

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

In the Matter of All Licenses Held by
Abdihakur Abdi Hassan d/b/a Capitol
Tobaccos for the Premises Located at
152 University Avenue West in St. Paul

**FINDINGS OF FACT,
CONCLUSIONS AND
RECOMMENDATION**

This matter came on for hearing before Administrative Law Judge James E. LaFave (ALJ) on October 2, 2012, at the Office of Administrative Hearings, 600 North Robert Street, St. Paul, Minnesota. The hearing was held pursuant to a Notice of Rescheduled Administrative Hearing dated September 10, 2012.

Daphne Lundstrom, Assistant City Attorney, appeared on behalf of the City of St. Paul (the City). Keillen Curtis, Attorney at Law, appeared on behalf of Abdihakur Abdi Hassan, d/b/a/ Capitol Tobaccos. Mr. Hassan participated via telephone.

STATEMENT OF THE ISSUES

1. Whether regulatory action should be taken against the licenses held by Abdihakur Abdi Hassan d/b/a Capitol Tobaccos?
2. Whether the recommended penalty of \$ 1,000 is reasonable pursuant to Saint Paul Legislative Code § 310.05 (m)(2)?

Based on the evidence in the hearing record, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. Abdihakur Abdi Hassan, d/b/a Capitol Tobaccos (“Licensee”) is the holder of a retail license to sell cigarettes and tobacco. His tobacco shop, Capitol Tobaccos, is located at 152 University Avenue West in St. Paul, Minnesota.¹
2. The City of St. Paul (“City”) describes and categorizes Capital Tobaccos occupancy as “Mercantile Sales”.²
3. Capitol Tobaccos has an occupancy limit of 67 persons. No more than 67 persons are allowed to be on the premises at any one time, including employees.³

¹ Ex 4.

² *Id.*

4. On June 30, 2012, at approximately 3:00 a.m., St. Paul Police responded to a report of an assault with a firearm at Capitol Tobaccos.⁴

5. Officer Valentine, the first Officer to respond, estimated there were 100-150 present at Capital Tobaccos when he arrived.⁵

6. Sgt. Cleveland arrived shortly thereafter and observed what he believed to be in excess of 100 people walking out of the business and loitering in the parking lot at 152 University Avenue West.⁶

7. On January 31, 2012, Administrative Law Judge Eric Lipman found that Capitol Tobaccos failed to maintain the approved capacity of its establishment, in violation of sections 55.06 and 310.05 (m)(2) of the St. Paul Legislative Code.⁷

8. Judge Lipman recommended the St. Paul City Council impose a \$500 penalty for the Licensee's failure to maintain the approved capacity for his establishment.⁸

9. On April 4, 2012, City Council File # 12-561 adopted Judge Lipman's recommendation and imposed a \$500 matrix penalty on the Licensee.

10. On July 25, 2012, the City served the Licensee with a Notice of Violation. The Notice informed the Licensee that on June 30, 2012, he had exceeded the occupancy limit of 67 persons, and that since this was his second offense within the past year the Department would recommend a \$1,000 fine. The Notice also informed the Licensee of his right to appeal.⁹

11. The Licensee timely notified the Department of his desire to appeal the violation and requested an administrative hearing.¹⁰

12. On September 10, 2012, the Department sent a Notice of Rescheduled Administrative Hearing to the Licensee.¹¹

13. At the Hearing, the Licensee stipulated and admitted to the facts and allegations contained in the Notice of Rescheduled Administrative Hearing, dated

³ Ex. 4 at p. 3.

⁴ Ex. 1 at p.5.

⁵ Ex 1 at p. 5 and Ex. 8 at p. 1.

⁶ Ex. 2 at p. 3.

⁷ Ex. 6 at p. 5. See January 31, 2012, Findings of Fact, Conclusions and Recommendation *In the Matter of All Licenses Held by Abdishakur Abdi Hassan d/b/a Capitol Tobaccos for the premises Located at 152 University Avenue West in St. Paul.* OAH Docket No. 8-6020-22427-3.

⁸ *Id.*

⁹ Ex. 8.

¹⁰ Ex. 9.

¹¹ Ex. 13.

September 10, 2012. Those facts and allegations are incorporated herein by reference in their entirety.

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

CONCLUSIONS

1. This matter is properly before the City of St. Paul and the Administrative Law Judge pursuant to Minn. Stat. § 14.55 and St. Paul Legislative Code §§ 310.05 and 310.06.

2. The City gave proper notice of the hearing and has fulfilled all of the relevant substantive and procedural requirements of law and rule.

3. As the party proposing that certain adverse action be taken, the City has the burden of proving the facts at issue by a preponderance of the evidence.

4. The City has proven by a preponderance of the evidence that on June 30, 2012, Capitol Tobaccos failed to maintain the approved capacity for its establishment, in violation of sections 55.06 and 310.05(m)(2) of the St. Paul Legislative Code.

5. This is a second offense for Licensee within the past year. The recommended penalty for a second offense is \$1,000 pursuant to the penalty matrix contained in St. Paul Legislative Code § 310.05 (m).

6. The Licensee provided no substantial or compelling reasons to justify a downward departure from the presumptive penalty.

Based upon these Conclusions, and for the reasons explained in the accompanying Memorandum, the Administrative Law Judge makes the following:

RECOMMENDATION

Based upon these Conclusions, the Administrative Law Judge respectfully recommends that: the St. Paul City Council IMPOSE a \$1,000 fine for the Licensee's failure to maintain the approved capacity for his establishment on June 30, 2012.

Dated: October 19, 2012

s/James E. LaFave

JAMES E. LAFAVE
Administrative Law Judge

Reported: Digitally recorded

NOTICE

This report is a recommendation, not a final decision. The St. Paul City Council will make the final decision after reviewing the record and may adopt, reject or modify the Findings of Fact, Conclusions and Recommendation contained herein. Pursuant to Section 310.05 of the St. Paul Legislative Code, the City Council's final decision shall not be made until this Report has been made available to the parties to the proceeding and the Licensee has been provided an opportunity to present oral or written arguments alleging error on the part of the Administrative Law Judge in the application of the law or the interpretation of the facts and an opportunity to present argument relating to any recommended adverse action. The Licensee and any interested parties should contact Shari Moore, Saint Paul City Clerk, 290 City Hall, 15 West Kellogg Boulevard, St. Paul, MN 55102, to ascertain the procedure for presenting argument.

MEMORANDUM

At the hearing in this matter, the parties stipulated, on the record, to the facts and allegations contained in the Notice of Rescheduled Administrative Hearing dated September 10, 2012. All that remained to debate was the penalty.

The City argued that : (1) the over occupancy at Capitol Tobaccos was a life and safety issue; (2) this was the Licensee's second violation within the past year; and (3) there was no justification to deviate from the presumptive fine of \$1,000 set forth in section 310.05(m) of the St. Paul Legislative Code.

The Licensee reasoned that since he admitted to the underlying facts, streamlining the process and saving all involved the time and expense of full-blown hearing, a lower fine was appropriate.

The Licensee's argument, while sympathetic, does not hold up when one reflects on the facts in this case. This was the second time within a year Licensee was cited for being over capacity. In both cases, the police reported over 100 persons at Capitol Tobaccos, far in excess of the 67 person capacity. In this instance, at 3:00 a.m., the police were forced to respond to an alleged assault with a firearm. The City is correct; this is a life and safety issue.

The presumptive fine of \$1,000, as set forth in section 310.05(m) of the St. Paul Legislative Code, is appropriate.

J. E. L.