

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE CITY OF SAINT PAUL

In the Matter of All Licenses Held by
RAS Ethiopian Bar & Restaurant d/b/a
RAS Restaurant & Lounge for the Premises
Located at 2516 – 7th Street West in
Saint Paul; License ID # 20100000062

**FINDINGS OF FACT,
CONCLUSIONS OF LAW, AND
RECOMMENDATION**

This matter came on for hearing on August 25, 2014, before Administrative Law Judge Barbara L. Neilson at the Office of Administrative Hearings (OAH) in St. Paul, Minnesota. The OAH record closed at the conclusion of the hearing that day.

Geoffrey Karls, Assistant City Attorney, appeared on behalf of the City of St. Paul (City). Dereje Pedasso, Manager, appeared on behalf of RAS Ethiopian Bar & Restaurant d/b/a RAS Restaurant & Lounge (Respondent). Mr. Pedasso was accompanied by Zinash Amde, Owner of the Respondent.

STATEMENT OF THE ISSUES

1. Did the Respondent violate one or more conditions placed on its licenses or the permit requirements contained in the St. Paul Legislative Code in April or May of 2014?
2. If so, is the proposed \$1,500 penalty the appropriate licensing sanction under St. Paul Legislative Code §§ 310.05 and 310.06?

SUMMARY OF RECOMMENDATIONS

The Administrative Law Judge concludes that the Respondent did, in fact, commit the violations of License Conditions 1, 10, 11, and 12 and St. Paul Legislative Code § 33.03(a) that have been alleged by the City. The Respondent did not show that there are substantial or compelling reasons to deviate from the presumptive penalty that is set forth in the Legislative Code for these violations. Accordingly, the Administrative Law Judge recommends that the City take appropriate adverse action against the licenses held by the Respondent.

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

FINDINGS OF FACT

I. Background

1. The Respondent operates a bar and restaurant at 2516 – 7th Street West in St. Paul. Dereje Pedasso is the manager of the business, and Zinash Amde is the owner.¹

2. The Respondent currently holds the following licenses issued by the City of St. Paul: Liquor On Sale – 101-180 Seats; Liquor On Sale – 2 a.m. Closing; Liquor On Sale – Sunday; Liquor – Outdoor Service Area (Patio); Alarm Permit; and Entertainment (A).²

3. The City approved a zoning request for Respondent's revised site plan on February 27, 2013. Among other things, the revised site plan identified authorized parking spaces and the location of a bike rack in the Respondent's lot.³

4. On October 20, 2013, the Respondent's owner agreed that several conditions would be placed on the Respondent's licenses. The conditions included the following:

- Condition 1. The licensee shall provide and maintain working video surveillance cameras and recorders on the premises (both inside and outside) in accordance with Saint Paul Police Department (SPPD) recommendations. The number of cameras, their placement and their quality must be approved by SPPD; and there shall be adequate lighting to support the camera placement. This equipment must be in operation during all business hours. Tapes/recordings must be maintained for a minimum of thirty (30) days, and there shall be an employee on-staff at all times with the ability to make them immediately available to the SPPD and/or the Department of Safety and Inspections (DSI) upon request. Video surveillance equipment shall be installed prior to the issuance of any license(s).
- Condition 10. The licensee shall make sure that all refuse and trash that is on the premises and/or surrounding sidewalk is removed from the licensed premises, and the surrounding sidewalk by noon on a daily basis.
- Condition 11. Licensee agrees to maintain the off-street parking lot area in a manner consistent with the approved site plan on file with the [DSI] dated 02/27/2013. This includes maintaining the striping of the parking lot, compact and handicap parking space

¹ Testimony of Dejere Pedasso; Test. of Zinash Amde.

² Exhibit 1; Test. of Kristina Schweinler.

³ Exs. 1 and 3.

signage, vehicle curb-stop parking barriers, trash container fencing, and bike rack.

- Condition 12. Licensee agrees to maintain a barrier sufficient to prevent customer and/or employee vehicles from parking and/or driving on the separate parcel of vacant land with property identification number 212823140004 (located immediately behind this property). The current approved barrier is the curb-stop parking barriers as shown on the approved site plan on file with DSI dated 02/27/2013. Further, licensee agrees to obtain prior written site plan approval from DSI, and to make all necessary improvements to this vacant parcel of land as required under this approval process, before using this property in any manner (e.g., parking of customer and/or employee vehicles, allowing access to this vacant parcel of land from their property, placement of trash/recycling containers, etc.).⁴

5. In September 2013, the City imposed a \$500 fine on the Respondent for providing entertainment in its establishment without a license, in violation of a licensing condition that was in place at that time.⁵

6. In March 2014, the City Council imposed a \$500 fine against the Respondent for failing to provide a video surveillance recording upon request in December 2013, in violation of License Condition 1.⁶

II. Basis for Current Proposed Penalty

A. Failure to Provide Videotape Recording in April 2014

7. PreWire Specialists, Inc., installed a new surveillance camera system on the Respondent's premises in February 2014. Seven cameras were included in the new system. At the time of installation, PreWire Specialists instructed Mr. Pedasso how to use the cameras and how to archive and record the video. The system was working properly at the time it was first installed.⁷

8. Two incidents occurred at or around Respondent's establishment during the late evening or early morning hours of March 30-31, 2014.⁸ On April 8, 2014, at approximately 4:00 p.m., St. Paul Police Sergeant David Ossell went to the Respondent's business and requested that staff provide him with surveillance video for the period of 11:00 p.m. on March 30, 2014, to 1:00 a.m. on March 31, 2014. The employee on duty contacted Mr. Pedasso regarding the request. Mr. Pedasso told

⁴ Ex. 2.

⁵ *Id.*; Test. of K. Schweinler.

⁶ *Id.*

⁷ Test. of D. Pedasso; Test. of Z. Amde.

⁸ Ex. 4; Test. of Sergeant David Ossell.

Sgt. Ossell that he would have his wife make the video recording and it should be available in a few days.⁹

9. On April 11, 2014, Sgt. Ossell received a telephone call from Mr. Pedasso indicating that the surveillance video was ready to be picked up. Sgt. Ossell went to the Respondent's establishment and was given an 8-gigabyte (GB) thumb drive. On April 4, 2014, Sgt. Ossell tried to play the video but was unable to do so because the operating system was not on the thumb drive. He called Mr. Pedasso and explained the problem. Mr. Pedasso indicated that the 8-GB thumb drive was too small to hold both the video and the operating system, and advised Sgt. Ossell to return to the bar to pick up a 64-GB thumb drive.¹⁰

10. Sgt. Ossell thereafter returned to the Respondent's establishment to retrieve the 64-GB thumb drive. On April 15, 2014, he again tried to play the video using the new thumb drive. He discovered that the operating system was not loaded on the new thumb drive and that the only camera with a video clip was Camera 7. There should have been a total of seven cameras recording video at the Respondent's establishment.¹¹

11. On April 16, 2014, Sgt. Ossell contacted Mr. Pedasso and told him that he needed the video for all of the cameras, including the interior of the bar. Mr. Pedasso indicated that he thought only the exterior video had been requested. Sgt. Ossell asserted that he had requested video for both the interior and exterior in his initial request on April 8, 2014. Mr. Pedasso told Sgt. Ossell that he would make a copy of the video from all of the cameras.¹²

12. Mr. Pedasso spent several hours trying to retrieve the video recording for police and discovered that there was a problem with the system's ability to record. He then contacted PreWire Specialists for assistance. The PreWire technician initially told Mr. Pedasso that he could repair the system, but later informed Mr. Pedasso and Ms. Amde that the hard drive had "burned up" due to a defect.¹³

13. Matt Johnson of PreWire Specialists, Inc., made the following statements in a letter that the Respondent submitted into evidence:

The cause of the loss of archived surveillance video recordings at Ras Bar is due to a hard drive failure that, Ras Bar nor PreWire Specialists have any control over. [Sic.] The drive has been sent back to Seagate (the manufacturer) and replaced per their RMA process due to being defective. PreWire Specialists, who installed the camera system, will be installing the

⁹ Ex. 5.

¹⁰ Ex. 5.

¹¹ *Id.*; Test. of D. Ossell.

¹² Ex. 6; Test. of D. Ossell.

¹³ Ex. 13; Test. of D. Pedasso; Test. of Z. Amde.

replacement drive today 4/23/2014 which will double the recording time it currently has.¹⁴

14. The surveillance camera system at the Respondent's business was subsequently repaired.¹⁵

15. On April 28, 2014, Sgt. Ossell contacted Mr. Pedasso regarding the surveillance video. Mr. Pedasso told Sgt. Ossell that the computer's hard drive had just burned up, he had been in contact with the company that installed the equipment, and the company had given him a letter verifying the nature of the problem. Sgt. Ossell again asked Mr. Pedasso if he could provide the surveillance video recording, and Mr. Pedasso said that he could not.¹⁶

B. Violations Observed during April 28, 2014, Inspection

16. On April 28, 2014, Kristina Schweinler, a Senior License Inspector with the DSI, conducted an inspection of the Respondent's premises. The inspection was prompted by a complaint that was received by the Mayor's Office concerning garbage in the Respondent's parking lot.¹⁷

17. During the inspection, Ms. Schweinler took pictures and noted the following:

- Bags of trash, brush, siding, a sign, buckets, and other items were left near the trash container and along the building; trash cans were stored near the rear exit; and a cooler, smoker and television set were on the patio, in violation of License Condition 10;¹⁸
- A vehicle with flat tires and expired license tabs was in the parking lot and a bike rack was chained to a cement post, in violation of License Condition 11;¹⁹
- No barriers were in place to restrict cars from parking in the gravel area outside the area established in the site plan, in violation of License Condition 12;²⁰ and
- There was evidence that alterations had been made to Respondent's establishment (a RAS Restaurant and Lounge sign was propped up against the building; two toilets were near the trash container; and old siding was under the stairs to the deck and along

¹⁴ Ex. 13. Documents attached to Mr. Johnson's letter indicated that, on April 18, 2014, Seagate Technology issued a receipt acknowledging that Mr. Johnson had returned certain equipment to Seagate.

¹⁵ Test. of D. Pedasso.

¹⁶ Ex. 6.

¹⁷ Test. of K. Schweinler; Ex. 1.

¹⁸ Test. of K. Schweinler; Exs. 7-2, 7-5, 7-6, 7-7, 7-8, 7-9, 7-10, 7-13, 7-14, 7-17, 7-18, 7-19, and 7-20.

¹⁹ Test. of K. Schweinler; Exs. 7-15, 7-16, and 7-20.

²⁰ Test. of K. Schweinler; Exs. 7-1, 7-20, 7-21, and 7-22.

the building) but the Respondent had not obtained permits to perform plumbing, electrical, or siding work, in violation of Saint Paul Legislative Code § 33.03(a).²¹

18. During the inspection on April 28, 2014, there were one or more employees and approximately four customers in the Respondent's establishment. The authorized parking area was not full at the time. Ms. Schweinler did not obtain the identities of the customers or confirm that the vehicles she had observed in the gravel parking area belonged to those customers or to employees of the Respondent.²²

19. The Respondent's customers sometimes take a cab home and leave their cars in the Respondent's parking lot overnight. In addition, some of the Respondent's customers have, on occasion, parked in the unauthorized area.²³

20. Under all of the circumstances, it is more likely than not that the vehicles that Ms. Schweinler observed in the unauthorized area on April 28, 2014, belonged to customers or employees of the Respondent.

C. Parking Violation Observed during May 8, 2014, Compliance Check

21. On May 8, 2014, at approximately 10:30 p.m., St. Paul Police Officers Vladimir Krumgant and Kannedy Lee were sent to the Respondent's establishment to determine whether the Respondent's patrons were parking in areas that were not designated in the Respondent's site plan as approved parking areas.²⁴

22. When the Police Officers arrived at the Respondent's business, six cars were parked in the gravel portion of the lot behind the establishment, which is not an approved parking area. The officers observed several vehicles coming and going from the gravel lot, and saw individuals who had parked in the gravel lot walk toward Respondent's establishment after leaving their vehicles. The police officers did not see anyone employed by the Respondent advising patrons not to park in this area.²⁵

III. Procedural Findings

23. By letter dated May 14, 2014, Geoffrey Karls, Assistant City Attorney, notified the Respondent that the DSI had recommended adverse action against all licenses held by the Respondent based on alleged violations of License Conditions 1, 10, 11, and 12, and an alleged violation of St. Paul Legislative Code § 33.03(a). The letter advised the Respondent that the DSI intended to recommend that a \$1,500 penalty be imposed against the Respondent under St. Paul Legislative Code § 310.05(m) based on multiple license condition violations.²⁶ The May 14, 2014, letter also informed the Respondent that the DSI intended to recommend that

²¹ Test. of K. Schweinler; Exs. 7-2, 7-3, 7-10, 7-11, and 7-12.

²² Test. of K. Schweinler.

²³ Test. of D. Pedasso.

²⁴ Ex. 9.

²⁵ *Id.*

²⁶ Ex. 10.

License Condition 2 be revised to require that security staff be present on the Respondent's premises on Thursday nights.²⁷

24. By letter dated May 21, 2014, the Respondent contested the violations alleged by the City and requested a hearing.²⁸

25. On August 13, 2014, the City issued a Notice of Administrative Hearing, scheduling the hearing to take place on August 25, 2014.²⁹

26. The hearing took place as scheduled on August 25, 2014.

27. During the hearing, the DSI withdrew its initial proposal that License Condition 2 be revised to require the presence of security staff on Thursday nights.

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

CONCLUSIONS OF LAW

1. The Administrative Law Judge and the St. Paul City Council have authority to hear this matter pursuant to St. Paul Legislative Code § 310.05(c).

2. The hearing in this matter was conducted in accordance with the applicable portions of the procedures set forth in St. Paul Legislative Code § 310.05 of the.

3. The City gave proper notice of the hearing in this matter and has fulfilled all procedural requirements of rule or law.

4. As the party proposing that certain action be taken, the City has the burden of proving by a preponderance of the evidence that adverse action is warranted against the licenses held by the Respondent.³⁰

5. Under the St. Paul Legislative Code, the St. Paul City Council has grounds to take adverse action against any or all licenses held by a licensee if the licensee has failed to comply with any condition set forth in the license or if the licensee has violated the provisions of any statute, ordinance or regulation reasonably related to the licensed activity.³¹

²⁷ Ex. 10-3 and 10-6.

²⁸ Ex. 11.

²⁹ Ex. 12.

³⁰ Minn. R. 1400.7300, subp. 5.

³¹ St. Paul Legislative Code § 310.06 (a) and (b)(6)(a).

6. The portion of the St. Paul Legislative Code relating to permit requirements applicable to building and general construction states:

No person shall construct, enlarge, alter, repair, move, demolish or change the occupancy of a building or structure without first obtaining a building permit from the building official. Permits for building or general construction are not required for repairs for maintenance only or for minor alterations provided they are not required under the state building code, this chapter or other pertinent provisions of the Saint Paul Legislative Code, and provided the cost of such repairs and minor alterations does not exceed the present market value of five hundred dollars (\$500.00).³²

7. The City demonstrated by a preponderance of the evidence that the Respondent violated License Condition 1 in April 2014, by failing to maintain working video surveillance cameras and recorders on the premises; failing to maintain tapes/recordings for a minimum of thirty days; and failing to make surveillance camera recordings immediately available to the St. Paul Police Department upon request.

8. The City demonstrated by a preponderance of the evidence that the Respondent violated License Condition 10 on April 28, 2014, by failing to ensure that all refuse and trash that was on the premises was removed by noon each day.

9. The City demonstrated by a preponderance of the evidence that the Respondent violated License Condition 11 on April 28, 2014, by failing to maintain the off-street parking lot in a manner consistent with the approved site plan.

10. The City demonstrated by a preponderance of the evidence that the Respondent violated License Condition 12 on April 28, 2014, and May 8, 2014, by failing to maintain a barrier sufficient to prevent customer and/or employee vehicles from parking or driving on the vacant gravel property located immediately behind the Respondent's establishment.

11. The City demonstrated by a preponderance of the evidence that the Respondent violated the requirements set forth in St. Paul Legislative Code § 33.03(a) by failing to obtain appropriate permits to make alterations to the premises.

12. The penalty matrix contained in the St. Paul Legislative Code sets forth presumptive penalties for certain violations. The Code states that the City Council may deviate from the presumptive penalty where the Council determines that there are "substantial and compelling reasons making it more appropriate to do so."³³

13. The Respondent had committed a prior violation of License Condition 1 in December 2013. As a result, the violation that occurred in April 2014 was the Respondent's second violation within one year. The penalty matrix suggests a presumptive penalty of \$1,000 for a second violation.

³² St. Paul Legislative Code § 33.03(a).

³³ St. Paul Legislative Code § 310.05(m).

14. There is no evidence that the Respondent had previously violated License Conditions 10, 11, or 12, or the permit requirements set forth in St. Paul Legislative Code § 33.03(a). The penalty matrix suggests a presumptive penalty of \$500 for a first violation of conditions placed on a license, and a presumptive penalty of \$500 for a first violation of provisions of the Legislative Code relating to the licensed activity.

15. The City has shown a sufficient basis to impose a presumptive penalty of \$1,500 against the Respondent.

16. There are no substantial or compelling reasons in the record to justify a deviation from the presumptive penalty in this case.

17. The attached Memorandum is incorporated in these Conclusions of Law.

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

RECOMMENDATION

IT IS RECOMMENDED that the St. Paul City Council take appropriate action against the licenses held by RAS Ethiopian Bar & Restaurant d/b/a RAS Restaurant & Lounge for the premises located at 2516 – 7th Street West in St. Paul, Minnesota.

Dated: September 25, 2014

s/Barbara L. Neilson
BARBARA L. NEILSON
Administrative Law Judge

Reported: Digitally recorded; no transcript prepared.

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 of Law, and Recommendation issued by the Administrative Law Judge. Pursuant to Section 310.05 of the St. Paul Legislative Code, the City Council shall not make a final decision until the parties have had the opportunity to present oral or written arguments to the City Council. The parties should contact Shari Moore, City Clerk, City of St. Paul, 290 City Hall, 15 West Kellogg Boulevard, St. Paul, MN 55102, to find out the process for presenting argument.

MEMORANDUM

The City's Legislative Code provides, in general, that the City may take adverse action against any or all licenses or permits on the basis that the licensee has failed to comply with any condition set forth in the license or has violated any of the provisions of any statute, ordinance or regulation reasonably related to the licensed activity.³⁴ The Code also sets forth presumptive penalties that should be applied for various violations, and allows the City to deviate from the presumptive penalty where there are substantial and compelling reasons for doing so.³⁵

As detailed in the Findings of Fact, the City provided ample written documents, photographs, and testimony to support its determination that the Respondent violated License Conditions 1, 10, 11, and 12 as well as the building permit requirements set forth in the Legislative Code in April 2014, and its determination that the Respondent again violated Condition 12 on May 8, 2014. Based upon the provisions of the Legislative Code, it appears that the violations alleged would support a presumptive penalty of \$1,500 or more. After consideration of the arguments made by the Respondent, the Administrative Law Judge concludes that there has not been a showing that there is a substantial or compelling reason to deviate from the presumptive penalty in this case.

During the hearing, the Respondent argued that its inability to provide a prompt copy of the recording to the St. Paul Police should be excused because there was a defect in its surveillance camera system. The defect, which was caused by a flaw in the equipment, was not discovered until after the Respondent attempted to retrieve the recording requested by the police. However, the Respondent had failed to comply with the same license condition just a few months before, and should have been well aware of its obligation to "*maintain working video surveillance cameras and recorders on the premises.*"³⁶ There is no evidence that the Respondent conducted any testing after the system was installed in February 2014 to ensure that its recording system was maintained in working condition. To the contrary, it appears that the Respondent was unaware of the recording difficulties in its system until well after Sgt. Ossell requested the recording on April 8, 2014. Under the circumstances, the Respondent has not shown that its belated discovery that there was a defect in the ability of its system to record surveillance video warrants a reduction in the presumptive penalty in this case.

The Respondent also contended that the excess trash and debris on its premises on April 28, 2014, was simply the result of a concerted effort "that morning" and "all that week" to clean up the establishment, and asserted that the rubbish was removed shortly thereafter. However, it appears that it would have taken a much lengthier period of time to produce and pile up all the construction debris and other rubbish that appears in the photographs that were taken on April 28, 2014. In any event, even if the rubbish had been placed on the Respondent's property for the first time that morning,

³⁴ St. Paul Legislative Code § 310.06 (b)(6)(a).

³⁵ *Id.*, 310.05 (m).

³⁶ License Condition 1 (emphasis added).

License Condition 10 requires that the Respondent remove all accumulated refuse and trash from its premises by noon each day.

The contention that the Respondent's manager and owner were not aware of the permit requirements does not excuse their failure to follow those requirements. Individuals who hold licenses in the City have an obligation to be aware of the requirements of the City Code and secure the appropriate permits before making changes in the licensed establishment. The St. Paul Legislative Code does not suggest that a violation of the permit requirements can only be found if a person *knowingly* fails to obtain a permit for a particular type of construction or alteration. Moreover, it is axiomatic that ignorance of the law is no excuse and individuals must comply with applicable laws or suffer the consequences.³⁷

The other assertions made by the Respondent during the hearing also do not warrant a determination that the presumptive penalty was inappropriate. The alleged failure of the Respondent's manager and owner to receive the mailed copies of the Notice of Violation relating to the December 2013 video surveillance violation does not change the fact that the Respondent paid a \$500 fine on March 25, 2014, that was based on an alleged violation of License Condition 1. Therefore, it cannot be disputed that the present case involves the Respondent's second violation of License Condition 1 within a year.

Finally, the Respondent's attempt to argue that the City did not provide sufficient evidence to show a violation of License Condition 12 was not persuasive. The City's inspector admitted that she did not obtain the identities of the individuals who were present on April 28, 2014, or confirm that the vehicles in the unauthorized area belonged to them. However, Mr. Pedasso acknowledged that some customers and employees were present in the establishment at the time of the inspection. He also admitted that some of the Respondent's customers have parked in the unauthorized area at times, and that customers sometimes take a cab home and leave their cars in the Respondent's parking lot overnight. Under all of the circumstances, the Administrative Law Judge finds that it is more likely than not that the vehicles parked in the unauthorized area on April 28, 2014, belonged to patrons or employees of the Respondent. In addition, the police officers who conducted a compliance check on May 8, 2014, verified that patrons of the Respondent's establishment were parking in the unauthorized area. And, in any event, the photographs taken by the City inspector on April 28, 2014, provide clear evidence that the Respondent violated License Condition 12 by failing to maintain a barrier sufficient to prevent vehicles from parking or driving in the unauthorized area behind the Respondent's establishment.

³⁷ See, e.g., *Claude v. Collins*, 518 N.W.2d 836, 841 (Minn. 1994) (finding that "[t]he trial court erred in thinking it had discretion to take factors such as inexperience in office or ignorance of the law into account in determining whether a violation of [the open meeting law] occurred"); *Teklai v. State*, 2002 WL 418357 (Minn. Ct. App. 2002) (acknowledging the "well-established legal principal that ignorance of the law is no defense"); *Stotts v. Wright County*, 478 N.W.2d 802, 805 (Minn. Ct. App. 1991), *review denied* (Minn. Feb. 11, 1992) ("[a] property owner is charged with knowledge of whether a local zoning ordinance permits construction undertaken on the property").

Photographs provided by the Respondent demonstrate that, by the date of the hearing, several of the violations alleged by the City had been corrected. For example, it appears that there are no excess items of trash or debris near the trash container or along the building; no trash cans or other items stored near the rear exit or on the patio; and at least some portion of the barrier restricting cars from parking in the gravel area is in place.³⁸ The Respondent is commended for its efforts to come into compliance with the conditions that apply to its license, and is encouraged to continue to cooperate with the City and members of the community.

B. L. N.

³⁸ Test. of D. Pedasso; Exs. 14-27.