

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE CITY OF BLOOMINGTON

In the Matter of the Alleged Alcoholic Beverage License Violation , Liquor Time, Inc.	FINDINGS OF FACT, CONCLUSIONS AND RECOMMENDATION
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The above-entitled matter came on for hearing before Administrative Law Judge Manuel J. Cervantes (ALJ) on June 16, 2009, at the Dakota Conference Room of the Bloomington Civic Plaza, 1800 West Old Shakopee Road, Bloomington, MN 55431. The record closed at the conclusion of the hearing on June 16, 2009.

Lisa C. Netzer, Associate Bloomington City Attorney, 1800 W. Old Shakopee Road, Bloomington, MN 55431-3027, appeared on behalf of the City of Bloomington ("City"). Edward Simonet, 522 S. Fourth St., Stillwater, MN 55082, appeared on behalf of the Respondent, Liquor Time, Inc. (Respondent or Liquor Time).

STATEMENT OF THE ISSUES

1. Did Respondent sell liquor to a minor on March 26, 2009? If so, was the sale a willful violation of Minn. Stat. § 340A.503, subd. 2(1) and Bloomington City Code § 13.52 (2008).
2. Does Respondent's April 7, 2009 sale of alcohol to a minor constitute a willful violation of Minn. Stat. § 340A.503, subd. 2(1) and Bloomington City Code § 13.52 (2008)?¹

FINDINGS OF FACT

1. The Respondent is an off-sale intoxicating liquor establishment located at 5206 West 84th Street in Bloomington, Minnesota. The Respondent has been licensed by the City of Bloomington since December 2003 for a full off-sale liquor license. The license currently lists May Shoua Ly as the owner of Liquor Time.²

¹ The Notice and Order for Hearing requests that both issues enumerated above be resolved by the ALJ. However, during the opening argument, the Assistant City Attorney only referenced issue number 2 above for resolution. In the interest of judicial economy and expedience, the ALJ will resolve both issues.

² Testimony of May Shoua Ly.

2. Bloomington Police Officer Kevin Belmont, a detective in the Property Crimes Division of the Bloomington Police Department, became aware of younger-aged people doing business with Liquor Time. Officer Belmont became suspicious of the potential for the sale of alcohol to underage individuals.³ In the summer of 2008, Officer Belmont and other Bloomington police officers conducted directed patrols of Liquor Time and other liquor stores in the area. Between July 2008 and May 2009, the Department issued thirteen citations to underage persons for purchasing or possessing alcohol obtained from Liquor Time.⁴ Officer Belmont spoke with staff at Liquor Time in August 2008 about the incidents involving the underage individuals attempting to and/or succeeding in the purchase of alcohol by using false identification.⁵

3. The underage individuals who were cited drove far distances from their residences in Tonka Bay, Minnetonka, Eden Prairie, Edina, and St. Paul to attempt to purchase alcohol at Liquor Time.⁶ One young person told Officer Belmont that the “word was out” that Liquor Time sells liquor to underage people with any kind of ID.⁷

4. Officer Heidi Miller is a member of the Bloomington Proactive Police Services Unit and PROTECT program, a program which analyzes crime trends in Bloomington, addresses problem properties/businesses in the city, and works with the community to solve problems.⁸ Liquor Time came to the attention of Officer Miller following the sale of alcohol to a minor in January 2009.⁹ In that case, when the officer attempted to detain the minor, the minor fled on foot through the neighborhood, jumped fences into people’s yards, and was eventually apprehended with the assistance of a canine. The minor was 17 years old.¹⁰ The minor told the officer that Liquor Time is known for not asking for identification and selling liquor to minors. He also told police he did not use a fake ID to buy the alcohol.

5. Officer Miller visited Liquor Time and owner Ms. Ly in late January or early February 2009, after two incidents in January 2009 involving the purchase of alcohol by underage individuals.¹¹

6. The purpose of Officer Miller’s visit was to introduce herself and to advise Ms. Ly of programs available to liquor establishments to assist them in complying with the law. Officer Miller visited Liquor Time in her full uniform, but only had a brief conversation with Ms. Ly since the latter was busy with distributors.¹² Officer Miller offered assistance to Liquor Time by suggesting instructional programs like TIPS for

³ Testimony of Officer Kevin Belmont.

⁴ Exs. 3-8, 10-16. Ex. 9 is a citation for underage possession of alcohol for a minor who purchased alcohol at Liquor Time in July 2007.

⁵ Test. of K. Belmont.

⁶ Test. of K. Belmont.; *see also*, Exs. 3-8, 12-16.

⁷ Test. of K. Belmont.; Ex. 5.

⁸ Testimony of Officer Heidi Miller.

⁹ Ex. 14.

¹⁰ Test. of H. Miller; Ex. 14.

¹¹ Test. of H. Miller; Exs. 13 and 14.

¹² Test. of H. Miller.

Liquor Time staff. TIPs stands for “Training for Intervention Procedures,” a nationally utilized program, which is aimed at helping managers and employees at on-and-off sale establishments to make lawful sales. Officer Miller indicated to Ms. Ly that she was aware of recent sales to minors by Liquor Time, that the City did not condone sales to minors, there are programs to help businesses identify this problem, and to help them comply with the law. Ms. Ly concurred that she did not want illegal underage sales occurring at her store.¹³

7. Officer Miller exchanged business cards with Ms. Ly and told her that she could contact her at any time for assistance relating to alcohol sales to minors. Officer Miller also left a brochure with Ms. Ly on the TIPs program. Officer Miller also learned on this visit that Ms. Ly was aware of and had access to a copy of the “We ID” manual, containing sample images of legitimate and authentic IDs.¹⁴ Ms. Ly did not follow up with or contact Officer Miller regarding training after this visit.

8. On March 26, 2009, while conducting surveillance of the establishment through his binoculars from a nearby parking lot, Officer Belmont observed a younger-looking individual enter Liquor Time and purchase alcohol. Officer Belmont stopped the individual shortly after he exited the Liquor Time parking lot in his car. The individual, Nolan Miller of Eden Prairie, born on December 8, 1988, was 20 years old at the time he purchased the liquor at Liquor Time.¹⁵ In 2008, Nolan Miller had heard of Liquor Time’s reputation as a store where it was easy to purchase liquor as a minor with a fake ID. He visited the store a “handful” of times prior to March 26, 2009.¹⁶ He used the same fake ID each time he purchased alcohol at Liquor Time.¹⁷ Nolan Miller knew of a few other minors who successfully purchased liquor at the Liquor Time using false IDs.¹⁸

9. When first stopped, Nolan Miller told Officer Belmont that the clerk at Liquor Time had not asked for his ID.¹⁹ He identified the clerk as the “Asian guy who always plays video games” while he worked. Based on that statement, Officer Belmont went back to Liquor Time to identify the clerk. The clerk was Seng Ly, Ms. Ly’s brother.²⁰ Nolan Miller recanted and testified at the hearing that Seng Ly did ask for his identification.²¹ This was corroborated by Ricardo Segobiano, who also testified.²² He was the customer in line immediately behind Nolan Miller on March 26, 2009, the evening of the purchase.

¹³ Test. of H. Miller.

¹⁴ Test. of H. Miller.

¹⁵ Test. of H. Miller; Ex. 3.

¹⁶ Testimony of Nolan Miller.

¹⁷ Test. of N. Miller. The ID is described in Fact 10, below. Seng Ly’s testimony also confirmed that he used the fake ID in prior visits.

¹⁸ Test. of N. Miller.

¹⁹ Test. of N. Miller.

²⁰ Officer Belmont testified that he knew that Mr. Miller’s reference to the “Asian guy who always played video games” meant Mr. Ly since the officer had observed him doing so from previous surveillances.

²¹ Test. of N. Miller.

²² Testimony of Ricardo Segobiano.

10. Nolan Miller admitted that the identification he presented to Seng Ly was not him but rather “some guy from Georgia.” The ID lacked Nolan Miller’s name and photo.²³ Mr. Segobiano did not see Seng Ly scan the license through a scanning machine, compare it to the IDs in the “We ID” manual, or verify it in any other fashion other than looking at the ID presented.²⁴

11. Seng Ly confirmed to Officer Belmont that he had made the liquor sale to Nolan Miller.²⁵ Officer Belmont then discussed with Seng Ly and Ms. Ly what the law requires for validating IDs and of the criminal and civil consequences for selling liquor to a minor. Officer Belmont then issued Seng Ly a gross misdemeanor citation for Procuring Alcohol to a Minor.²⁶

12. Following the March 26, 2009 incident, Ms. Ly did not enact any changes to the procedures by which store employees identified customers. Employees simply continued looking at the photograph and date of birth listed on an ID, without validating its authenticity.²⁷ Ms. Ly did not contact the City of Bloomington for assistance, she did not attend any identification training, or send any of her employees to such training.²⁸

13. Between March 26, 2009 and April 7, 2009, Ms. Ly called Douglas Junker, Bloomington License Examiner, to discuss the renewal of Liquor Time’s city liquor license. Mr. Junker warned Ms. Ly that the store must ask for identification before selling alcohol and that complying with this provision of the city ordinance and state law was a condition of the license.²⁹

14. On April 7, 2009, Officer Belmont again conducted surveillance on Liquor Time through his binoculars from a nearby parking lot. The officer observed a younger-aged individual enter the store. Officer Belmont recognized Seng Ly as the clerk on duty at the checkout counter. Seng Ly recognized the younger-looking individual as a “regular customer” of about a year and a half.³⁰ Seng Ly did not ask him for any identification when he purchased the alcohol. The younger-looking individual then exited the store, placed the alcohol-containing brown paper bag inside the trunk of his car, and left the Liquor Time parking lot. Officer Belmont stopped the car and learned that the individual, Ilya Burlak of Burnsville, was 20 years old.

15. Seng Ly asked for Mr. Burlak’s identification the first time he visited the store and Burlak presented Seng Ly with what appeared to be a form of Russian identification.³¹ Burlak’s purported Russian ID was a fake. Seng Ly never confirmed

²³ Test. of N. Miller and R. Segobiano.

²⁴ Test. of R. Segobiano.

²⁵ Test. of K. Belmont.

²⁶ Test. of K. Belmont.; Ex. 3.

²⁷ Testimony of Seng Ly and May Ly.

²⁸ Test. of May Ly.

²⁹ Test. of May Ly; stipulation of fact no. 14.

³⁰ Test. of S. Ly.

³¹ At the hearing, Seng Ly could not remember whether it was a passport or other document.

the validity of the ID with the “We ID” manual or with any other source. Again on April 7, 2009, Officer Belmont spoke with Ms. Ly and Seng Ly regarding the necessity of asking for and properly validating IDs when completing an alcohol sale and again criminally cited Seng Ly for selling alcohol to a minor.

16. Ms. Ly did not make any personnel changes following the April 7, 2009, incident and kept Seng Ly on staff but testified that he would be fired. However, Seng Ly was still working at the checkout counter on May 22, 2009, when another underage individual, Daniel Gerber, aged 20 of Eden Prairie, illegally purchased alcohol from Liquor Time using a false South Dakota driver’s license that Seng Ly did not properly validate before completing the sale.³² Liquor Time employees only began using the “We ID” guide to compare IDs after May 22, 2009.

17. While Ms. Ly understood that liquor store owners and employees have the responsibility of knowing and determining what valid IDs look like, she and her staff did not know whether IDs presented were valid or fake before May 22, 2009 because they “did not pay attention” to the particular features of the IDs that indicate legitimacy.³³

CONCLUSIONS

1. The City of Bloomington and the Office of Administrative Hearings have jurisdiction in this matter under Minn. Stat. §§ 14.50 and 340A.503, subd. 2(1) (2008) and the Bloomington City Code § 13.52 (2008).

2. The City of Bloomington gave proper notice of the hearing in this matter and all relevant substantive and procedural requirements of the statute and rule have been fulfilled.

3. The City of Bloomington has the burden of proof in this proceeding and must establish the facts at issue by a preponderance of the evidence, including whether the alcohol sales of March 26, and April 7, 2009, were willful violations of statute and ordinance.

4. The sale of 3.2 percent malt liquor, wine, or intoxicating liquor to persons under the age of 21 is a violation of Bloomington City Code §§ 13.52 (b)(1) and 13.01 and Minn. Stat. § 340A.503, subd. 2(1). A purchaser’s age must be validated at the time of the sale by an approved form of identification.³⁴ Completing a liquor sale to an underage person without validating the accuracy of the identification violates a Bloomington liquor license.³⁵

³² Questions and testimony at the hearing showed that Seng Ly did not notice or properly compare the color scheme defects in the fake South Dakota driver’s license to the sample license from that state in the “We ID” manual.

³³ Test. of May Ly.

³⁴ Minn. Stat. § 340A.503, subd. 2; Ex. 1.

³⁵ *Id.*

5. If a violation of the above-mentioned state statute or city ordinance occurs, the City Council may revoke a license or suspend it up to 60 days, may fine the licensee up to \$2,000 for each violation, or may issue a combination of sanctions.³⁶

6. Bloomington City Council Resolution 2005-118 contains the guidelines by which the Council determines the appropriate sanction for a given violation.³⁷ The City Council also has the right to impose enhanced sanctions such as higher fines and the suspension or revocation of licenses for willful violations.³⁸

7. Respondent's employee, Seng Ly, failed to properly validate the ID presented by Nolan Miller on March 26, 2009, before completing the sale. Had Seng Ly properly inspected the ID, it would have been obvious to him that it was a fake because it did not bear Nolan Miller's photo or name. The Bloomington Police Department subsequently cited Seng Ly for a gross misdemeanor of selling liquor to a minor.

8. Respondent's employee, Seng Ly, failed to request identification from the underage individual, Ilya Burlak, on April 7, 2009, before completing the sale. The Bloomington Police Department again cited Mr. Ly for a gross misdemeanor of selling liquor to a minor.

9. The Respondent violated its city-issued liquor license by failing to properly inspect the ID presented by Nolan Miller on March 26, 2009 and by failing to request identification from Ilya Burlak on April 7, 2009.

10. The Respondent continued its sale, identification validation, and staffing procedures, policies, and arrangements following the March 26, 2009, underage sale incident without any substantive changes to halt underage sales at the establishment and improve staff detection abilities in the future.

11. Ms. Ly understood that Liquor Time and its staff bear the responsibility of knowing and determining what the proper appearance and features of a valid identification document are, particularly in light of the several cautionary contacts Liquor Time had with Bloomington police and the city licensing official.

12. Ms. Ly never attended nor required her employees to attend training programs for identification detection or authentication despite the sale of alcohol to underage individuals in the summer of 2008, January 2009, and March 26, 2009.

13. A willful violation of an ordinance or statute is a "disregard for governing statutes and an indifference to their requirements."³⁹

³⁶ City Code § 13.55(a); Ex. 1.

³⁷ Resolution 2005-118; Ex. 2.

³⁸ *Id.*

³⁹ *In re: Henry Youth Hockey Ass'n, License No. 02795, 511 N.W.2d 452 (Minn. App. 1994).*

14. Respondent's sale practices, identification validation, and staffing procedures, policies, and arrangements following the Bloomington Police and city licensing official contacts without any substantive changes and the lack of any training in or plans to receive training in identification detection or authentication by Liquor Time management and employees constitutes conduct indifferent to and in careless disregard of the Bloomington City Code § 13.52 (2008) and Minn. Stat. § 340A.503, subd. 2(1). The sale of alcohol to underage persons on March 26 and April 7, 2009, were, therefore, willful violations.

15. Bloomington City Council Resolution 2005-118 empowers the City Council to impose higher sanctions if a licensee willfully violates the conditions of its license, city code, and/or Minnesota law.

RECOMMENDATION

IT IS RECOMMENDED that the Bloomington City Council impose a sanction it deems appropriate upon the license of Liquor Time, Inc. for the willful violations of its liquor license.

Dated: July 17, 2009

s/Manuel J. Cervantes

MANUEL J. CERVANTES
Administrative Law Judge

Reported: Digitally Recorded

NOTICE

This Report is a recommendation, not a final decision. The City Council of Bloomington will make the final decision after a review of the record. The Council may adopt, reject, or modify the Findings of Fact, Conclusions, and Recommendations. Under the City's Code, the Council will not make its final decision until the report of the Administrative Law Judge has been made available to the parties to the proceeding and an opportunity has been afforded to each party adversely affected to file exceptions and present oral argument to a majority of officials who are to render the decision. Parties should contact the City Clerk's Office, City of Bloomington, 1800 West Old Shakopee Road, Bloomington, MN 55431-3027, telephone: 952-563-4925, to ascertain the procedure for filing exceptions or presenting argument to the City Council.

MEMORANDUM

There is no doubt that a sale of alcohol by Liquor Time to a minor, Nolan Miller, transpired on March 26, 2009, a claim initially raised in the Notice of Hearing. Respondent concedes there was a violation of the city liquor code and state statute by failing to card the minor on April 7, 2009. The dispute in both sales, however, centers on whether the violations were “willful.” The burden of proof is on the City to prove by a preponderance of evidence that the unlawful liquor sales to minors on March 26 and April 7, 2009, were willful violations.

Minn. Stat. § 340A.503, subd. 2(1), provides that it is unlawful for any individual to “sell, barter, furnish, or give alcoholic beverages to a person under 21 years of age.” Subdivision 6 indicates that the acceptable types of identification required to show a person is 21 or over in order to purchase alcohol are a valid driver’s license or ID card issued by the State of Minnesota, another state, or Canadian province, any of which must include a photograph and the date of birth of the individual; a valid military identification card issued by the U.S. Department of Defense; a valid U.S.-issued passport; or a valid passport if the individual is a foreign national. Bloomington City Code § 13.52 also prohibits the sale of alcohol to minors and mirrors Minn. Stat. § 340A.503 in the acceptable forms of identification required to purchase alcohol.

Minn. Stat. § 340A.503, subd. 6(b), establishes an affirmative defense that permits defendants to establish by a preponderance of the evidence that the defendant “reasonably and in good faith relied upon representations of proof of age authorized in paragraph (a) in selling, bartering, furnishing, or giving the alcoholic beverage.” The statute places the onus on the Respondent to ensure the legitimacy and authenticity of identification cards presented and to “card” individuals that may appear to be near the age of 21. Liquor Time did not raise this defense because no ID was requested of the minor purchaser on April 7, 2009, and there has been no demonstration of good faith reliance on an identification document offered in the past.

Neither the Bloomington City Code nor state statute defines what a “willful” violation is; therefore, the Administrative Law Judge must look to other legal authority. Minnesota courts have defined willful as a “disregard for governing statutes and an indifference to their requirements, or a careless disregard of statutory requirements.”⁴⁰ Absent a statutory or judicially-established meaning for a willful violation, the “ordinary” meaning may be either “described as one done intentionally, knowingly, and purposely, without justifiable excuse, as distinguished from an act done carelessly, thoughtlessly, heedlessly, or inadvertently.”⁴¹ Willfulness is therefore different than negligence.⁴²

⁴⁰ *In re: Henry Youth Hockey Ass’n, License No: 02795*, 511 N.W.2d 452 (Minn. App. 1994). In that case involving a gambling license where Minn. Stat. § 349.16, subd. 1(1988) did define willfulness, the court held that the burden of proof for the Lawful Gambling Board (petitioner) required the Board to determine (a) whether the licensee violated a law or Board rule, (b) whether there were multiple violations, and (c) whether violations constitute a pattern of willful violations giving the Board the authority to revoke the license instead of merely suspending it.

⁴¹ *Backlund v. City of Duluth, Minn.*, 176 F.R.D. 316, 323-324 (D. Minn. 1997).

⁴² *Id.* at 323-324.

Additionally, willfulness may also be described as something “done without ground for believing it is lawful or conduct marked by a careless disregard whether or not one has the right so to act.”⁴³ Thus, in the absence of a statutory or code-based definition, willfulness can be characterized as an “indifference” or “careless disregard” of the requirements of the controlling law.⁴⁴

Although citations related to Respondent’s sale of alcohol to minors began in 2007, underage sale activity at Liquor Time attracted the close attention of the Bloomington Police Department in the summer of 2008. Officer Belmont described that one minor purchaser who was cited told him that “the word was out” that Liquor Time sold liquor to minors with false IDs. In a totally unrelated case, Nolan Miller said that Liquor Time had a reputation throughout the Twin Cities area as a store where minors could pass off a fake ID and buy alcoholic beverages.

Ms. Ly’s identification validation procedure consisted of instructing the staff to check the date of birth and to compare the photograph on the card to the customer’s appearance. Given the testimony of Nolan Miller, Seng Ly did not do that very well since he did not catch the fake photo on the March 26, 2009. Had Seng Ly properly reviewed the ID, he would have seen it was a fake because the photo was not of Nolan Miller. Admittedly, Ms Ly and her employee were not well-versed in spotting card features designed by the several states as a means of quickly identifying if the card was a fake. By their actions, it does not appear that they were interested in learning about them either.

Bloomington Police put Liquor Time on notice on multiple occasions regarding their insufficient ID-validation procedures. Officer Miller provided information on training opportunities to the store and told Ms. Ly that she could call her with any questions regarding identification validation or on training opportunities. Ms. Ly did not follow up with the offers for assistance. Likewise, Officer Belmont communicated the necessity of changing store policies to Ms. Ly and Seng Ly on March 26, 2009, in order to stop the sale of alcohol to minors and curb the use of fake IDs at the establishment. Officer Belmont showed the seriousness of the circumstances by criminally citing Seng Ly for Procuring Alcohol for a Minor on March 26, 2009. Finally, Douglas Junker, the Bloomington License official, also informed Ms. Ly during a phone conversation prior to April 7, 2009, that Liquor Time staff must examine customer identification before selling alcohol and that that requirement was a condition of their city-issued liquor license. Eleven days after the March 26 citation, on April 7, 2009, Seng Ly sold alcoholic beverages to a minor without carding him at all because he was a regular customer.

Respondent’s justification that the minor was not carded on April 7, 2009, because he had been carded previously and he was a regular customer does not hold up to scrutiny. It is undisputed that Burlak was underage and it was unlawful to sell him

⁴³ *Id.*

⁴⁴ The Minnesota Court of Appeals recently described the *Henry Youth* definition as a “broader” frame than adopted by other courts or the definition proffered by Black’s Law Dictionary (1999) of “voluntary and intentional.” See *Johanns v. Minnesota Mobile Storage, Inc.*, 720 N.W.2d 5 (Minn. App. 2006).

alcoholic beverages. The Russian ID that he used in the first instance was a fake. His status as a regular customer did not operate to validate the fake ID. Respondent's initial failure to comply with the law does not mean that the underage minor is entitled to a "pass" from all future requests for the presentation of identification as required by statute and city ordinance.

Although Ms. Ly denied that she and her employees were aware of any problems with or a reputation of selling alcohol to minors through the use of fake IDs, she and her employees were aware of the legal requirements of their liquor license, their responsibility of ensuring the validity of IDs before selling liquor, and the several occasions where the police and a city official communicated the necessity of properly validating IDs. Liquor Time, however, choose to ignore this advice and did not enact any policy or staffing changes until after the May 22, 2009 incident. Ms. Ly must have understood the gravity of the situation because she said that if Seng continued to violate the law, she would fire him. Yet at the hearing, Seng Ly said he continued to work at Liquor Time.

Having considered the totality of the facts described above, the Administrative Law Judge concludes that the sales on March 26 and April 7, 2009, were "willful violations" of Minn. Stat. § 340.503 and Bloomington City Code § 13.52, and thereby justifies the City Council's authority to impose higher sanctions upon the license of Liquor Time for willful violations of the law.

M. J. C.