

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

In the Matter of Licenses Held by V & HM Plus, LLC, d/b/a El Pantano Plus for Premises Located at 586 Rice Street in St. Paul

**FINDINGS OF FACT,
CONCLUSIONS AND
RECOMMENDATION**

This matter was heard by Administrative Law Judge (ALJ) Richard C. Luis at City Hall in St. Paul on November 16, 2010. The OAH record closed on November 29, 2010.

Rachel Tierney, Assistant St. Paul City Attorney, appeared on behalf of the St. Paul Department of Safety and Inspections (City). Boris Parker, Parker & Wenner, appeared on behalf of the Licensee, V & HM Plus, LLC (El Pantano Plus, El Pantano Bar, El Pantano).

STATEMENT OF ISSUE

Should disciplinary action, in the form of a \$2,000 penalty and ten days' suspension, be taken against the Licenses of El Pantano Plus for violation of Conditions 6 and 7 of its On-Sale Liquor License issued August 19, 2009?

Specifically, on the evening of August 13-14, 2010, did the Licensee fail to require a male patron who appears to be younger than 30 years old to produce proper picture identification (state or federally issued identification cards establishing the bearer is over 21 years old) before allowing that patron to enter its establishment?

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

FINDINGS OF FACT

1. El Pantano Plus (El Pantano) is a nightclub/bar located at 586 Rice Street (at the corner of Rice Street and Como Avenue) in St. Paul. V & HM Plus, LLC, owns and operates El Pantano and holds the following Licenses: On-Sale Liquor, Entertainment (B), and Restaurant (5).¹

2. El Pantano's Licenses were approved by the St. Paul City Council on August 19, 2009, with thirteen Conditions. The Conditions include the requirement that

¹ Ex. 2.

security personnel “verify the age of patrons by checking state or federally issued identification cards (no picture I.D., no entrance),” and “require proper picture identification from anyone who appears to be younger than 30 years old.”²

3. Kristina Schweinler, a senior license inspector for the City of St. Paul, discussed the License Conditions with partners of V & HM Plus, LLC, Maria Leon and Vu Long Hoang. With respect to Conditions 6 and 7 requiring verification of patrons identification, Ms. Schweinler addressed generally the forms of identification that are deemed acceptable. Ms. Schweinler did not specifically discuss whether Consular Identification Cards issued by Mexico are considered “proper picture identification” for purposes of the License Conditions.³

4. The Licensee signed an affidavit agreeing to the License Conditions.⁴

5. At 1:44 a.m. on August 14, 2010, St. Paul Police Officers Eric Kammerer and Joseph Ryan were on patrol in a squad car in the area of Rice Street and Como Avenue. The Officers observed a crowd of about 10-15 people milling outside the immediate vicinity of El Pantano. While waiting for a red light at the intersection of Rice and Como, the Officers saw a male who had been standing outside of El Pantano cross Rice Street from east (the front of the bar) to west against a red light. The vehicle traffic on Rice (moving north and south) had the green light, and the male was impeding the vehicular traffic.⁵

6. After pulling over to the northwest corner, Officers Kammerer and Ryan exited the squad car and approached the man who had walked across the street against the red light. The Officers determined the man was intoxicated by the odor of alcoholic beverages and his unsteady gait. The Officers conducted a pat-down search and were unable to find any identification on the male’s person. The male informed the officers that he did not have his I.D. on him, and identified himself as Jose Erlande Lopez, claiming to be born on March 24, 1985, and claiming a residence and telephone number at 324 White Bear Avenue in St. Paul.⁶

7. When asked by the Officers, “Lopez” stated he had been drinking inside El Pantano, and that he had consumed approximately eight beers there. When asked if he had been requested to produce identification at the door of El Pantano, “Lopez” stated that he had been asked but that he had been allowed to enter the establishment even though he did not have a photo I.D. on him.⁷

8. Officer Ryan is familiar with El Pantano because it is located in the district of the city that he is assigned to patrol. Likewise, the management of El Pantano is familiar with Officer Ryan. Officer Ryan was familiar with the restrictions that had been

² Ex. 3 (Conditions Nos. 6 and 7).

³ Testimony of Kristina Schweinler.

⁴ Test. of Christine Rozek.

⁵ Exhibit 1.

⁶ *Id.*

⁷ Ex. 1; Test. of Officers Ryan and Kammerer.

placed on the bar's License, issued August 19, 2009, specifically the Condition that required El Pantano to require proper picture identification from anyone who appeared to be younger than 30 years old, and to deny entrance to anyone who did not produce proper identification.⁸ Because "Lopez" had no identification, the Officers concluded that El Pantano had violated Condition 7 of its license, and proceeded to the bar with Mr. "Lopez."⁹

9. It is El Pantano's practice to ask for identification from everyone, but particularly anyone who appears to be under 30 years old, and to refuse admission to anyone who fails to produce that identification.¹⁰

10. When the Officers entered El Pantano with Mr. "Lopez," they asked the security personnel how Mr. "Lopez" was permitted to enter the bar without any identification. The security personnel did not respond. The Officers reminded them of the need to check for I.D.s and to refuse admission to those who did not have proper identification, based on the restrictions placed on the establishment.¹¹

11. The Officers then spoke with the bar's manager, Alejandro (Alex) Perez, who had been inside the establishment's office most of the evening. The Officers presented Mr. "Lopez" to Mr. Perez, but Mr. Perez was unable to identify "Lopez" as a bar patron that evening.¹²

12. Gerardo Parra is employed as a security guard at El Pantano and was on duty the evening of August 13-14, 2010. He requests picture identification from everyone before they are allowed in the bar.¹³ At the time "Lopez" was brought to El Pantano by Officers Kammerer and Ryan, Mr. Parra was in the back office area and overheard the conversation the Officers had with Mr. Perez. Mr. Parra recognized Mr. "Lopez" as someone he had asked to produce identification earlier that evening. Parra remembers that "Lopez" produced a Consular I.D. from Mexico. Consular Identification Cards from Mexico include a photo and the date of birth of the particular individual. The one presented by Mr. "Lopez" indicated that he was over the age of 21.

⁸ The City's Amended Notice of Hearing (issued November 10, 2010) charged El Pantano with violating Conditions 6 and 7 of its License. Those Conditions read:

6. Security personnel shall be assigned to each entrance and remain until all patrons have left the licensed premises, which include the parking lot(s). Security personnel shall "wand" (using a metal detector) each patron and check all handbags and packages carried by patrons. Security personnel shall verify the age of patrons by checking state or federally issued identification cards (no picture I.D., no entrance). Customers re-entering the establishment shall be subject to the same security measures as customers entering the establishment for the first time.

7. Adherence to Strict Identification Requirements: El Pantano Plus will require proper picture identification from anyone who appears to be younger than 30 years old. Those without proper identification shall be denied entrance.

⁹ Test. of Ryan and Kammerer.

¹⁰ Test. of Alejandro (Alex) Perez.

¹¹ Test. of Officers Ryan and Kammerer; Ex. 1.

¹² *Id.*

¹³ Test. of Gerardo Parra.

Mr. Parra believed Consular I.D.s from Mexico, El Salvador, and Honduras all were proper identification to show proof of age.¹⁴

13. The City maintains that Consular Identification Cards are not “proper I.D.” within the meaning of Conditions 6 and 7 placed on El Pantano’s License.¹⁵

14. Mr. Parra recognized “Lopez” on August 13-14, to be a regular Saturday-night patron at El Pantano. Approximately two weeks later, Mr. Parra again saw the individual identified as Mr. “Lopez” at El Pantano. Mr. Parra asked him why the police officers had stopped him. “Lopez” responded that they had stopped him because he had crossed the street and that they asked for his I.D. but he did not give it to them.¹⁶ Mr. Parra told Mr. Perez that Mr. “Lopez” was in the bar. “Lopez” apologized to Mr. Perez for causing a problem and indicated that he was worried the police would put him in jail. Mr. Perez asked “Lopez” if he would allow him to copy his Mexican Consular I.D. He consented but the bar’s printer was out of ink and Perez was unable to copy it.¹⁷

15. On Saturday, November 6, 2010, Mr. Parra again saw “Lopez” at El Pantano.¹⁸

16. Earlier violations against El Pantano’s licenses were based on a failure to establish that its Workers’ Compensation Insurance was up to date, and for allowing persons under the age of 21 into their establishment on unauthorized “18-plus nights.”¹⁹ The City has also cited El Pantano for violating Condition 1 of its License by allowing patrons to enter and stay too late on the evening of May 15-16, 2010.²⁰

17. On September 1, 2010, the City charged El Pantano Plus for violation of Condition Number 7 of its License, specifically that it did not require proper picture identification from a person who appeared to be younger than 30 years old, who should have been denied entrance.²¹ The Citation was appealed,²² and this hearing process followed. The City added the charge of violating Condition 6 in its Amended Notice of Hearing issued November 10, 2010.

18. After the Hearing, the Licensee submitted a photo and surveillance video, both taken on November 20, 2010, of a person Mr. Parra recognized as the same person Officers Kammerer and Ryan had brought into the bar on August 14, as noted at Findings 12 and 14. That person is identified in the submission as “Abel Maza Sanchez.”²³

¹⁴ Test. of G. Parra.

¹⁵ Test. of K. Schweinler; Ex. 3.

¹⁶ Test. of G. Parra.

¹⁷ Test. of A. Perez.

¹⁸ Test. of G. Parra.

¹⁹ Ex. 4.

²⁰ Ex. 7.

²¹ Ex. 9.

²² Ex. 10.

²³ See, Finding of Fact No. 7.

19. A "Court Docket Sheet" submitted by the Licensee on November 23, 2010, regarding "Abel Maza Sanchez", indicates that "Sanchez" has been convicted of driving without a license in Minnesota, and that he is delinquent in payment of the penalty for that violation (\$181.00).²⁴

20. On November 29, 2010, the City submitted Affidavits from Officers Kammerer and Ryan, indicating neither Officer recognizes the individual in the photograph identified as "Abel Maza Sanchez" submitted by counsel for El Pantano on November 23, 2010.

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

CONCLUSIONS

1. The Administrative Law Judge and the St. Paul City Council have authority to hear this matter pursuant to Minn. Stat. § 14.50 and St. Paul Legislative Code § 310.05(c).

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

3. The City gave proper notice of the Hearing and has fulfilled all procedural requirements.

4. The City has the burden of proving by a preponderance of the evidence that adverse action is warranted against the Licenses held by V & HM Plus, LLC, d/b/a El Pantano Plus.

5. The City has not demonstrated by a preponderance of the evidence that on the evening of August 13-14, 2010, the Licensee violated Conditions 6 or 7 of its On-Sale Liquor License by failing to require proper picture identification from anyone appearing younger than 30 years old, by not denying entrance to a person who failed to present proper identification, or by failure to check identification cards of people entering its establishment.

6. It is not appropriate to penalize the Licensee for a third violation of the conditions of its License, which would result in the imposition of a \$2,000 penalty and suspension of the License for ten days because of the alleged failure to ask patron "Lopez" for identification on the evening of August 13-14, 2010.

7. It is appropriate to dismiss the Citation (Notice of Violation) issued to the Licensee on September 1, 2010, based on the incident of August 13-14, 2010, that forms the basis of this appeal.

Based on the Conclusions, the Administrative Law Judge makes the following:

²⁴ *Id.*

RECOMMENDATION

IT IS RECOMMENDED that the Notice of Violation issued to the Licensee on September 1, 2010, as amended on November 10, 2010, based on an alleged incident occurring August 13-14, 2010, which allegedly violated Conditions 6 and 7 of the Licensee's Off-Sale Liquor License, be **DISMISSED**.

Dated: December 29, 2010

/s/ Richard C. Luis

RICHARD C. LUIS

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 either party 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. Any interested parties should contact Shari Moore, Saint Paul City Clerk, 290 City Hall, 15 West Kellogg Boulevard, St. Paul, MN 55102, to learn the procedure for presenting argument.

MEMORANDUM

It has not been established by the City that the individual apprehended crossing the street against a red light outside El Pantano in the early morning hours of August 14th failed to produce "proper identification" to staff at El Pantano within the meaning of the conditions imposed on the establishment's License(s). The City only proved that the person calling himself "Lopez", who possibly is actually "Abel Maza Sanchez", had no identification in his pockets and denied having identification when apprehended by the Police Officers. This fact is explained readily – he was intoxicated at the time, and also had (if he is "Sanchez"), an outstanding unpaid fine to the City of St. Paul. Either of these facts could provide an incentive for the drunken individual to pretend he was somebody else and conceal his identification.

Security Guard Gerardo Parra recalls that the person calling himself "Lopez," who was brought into El Pantano by Police Officers on August 14, was a person he had I.D.'d earlier that evening. He maintains that same person appears in the photograph

taken November 20, 2010, identified then as “Abel Maza Sanchez”. The ALJ concludes that Parra’s recall of the person he alleges to have I.D.’d is credible. He recognized “Lopez” on August 14, talked with him about the incident after that, and re-identified “Lopez” as “Sanchez” after the hearing. The fact that Officers Kammerer and Ryan do not recognize the individual pictured on November 20 is discounted by the ALJ for the purposes of this proceeding, in light of the fact that Officer Kammerer testified in November that he may no longer recognize the person he and Officer Ryan apprehended on August 14, in any case.

There remains a question of whether El Pantano admitted any one to its establishment on the evening in question who did not have “proper identification” within the meaning of License Conditions Numbers 6 and 7. It is noted that Parra’s “identification” of a person he allowed in after presenting a Mexican Consular I.D. relates to a person whose very presence inside the El Pantano premises earlier on the evening of August 13-14 may be open to question. More significantly, the License Conditions pertinent to El Pantano²⁵ failed to establish that a picture identification issued by the Consulate of Mexico does not constitute “proper picture identification” within the meaning of License Condition 7.

The Administrative Law Judge notes that, while Inspector Schweinler’s testimony is that “proper picture identification” is limited to passports and valid United States Driver’s Licenses, that specific clarification or interpretation is not present in El Pantano Plus’s “Conditions” document itself, and Mr. Parra is credible in his belief that Consular I.D.s also were acceptable.²⁶

It is apparent that personnel at El Pantano, as of August 13-14, 2010, believed and accepted as valid “proper picture identification”, or “state or federally issued identification cards”,²⁷ the picture identification cards issued by Consular authorities representing Mexico. Absent a specific notice or other substantial evidence that the management and security staff at El Pantano knew or should have known that Mexican Consular Identifications were not acceptable identification, it is inappropriate to assess a penalty against the Licensee for failing to require more on August 13-14, 2010.

R. C. L.

²⁵ Ex. 3.

²⁶ *Id.*

²⁷ *Id.*; Conditions 6 and 7.