

October 8, 2021

VIA EFILING ONLY

Shari Moore
City Clerk
City of St. Paul
310 City Hall
15 W Kellogg Blvd
Saint Paul, MN 55102
cityclerk@ci.stpaul.mn.us

Re: *In the Matter of the Cigarette/Tobacco License held by Zakariya Abukhudeer d/b/a The One Stop Market, LLC, for the premises located at 1541 Maryland Avenue in Saint Paul License ID # 20190001624*
OAH 60-6020-37157

Dear City Clerk Moore:

Enclosed and served upon you is the Administrative Law Judge's **ORDER ON CERTIFICATION** in the above-entitled matter. The compiled record to date is also enclosed for your review. The audio of the hearing on oral arguments, which took place on September 27, 2021, will be served in a separate email.

If you have any questions, please contact me at (651) 361-7874, michelle.severson@state.mn.us, or via facsimile at (651) 539-0310.

Sincerely,



MICHELLE SEVERSON
Legal Assistant

Enclosure

cc: Docket Coordinator
Therese Skarda
Mark K. Thompson

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE CITY OF ST. PAUL

In the Matter of Cigarette/Tobacco License held by Zakariya Abukhudeer d/b/a The One Stop Market, LLC, for the premises located at 1541 Maryland Avenue in Saint Paul, License ID # 20190001624

ORDER ON CERTIFICATION

This matter came before Administrative Law Judge James E. LaFave for a prehearing conference on September 27, 2021.

Therese Skarda, Assistant St. Paul Attorney, appeared on behalf of the City of St. Paul (City). Mark K. Thompson, MKT Law PLC, appeared on behalf of Zakariya Abukhudeer d/b/a The One Stop Market LLC (Respondent).

On September 7, 2021, the Administrative Law Judge issued an order granting in part and denying in part the City's Motion for Summary Disposition (Motion). During the prehearing conference, Respondent requested the Motion be certified to the St. Paul City Council (Request). The City did not object.

Based on the files, records, and proceedings herein, the Administrative Law Judge makes the following:

ORDER

1. The Respondent's Request is **GRANTED**.
2. The City's Motion is **CERTIFIED** to the St. Paul City Council. All proceedings in this case are **STAYED** pending a ruling by the Council. If the St. Paul City Council makes a final decision in this matter, it must allow Respondent an opportunity to file exceptions and present argument, as required by Minn. Stat. § 14.61, subd. 1 (2020).

Dated: October 8, 2021


JAMES E. LAFAVE
Administrative Law Judge

MEMORANDUM

Despite the parties' agreement that the Request should be granted, the Request must be evaluated in light of the criteria set forth in Minn. R. 1400.7600 (2021).

After receiving an adverse ruling on a motion, a party may request that the Administrative Law Judge certify the motion to the agency.¹ In deciding which motions should be certified, the administrative law judge shall consider:

- A. whether the motion involves a controlling question of law as to which there is substantial ground for a difference of opinion; or
- B. whether a final determination by the agency on the motion would materially advance the ultimate termination of the hearing; or
- C. whether or not the delay between the ruling and the motion to certify would adversely affect the prevailing party; or
- D. whether to wait until after the hearing would render the matter moot and impossible for the agency to reverse or for a reversal to have any meaning; or
- E. whether the issues are solely within the expertise of the agency.²

After considering the criteria set forth in the Rule, it is appropriate to certify the Motion to the St. Paul City Council. The Administrative Law Judge recommended that summary disposition be granted as to two allegations and ordered that the remaining claims be denied. If the recommendation is followed, there are grounds to sanction the Respondent. The Administrative Law Judge also opined that if the the City prevailed at hearing on the remaining allegations, those violations would not support the greater-than-double upward departure to revocation the City sought.

In light of these circumstances, a decision by the St. Paul City Council could conserve the parties' resources and materially advance the conclusion of the hearing. This weighs heavily in favor of certification.

The Request satisfies the criteria detailed in Minn. R. 1400.7600. Based on the foregoing, the Respondent's Request is **GRANTED**.

J. E. L.

¹ Minn. R. 1400.7600.

² *Id.*