicant,” which Respondents cite, is not applicable to the renewal of a liquor license. Rather, the language applies to the consideration of an initial license or the transfer of a license. The City points out that the portion of Minn. Stat. § 340A.412 that applies to renewal of a liquor license only requires an “investigation” and the “investigation” is to determine whether renewal of the liquor license is in the “public interest.”<sup>25</sup> In addition, the City asserts that it has in fact conducted a large scale investigation into the background and finances of Richard P. Nelson and Starmac, Inc., d/b/a Champions.<sup>26</sup>

In support of its position, the City filed the Affidavit of Grant Wilson, Manager of Business Licensing with the City of Minneapolis. Mr. Wilson’s Affidavit details the scope of the investigation and specifically states that the investigation has “examined the background, finances and financial arrangements of Richard Nelson.”<sup>27</sup> Mr. Wilson also states that the City of Minneapolis’ licensing database shows that Champions’ liquor license is held by Starmac, Inc. with Richard Nelson listed as its personal representative.<sup>28</sup>

Finally, the City argues that case law establishes that the City has broad authority to consider nonrenewal of a liquor license.<sup>29</sup> The City notes that by law it has the authority to make a decision regarding nonrenewal without a contested case hearing, but in this case it chose to have a contested case hearing to “obtain a factual finding and a recommendation on the question of whether renewal of the subject license would comport with the public interest.”<sup>30</sup>

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<sup>21</sup> Second Aff. of R. Nelson, Ex. A.

<sup>22</sup> *Id.*

<sup>23</sup> Second Aff. of R. Nelson at ¶2.

<sup>24</sup> Respondents’ Second Motion for Summary Disposition at 2-3.

<sup>25</sup> City’s Response at 3.

<sup>26</sup> *Id.*

<sup>27</sup> *Id.*, Aff. of Grant Wilson at ¶6.

<sup>28</sup> *Id.* at ¶ 7.

<sup>29</sup> City’s Response at 4-5.

<sup>30</sup> *Id.* at 6.

## V. Legal Analysis

Minnesota Statutes section 340A.412, subdivision 2, governs the issuance, transfer, and renewal of “on-sale” liquor licenses. That statute provides:

(a) The **city or county** having jurisdiction over on-sale licenses to sell intoxicating liquor **shall on initial application for an on-sale license or on application for a transfer of an existing license conduct a preliminary background and financial investigation of the applicant.** The application must be in the form prescribed by the commissioner and with any additional information as the governing body of the city or county having jurisdiction over the license requires. If the governing body of the city or county having jurisdiction determines or if the commissioner on the commissioner's own initiative determines that a comprehensive background and investigation of the applicant is necessary, the governing body may conduct the investigation itself or contract with the commissioner for the investigation. In addition, **an investigation may be required prior to renewal of an existing on-sale license when the governing body of the city or county deems it in the public interest.** An investigation fee not to exceed \$500 shall be charged an applicant by the city or county if the investigation is conducted within the state, or the actual cost not to exceed \$10,000 if the investigation is required outside the state.

(b) **No license may be issued, transferred, or renewed if the results of the investigation show, to the satisfaction of the governing body, that issuance, transfer, or renewal would not be in the public interest.**<sup>31</sup>

Under the plain language of this statute, a city can decide not to renew an on-sale liquor license “if the results of the investigation show ... that ... renewal would not be in the public interest.”<sup>32</sup>

In this case, the undisputed facts show that Richard P. Nelson, in his capacity as the Owner and President of Starmac, Inc., is listed as the “Applicant” on Champions’ liquor license renewal application form.<sup>33</sup> The Respondents assert that the City has not conducted an investigation of Richard P. Nelson, which is required by Minn. Stat. § 340A.412, subd. 2, to consider non-renewal of Champions’ license.<sup>34</sup> In response, the City provided evidence to show that the City has conducted an investigation of Richard P. Nelson, as well as an investigation of Starmac, Inc., in conjunction with the application filed by Mr. Nelson to renew Champions’ on-sale liquor license.<sup>35</sup> Because there are specific facts in dispute regarding whether the City conducted an investigation

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<sup>31</sup> Minn. Stat. § 340A.412, subd. 2 (2012) (emphasis added).

<sup>32</sup> *Id.*

<sup>33</sup> Second Aff. Of R. Nelson, Ex. A.

<sup>34</sup> Second Motion at 1-2; Second Aff. of R. Nelson at ¶2.

<sup>35</sup> City’s Response at 4; Aff. of G. Wilson at ¶6.

into the background and finances of Richard P. Nelson, the Owner and President of Starmac, Inc., there is a material issue of fact to be resolved at the hearing. Thus, Respondents' Second Motion for Summary Disposition must be denied.

Respondents' argument to the contrary fails because it is based on an illogical and erroneous interpretation of Minn. Stat. § 340A.412, subd. 2. Respondents argue that this statute requires an investigation into the **personal** "background and finances" of Richard P. Nelson because Mr. Nelson is listed as the "Applicant" on the license renewal application form.<sup>36</sup> The undisputed facts in this case, however, show that Mr. Nelson signed the form in his capacity as the Owner and President of Starmac, Inc., not in his personal capacity.<sup>37</sup> Thus, the "investigation" required by Minn. Stat. § 340A.412, subd. 2 for license renewal purposes is of Mr. Nelson, in his capacity as Owner and President of Starmac, Inc., and of Starmac Inc., d/b/a Champions Saloon and Eatery. If Respondents' alternative interpretation was adopted, it would lead to the absurd result that the City would be required to investigate the personal affairs of the individual who happens to sign the renewal application form on behalf of the business, but the City would not be required to investigate the business that is being relicensed. For these reasons, Respondents have failed to demonstrate that they are entitled to summary disposition as set forth in their Second Motion for Summary Disposition.<sup>38</sup>

**J. M. C.**

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<sup>36</sup> Second Motion at 2; Second Aff. of R. Nelson, Ex. A.

<sup>37</sup> Second Aff. of R. Nelson, Ex. A.

<sup>38</sup> See Minn. Stat. § 645.17 (2012) (statutes are to be interpreted to avoid absurd results).