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**STATE OF MINNESOTA
IN COURT OF APPEALS
A10-304**

In the Matter of On-Sale Liquor License
Held by Cooper's Restaurant, Inc. d/b/a Cooper's Restaurant,
4185 South Robert Trail, Eagan, MN 55123.

Filed November 9, 2010

Affirmed

Collins, Judge*

City of Eagan

Robert D. Miller, Minneapolis, Minnesota (for relator Cooper's Restaurant, Inc.)

Sharon K. Hills, Michael G. Dougherty, Severson, Sheldon, Dougherty & Molenda, P.A.,
Apple Valley, Minnesota (for respondent City of Eagan)

Considered and decided by Bjorkman, Presiding Judge; Kalitowski, Judge; and
Collins, Judge.

UNPUBLISHED OPINION

COLLINS, Judge

Relator Cooper's Restaurant, Inc. (restaurant) challenges the decision of
respondent City of Eagan (city) imposing a civil penalty and suspension of the
restaurant's liquor license following an administrative hearing. The restaurant concedes
that it sold an alcoholic beverage to an underage person, but contends that the city's

* Retired judge of the district court, serving as judge of the Minnesota Court of Appeals
by appointment pursuant to Minn. Const. art. VI, § 10.

decision is not supported by substantial evidence and is arbitrary and capricious because the sale was induced by “trickery or deception.” We affirm.

FACTS

In the evening of December 21, 2009, Eagan Police Officer Christopher Meade went to the restaurant dressed in plain clothes to conduct an alcohol-compliance check; he was accompanied by Joshua Grubb, an underage purchaser. The restaurant had been cited for violations of relevant statutes, regulations, or ordinances three times within the preceding 36 months: twice for selling alcoholic beverages after 1:00 a.m. without having the requisite special permit and once for selling an alcoholic beverage to an underage person.

Officer Meade and Grubb entered the restaurant, took seats at the bar, and each ordered a beer. The bartender recognized Officer Meade from past visits to the restaurant, and knew him to be a police officer. The bartender asked each man for his proof-of-age identification. She first examined the Minnesota identification card produced by Grubb, which showed his date of birth, October 10, 1989, and bore the legend “UNDER 21” at the top of his photograph. The bartender asked Grubb “if he had done the 21 shots on his birthday,” and Grubb said, “No.” After looking at Officer Meade’s Minnesota driver’s license and confirming that he was of-age, the bartender examined Grubb’s identification card a second time before serving them each a beer.

The restaurant had a card-swipe device, which if used by the bartender would have scanned Grubb’s identification card and shown that he was 20 years old and underage. The restaurant also had a bulletin board displaying the date on or before which a person

must have been born in order to be 21 or more years old. The bartender, who had nearly 25 years of bartending experience, simply admitted that she “made a total human error” and “miscalculated” Grubb’s age.

Because the restaurant failed the alcohol-compliance check, the city initiated administrative proceedings. Officer Meade, Grubb, the bartender, the restaurant’s owner, and the restaurant’s attorney appeared at the administrative hearing. The restaurant’s owner argued that the bartender was misled because Grubb’s answer to her question about drinking 21 shots could be taken as an acknowledgement that he was 21 years old. But the bartender specifically testified that she never asked Grubb his age or whether he was 21 years old; she stated that she always looks at the identification-card picture, but acknowledged that the picture on “[Grubb’s identification card] says under 21.” Her only explanation was that she “got confused with the birth dates.”

The restaurant’s owner relied on Officer Meade’s presence in support of his argument that Grubb misrepresented his age, contending that a fair assumption would be that “they’re to tell the truth.” The bartender agreed that she respected Officer Meade’s position as a police officer and did not expect him to try to trick her, and she stated that Officer Meade’s presence “probably” influenced her decision to serve Grubb. The restaurant’s owner acknowledged that the restaurant had failed alcohol-compliance checks in the past and that he was aware that alcohol-compliance checks are conducted by police officers accompanied by underage persons.

The city’s administrative-hearing officer issued a decision concluding that the restaurant served alcohol to an underage person. The city ordered the restaurant to pay a

\$2,000 civil penalty and suspended its liquor license for 30 days. This certiorari appeal followed.

DECISION

Municipalities have broad discretion in the issuance, regulation, and revocation of liquor licenses. *Hymanson v. City of St. Paul*, 329 N.W.2d 324, 326 (Minn. 1983); *In re On-Sale Liquor License, Class B*, 763 N.W.2d 359, 365 (Minn. App. 2009). A municipality may impose a civil penalty and suspend a liquor license based on the licensee's failure to comply with an applicable statute, rule, or ordinance relating to alcoholic beverages. Minn. Stat. § 340A.415 (2008). The suspension may not take effect until the licensee has been provided with an opportunity for an administrative hearing. *Id.* This court may reverse or modify the municipality's decision if the decision is arbitrary and capricious, unsupported by substantial evidence, or affected by an error of law. Minn. Stat. § 14.69 (2008). Reversible error must be shown by the party claiming it. *On-Sale Liquor License*, 763 N.W.2d at 366.

Under Minnesota law, it is unlawful to sell or give an alcoholic beverage to a person under 21 years of age. Minn. Stat. § 340A.503, subd. 2(1) (2008). Proof of age may be established only by one of the government-issued forms of identification enumerated in the statute, including a Minnesota identification card. *Id.*, subd. 6(a) (2008). A person prosecuted for selling an alcoholic beverage to an underage person has an affirmative defense of reasonable, good-faith reliance only if the reliance is on proof of age as established by one of the authorized forms of identification. *Id.*, subd. 6(b)

(2008). With exceptions not relevant here, the act of an employee of a licensed establishment is deemed to be the act of the licensee. Minn. Stat. § 340A.501 (2008).

Under the Eagan city code, a licensee's fourth violation within a 36-month period calls for a \$2,000 civil penalty and a 30-day suspension of its license. Eagan, Minn., City Code § 5.02, subd. 4(G) (2009). A violation includes any failure to comply with any applicable statute, regulation, or city-code provision relating to alcoholic beverages. *Id.*, subd. 4(F) (2009).

The restaurant concedes that it sold an alcoholic beverage to Grubb, who was 20 years old, but argues that “the deceptive manner in which the [alcohol-compliance] check was conducted rendered the transaction capricious” and that “evidence gained from the use of trickery or deception” is not substantial evidence. In support of this contention, the restaurant relies on *Wajda v. City of Minneapolis*, in which the supreme court stated that an administrative agency abuses its discretionary power through “unreasonable, arbitrary, capricious, or fraudulent action.” 310 Minn. 339, 343, 246 N.W.2d 455, 457 (1976) (quotation omitted).

The restaurant suggests that Grubb's response to the bartender's question about 21 shots, coupled with Officer Meade's status as a police officer, amounts to fraudulent behavior within the meaning of *Wajda*. We disagree. It is undisputed that: (1) Grubb produced his valid Minnesota identification card; (2) the bartender failed to utilize the readily available card-swipe machine, never asked Grubb's age, and ignored the qualifying date of birth displayed on the bulletin board; (3) Officer Meade made no representation as to Grubb's age; and (4) the restaurant was aware that the city

occasionally conducted alcohol-compliance checks with police officers accompanied by underage persons. These facts negate the suggestion that the illegal sale was induced by fraudulent behavior on the part of the city.

Moreover, as a matter of law, the *sole* source of verification of Grubb's age upon which the restaurant was entitled to rely was his Minnesota identification card. The card stated Grubb's date of birth, showing him to be 20 years old, and bore the legend "UNDER 21" at the top of his photograph. See Minn. Stat. § 340A.503, subd. 6(b). The city's decision to impose a civil penalty and suspend the restaurant's liquor license is thus supported by substantial evidence and is not arbitrary and capricious.

Affirmed.