

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

In the Matter of All Licenses Held by M.
Reaney, Inc. d/b/a Reaney's Bar for the
Premises Located at 870 Payne Ave. in
St. Paul; License ID #0016230

FINDINGS OF FACT,
CONCLUSIONS AND
RECOMMENDATION

A hearing in this matter was held on July 21, 2004 at the St. Paul City Hall before Allan W. Klein, Administrative Law Judge.

Appearing on behalf of the Office of License, Inspections and Environmental Protection for the City of St. Paul (hereinafter "LIEP") was Virginia D. Palmer, Assistant City Attorney, 400 City Hall, 15 West Kellogg Boulevard, St. Paul, MN 55102.

Appearing on behalf of M. Reaney, Inc. d/b/a Reaney's Bar (hereinafter "Reaney's") was Fredrick J. Goetz, of the firm of Goetz & Eckland, P.A., 43 Main Street SE, Suite 400, Minneapolis, MN 55414.

The hearing took less than a day, and the record closed on August 31, 2004, upon receipt of the final argument from counsel.

NOTICE

This report is a recommendation, not a final decision. The St. Paul City Council will make the final decision after a review of the record. The City Council may adopt, reject or modify the Findings of Fact, Conclusions, and Recommendation herein. Under Section 310.05(c-1) of the City's Legislative Code, the City Council will provide Reaney's an opportunity to present oral or written argument to it before it takes final action. Reaney's should contact the St. Paul City Clerk to ascertain the procedure for presenting argument to the council.

STATEMENT OF ISSUE

Should disciplinary action be taken against Reaney's licenses because of two alleged violations of statute?

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

FINDINGS OF FACT

1. Reaney's Bar is located at 870 Payne Avenue, at the corner of Payne and Wells Street, on the east side of St. Paul.

2. The corporation M. Reaney, Inc. holds a number of licenses from the City, including an on-sale liquor license, an on-sale Sunday liquor license, and off-sale malt liquor license, a gambling license, and a Class C restaurant license.

3. On December 20, 2003, which was the Saturday before Christmas, St. Paul Police Officers J. Reginek and M. Dunaski were doing routine patrol work on Payne Avenue. Part of their normal activities is to make "pro-active police visits" to a variety of business establishments, including bars. There are 15 bars within their patrol area, and typically they will walk through a bar looking for underage drinking, obviously intoxicated persons, marijuana, illegal gambling, locked doors, and similar violations. On that Saturday night, at approximately 8:45 p.m., they entered Reaney's Bar.

4. Reaney's is a relatively long, thin room. The entrance is at one end, with the bar running down the right hand side and tables on the left. At the far end of the bar from the entrance, the bar forms an "L" shape. When Officers Reginek and Dunaski entered the bar, they sat down near the front door and looked around. They observed a table with three people sitting at it. The table held numerous (at least a dozen) glasses and beer cans. One of the three people was a woman, later identified as Amy Robson, who was leaning against the wall, with her head bobbing up and down, in what the officers described as a "semi-conscious state." She was quiet, and appeared to be having trouble staying awake. Neither officer saw any of the three people at the table actually go up to the bar and buy a beverage. Nor did the officers observe any person deliver a beverage to the table. But Officer Reginek did observe each of the three people drinking from glasses or cans that were already on the table. Neither officer recognized Robson, but both of them recognized one of the other people at the table, Ricky Isaac. They had seen Isaac often before on their patrols.

5. After approximately 15 minutes in the bar, the two officers went outside. Shortly thereafter, Robson and Isaac exited the bar. The officers watched as they proceeded east along Wells Street, and noticed that Robson was unable to walk without holding herself up by placing her hand on the building wall. The officers approached the two, and spoke with them. Robson was nearly incoherent, and was obviously highly intoxicated. Isaac had bloodshot, watery eyes and a strong odor of alcoholic beverages on his breath, and slurred his speech, but he was better able to speak than was Robson. The officers called for a portable breath test squad, and administered PBT to both Robson and Isaac. Robson's PBT results were .273 blood alcohol content, while Isaac's PBT results were .291. In the course of their conversation, Robson told the officers that she had been drinking in Reaney's since 3:00 p.m. that day. The officers determined that neither of the two had a permanent address, and they were contemplating having them taken to detox when an emergency call came in regarding a high speed chase nearby. The officers left to join the chase, leaving Isaac and Robson on Wells Street.

6. The officers later filed an Incident Report, alleging that Reaney's had sold alcohol to obviously intoxicated persons. The Administrative Law Judge finds that Reaney's did sell an intoxicating beverage to an obviously intoxicated person when it sold to Amy Robson. However, there is insufficient evidence to find that Ricky Isaac was obviously intoxicated at the time of any sale to him. Reaney's did fail to maintain sobriety in the establishment.

7. Approximately three weeks later, on Friday, January 9, 2004, numerous police personnel executed a search warrant at Reaney's as part of an ongoing investigation concerning the illegal sale of narcotics and weapons violations. The police entered the bar at approximately 11:30 p.m.

8. Officers Reginek and Dunaski were among the first to enter the bar. They observed two individuals who appeared to be under the age of 21. The individuals were backing away from the bar as the officers entered, and promptly attempted to leave the bar. Officer Reginek radioed to police still outside the bar to stop the two. They were apprehended, and both were discovered to be under age. The man (Patrick Williams) had an ID, which turned out to belong to his older brother. The picture on the ID did not match the face of the individual who had been in the bar. Williams was booked for giving false information. He admitted that he had been drinking at the bar. The girl (Antoinette Townsend) also admitted she had been drinking in the bar. She did not have a valid ID with her. She was cited for underage consumption. Both were handcuffed and placed inside a paddy wagon. None of the police actually observed either of these individuals drinking at the bar, nor did they test the glasses which were located on the bar in front of the individuals. Both were given PBT's, and the man had a .115 BAC, while the woman had a .033. There is no evidence that any of Reaney's employees made a visual examination of William's ID and compare the photograph to the person presenting it. The Administrative Law Judge finds that Reaney did sell to and did allow both of them to consume intoxicating beverages.

9. The City is recommending that Reaney's receive a \$2,000 fine, and a 30-day suspension of the licenses, with 20 days of the suspension stayed for a period of 18 months. Reaney's, on the other hand, denies both of the allegations, but argues that under the presumptive penalty matrix contained in the City Code (Section 409.26(b)), only a fine shall be imposed, not any suspension. One of the reasons the City is asking for a higher penalty is a recent similar violation.

10. On September 6, 2003, police officers observed an individual leaving Reaney's at closing time who was so intoxicated that she had to be taken to detox. This lead LIEP to propose taking adverse action against the license, and Reaney's requested a hearing. On December 2, 2003, at the time of the hearing, a settlement was reached whereby Reaney's agreed to admit to the violation of failure to maintain order and sobriety and accept a recommended penalty in the amount of a \$500 fine. This settlement was brought to the City Council and, on December 17, 2003, the Council adopted resolution #03-1103, ordering the \$500 fine for the violation of failure to maintain order and sobriety. The resolution was then forwarded to the Mayor's office. Before the Mayor had acted on the resolution, however, the incident of December 20,

2003, involving Amy Robson and Ricky Isaac, occurred. The Mayor signed the resolution four days later, on December 24, 2003.

11. At the December 17, 2003 City Council hearing, Mr. Reaney stated that he thought the citation and penalty were “ridiculous”, that the process was “a waste of time” and that he thought Reaney’s “would be back here soon”.

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

CONCLUSIONS

1. The City Council of the City of St. Paul and the Administrative Law Judge have jurisdiction in this matter pursuant to Minn. Stat. § 14.55 and § 310.05 of the City’s legislative code.

2. The City has given proper notice of the hearing in this matter and has fulfilled all relevant substantive and procedural requirements of law or rule.

3. Minn. Stat. § 340A.502 provides that no person may sell alcoholic beverages for the use of an obviously intoxicated person. On the evening of December 20, 2003, Amy Robson was sold intoxicating beverages by Reaney’s when she was obviously intoxicated. The evidence is insufficient to determine that Ricky Isaac was obviously intoxicated at the time of a sale.

4. Minn. Stat. § 340A.503, subd. 1(a) makes it unlawful for any licensee to permit any person under the age of 21 years to drink alcoholic beverages on the licensed premises. Section 340A.503, subd. 2 makes it unlawful for any person to sell or give alcoholic beverages to a person under 21 years of age. In this case, the evidence demonstrates that Reaney’s did violate both subdivisions of that statute on January 9, 2004, in the cases of Patrick Williams and Antoinette Townsend. Minn. Stat. § 304A.503, subd. 6(b) provides a “safe harbor” for facilities accused of violating subd. 2(1) if the facility can “prove...reasonably and in good faith relied upon representations of proof of age...” such as a valid driver’s license with a photograph and date of birth. The evidence in this case does not support Reaney’s entitlement to the “safe harbor” provision.

5. Section 409.26 of the City’s Municipal Code sets forth presumptive penalties for violations in connection with intoxicating liquor and non-intoxicating malt liquor. Paragraph (a), however, provides that the Council may deviate from the presumptive penalties in an individual case if it determines “that there exists substantial and compelling reasons making it more appropriate to do so.” The presumptive penalty for sale of alcoholic beverages to underage person for a facility with a seating capacity of up to 149 persons is \$500. The penalty for sale of alcoholic beverage to an intoxicated person where there is a second appearance is doubled, which would be a total of \$1,000. Adding the two together results in a presumptive penalty of \$1,500.

6. The City argues that the fact that the December 20 violation followed so closely upon an identical September 6 violation (when the Council acted on it on December 17), supports a strong penalty, such as an increased fine and a closure. The City also argues that Mr. Reaney's behavior at the City Council hearing on December 17 suggests that there should be an upward departure from the presumptive penalty.

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

RECOMMENDATION

THE ADMINISTRATIVE LAW JUDGE RESPECTFULLY RECOMMENDS: that the City Council take adverse action against the licenses of M. Reaney, Inc., by imposing a presumptive penalty of \$1,500 and a suspension of ten consecutive days, stayed for a period of 18 months upon the condition of no similar violations.

Dated this 10th day of September, 2004.

s/Allan W. Klein
ALLAN W. KLEIN
Administrative Law Judge

Reported: Taped

MEMORANDUM

The only difficult question presented by this case is whether or not the presumptive penalty is strong enough, given a recent prior violation and Mr. Reaney's apparent disregard for the statutory standards. The Administrative Law Judge does not believe that the facts justify going as far as LIEP has recommended, but he does believe that the facts justify doing something above the presumptive penalty. Of course, it is up to the Council to make the final decision on the penalty, and going so far as LIEP has recommended would not be unreasonable.

One of the police officers who regularly patrols the Payne Avenue area defended the decision not to take Amy Robson and Ricky Isaac to detox by pointing out "it's an everyday occurrence to have intoxicated people on Payne Avenue." The area around Reaney's has plenty of bars, and Isaac was known to wander in and out of several of them in a day. He was well known to the officers. One of the officers implied that he was one of many "street people" who inhabit the area and drift through the bars.

The statute and the City code both prohibit the sale of intoxicating beverages to person who are obviously intoxicated, and the City code requires licensees to maintain order and sobriety in their place of business. The fact that the first citation and fine did not seem to cause a change in the atmosphere at Reaney's certainly justifies the higher fine imposed by the Matrix. The recency in time between the two violations, and Mr.

Reaney's behavior at the first hearing justify an upward departure. The Administrative Law Judge believes that a stayed suspension of the license would be a reasonable departure, but also believes that the City Council may exercise its discretion to go beyond that penalty, all the way up to the higher fine and executed suspension recommended by LIEP.

A.W.K.