

August 20, 2018

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 Dollar Plus, Inc. d/b/a Dollar Plus for the Premises Located at 560 University Avenue West in St. Paul*
OAH 82-6020-35305

Dear City Clerk Moore:

Enclosed and served upon you is the Administrative Law Judge's **FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDATION** in the above-entitled matter. The official record, with the exception of the recording of the hearing, is also enclosed. If you would like a copy of the recording, please contact the Office of Administrative Hearings in writing, by telephone at (651) 361-7888, or by email at lisa.armstrong@state.mn.us. The Office of Administrative Hearings' file in this matter is now closed.

If you have any questions, please contact my legal assistant Lisa Armstrong at (651) 361-7888 or lisa.armstrong@state.mn.us, or facsimile at (651) 539-0310.

Sincerely,



BARBARA J. CASE
Administrative Law Judge

BJC:la

Enclosure

cc: Therese Skarda
Muhammed Ali Mohamud

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

In the Matter of the Cigarette/Tobacco
Licenses Held by Muhammed Ali
Mohamud, Owner of Dollar Plus, Located at
560 University Avenue West in St. Paul

**FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND RECOMENDATION**

This matter came before Administrative Law Judge Barbara J. Case for a hearing on July 31, 2018. The record closed on the same date.

Therese Skarda, Assistant City Attorney, appeared on behalf of the City of St. Paul (City). Muhammed Ali Mohamud (Mr. Mohamud or Licensee), appeared on his own behalf, without legal counsel.

STATEMENT OF ISSUE

Does the City have reasonable cause to revoke the tobacco license of Licensee?

SUMMARY OF RECOMMENDATION

The Administrative Law Judge recommends that the revocation of Licensee's tobacco license be affirmed.

Based upon the evidence in the hearing record, the Judge makes the following:

FINDINGS OF FACT

1. On March 7, 2008, Mr. Mohamud was granted license # 20080000589 to sell tobacco and tobacco products by the Department of Safety and Inspections for the City of St. Paul. He operates Dollar Plus, Inc. at 560 University Avenue West, St. Paul, Minnesota.¹ Mr. Mohamud is the sole owner and licensee for the business.²

2. In the ten years that Licensee has had a tobacco license, he has had few violations of the city code. Licensee had one citation for selling tobacco to an underage individual and two instances of failing to timely pay his license fees.³

¹ Exhibit (Exs.) 18-4 (Licensing records); Testimony (Test.) of Muhammed Ali Mohamud.

² Ex. 1-4 (Incident Report).

³ Test. of Jordan Sams.

3. Over the last few years, St. Paul Police received complaints from members of the community about narcotics being sold in Licensee's store. Community members reported that in addition to adults the narcotics were being sold to juveniles and that the narcotics had resulted in people overdosing and becoming ill.⁴ The number of complaints from community members about Dollar Plus prompted police to investigate the business.⁵

4. On the evening of November 17, 2016, Officer Garaad Sahaal, a St. Paul police officer, who at that time was a member of the narcotics unit, went undercover to Dollar Plus and attempted to purchase narcotics in the form of synthetic marijuana.⁶ Licensee was told by Officer Sahaal to come back in the morning because the narcotics were not sold in the evening hours, and because the narcotics were sold by "that other dude." Licensee explained that "he does not even know that I know, I didn't even know that he does that, I heard from a customer." Licensee also said, "That's his own privacy."⁷ Licensee also told Officer Sahaal the best time to find "Jay," the individual who sold the narcotics, was weekdays before 3:00 p.m.⁸

5. There is a gap in the investigation of Dollar Plus between November 2016 and September 2017, because it took that amount of time for the St. Paul Police Department to identify people who could act as confidential reliable informants (CRIs). CRIs are people the police have determined they can rely upon to provide reliable information to the police in a confidence.⁹

6. Jalal Mouine (Mouine) was the sole worker at Dollar Plus most days from the morning until the early afternoon and was an employee of Licensee.¹⁰ On September 20, 2017, a CRI purchased narcotics inside Dollar Plus from Mouine, who is also known as "Jay."¹¹

7. On September 25, 2017, and October 3, 2017, the CRI again purchased narcotics from Mouine inside Dollar Plus.¹²

8. On November 21, 2017, Mouine was arrested outside of Dollar Plus.¹³ Ramsey County District Court Judge Richard H. Kyle found probable cause and signed a search warrant for Dollar Plus, some residences, storage lockers, and some

⁴ Test. of J. Sams; Ex. 1-3 (Incident Report).

⁵ Ex.1-3 ; Test. of J. Sams.

⁶ Test. of Garaad Sahal; Ex. 1-3.

⁷ *Id*; Ex. 1 (Video).

⁸ *Id*.

⁹ Test. of J. Sams.

¹⁰ Ex. 1-5.

¹¹ Test. of J. Sams; Ex. 1-4.

¹² Ex. 1-4.

¹³ Ex. 1-9.

vehicles.¹⁴ The police used a key to Dollar Plus that had been on Mouine's key chain to enter Dollar Plus.¹⁵

9. When they searched Dollar Plus, officers found numerous guns, numerous rounds of ammunition, a large knife and a bullet proof vest. The weapons included:

- a. A nine millimeter silver colored handgun, loaded and cocked, found behind the clerk's counter;¹⁶
- b. Numerous rounds (37 boxes) of ammunition for the handgun;¹⁷
- c. A high powered long-gun or AK-47;¹⁸
- d. "Magazines" or ammunition for the AK-47;¹⁹
- e. A large knife;²⁰ and
- f. A bulletproof vest.²¹

10. Weapons and narcotics dealing are often related because narcotics dealers often keep weapons for protection. These weapons pose a danger to the community.²²

11. The handgun found in Dollar Plus posed a danger to the public because the handgun was cocked and loaded and easily accessible to the public in its location behind the counter in an open case. The handgun could easily have been bumped or dropped and accidentally discharged.²³

¹⁴ Exs. 4-5, 4-6; Test. of J. Sams. Officer Jordan Sams has been a police officer for nine years, the last five of which have been with the St. Paul Police Department. At the time of the events in this case, he was assigned to be, among other duties, a narcotics officer.

¹⁵ Ex. 1-9.

¹⁶ Exs. 11-10, 11-11, 11-12; Test. of Rob Stanway.

¹⁷ Ex. 5-6; Test. of R. Stanway.

¹⁸ Ex. 11-33; Test. of R. Stanway.

¹⁹ Ex. 11-26; 11-35; 11-36; Test. of R. Stanway.

²⁰ Ex. 5-6; Test. of R. Stanway.

²¹ Ex. 5-6; Test. of R. Stanway.

²² Test. of R. Stanway. Sargent Rob Stanway, an investigator with the St. Paul Police Department, graduated from the Police Academy in 1995 and has 23 years of experience as a Police Officer. Based upon his training and experience, Sargent Stanway testified that weapons and narcotics dealing go "hand-in-hand".

²³ *Id.* Sargent Stanway has never seen a gun like this in a business in St. Paul.

12. The AK-47 and ammunition for it were of great concern to the police. It is atypical for this type of gun to be found in a business. The gun was not safely stored and locked away, but was loaded and easily accessible to anyone in Dollar Plus.²⁴

13. The synthetic marijuana being sold in Dollar Plus is unlike botanical or grown marijuana. It is chemically made and the producers are constantly altering the formula and hence the contents of the drug. It is very easy for people to overdose on the product and, because it is inconsistent, there are frequent adverse reactions to it. The neighborhood was put at risk because Dollar Plus was selling synthetic marijuana to individuals, including juveniles.²⁵

14. No synthetic marijuana was found on the day that the search warrant was executed at Dollar Plus.²⁶

15. Mouine regularly stopped at a self-storage unit before arriving at Dollar Plus in the morning. He would often make trips to the self-storage unit and then back to Dollar Plus during the day. He would stop at the self-storage unit after leaving Dollar Plus for the day. He often ended his day at his sister's residence in Burnsville.²⁷

16. On November 21, 2017, police seized marijuana and synthetic marijuana from Mouine's self-storage unit.²⁸ \$140,000 in cash was found at the Burnsville residence and \$10,000 in cash was found in the storage unit. The storage unit had Licensee listed as an alternate contact and Dollar Plus listed as an alternate address. Mouine's sister informed the police that Mouine had been bringing cash to her home for approximately a year and that it had to do with his business.²⁹

17. On November 21, 2017, Officer Sams called Licensee at Licensee's request and arranged to speak with him in person the next day. Officer Sams went to Dollar Plus on November 22, 2017, and spoke with Licensee. Licensee told Officer Sams that he had confronted Mouine and Mouine denied dealing drugs in the store. Licensee also told a customer who asked for drugs to come back in the morning. He explained that he worked at night, rarely saw Mouine, and never saw Mouine sell anything. Licensee also said that the guns in the store belonged to Mouine.³⁰

²⁴ Test. of R. Stanway.

²⁵ *Id.*

²⁶ *Id.*

²⁷ *Id.*; Ex. 1 (Incident Report).

²⁸ Test. of J. Sams.

²⁹ *Id.*

³⁰ *Id.*; Ex. 14 (video).

18. Mouine pled guilty to one felony count of selling narcotics.³¹

CONCLUSIONS OF LAW

1. The City and the Office of Administrative Hearings have jurisdiction to consider this matter pursuant to Minn. Stat. §§ 14.55, 340A.415 (2018), and St. Paul Legislative Code §§ 310.05, .06.

2. The City has complied with all relevant procedural requirements of ordinance and rule.

3. St. Paul Legislative Code § 310.06 states grounds for adverse license actions. Sections 310.06 (b) (6) (a) and (c), and 310.06 (b) (7) and (b) (8) are specifically identified in the Notice.

4. St. Paul Legislative Code § 310.05 (m) provides a matrix of penalties for first, second, third, and fourth appearances before the city Council. It sets forth hearing procedures and, in section (m), provides a matrix of penalties for first, second, third, and fourth license violations. Part (m) (6) relates to “commission of a felony on the premises by a licensee or employee.” For a first violation, the matrix penalty is a \$2000 fine.³²

5. Code § 310.05 (m) provides that the matrix penalties are presumed to be appropriate for every case but also notes that the City Council may deviate in an individual case where the council finds substantial and compelling reasons making it more appropriate to do so. If the Council deviates, it must provide written reasons why the penalty selected was more appropriate.³³

6. The City has complied with the notice requirements of Code section 310.05 (m).

7. The City has shown substantial and compelling reasons to deviate from the penalty matrix and revoke Licensee’s tobacco products license for reasons identified in St. Paul Legislative Code §§ 310.06 (b) (6) (a) and (c) and 310.06 (b) (8).

Based upon these Conclusions of Law and for the reasons explained in the Memorandum below, the Administrative Law Judge makes the following:

³¹ Test. of J. Sahal.

³² 310.05(M)(6).

³³ *Id.*

RECOMMENDATION

IT IS HEREBY RECOMMENDED:

The City should revoke Licensee's license to sell tobacco.

Dated: August 20, 2018



BARBARA J. CASE
Administrative Law Judge

NOTICE

This Report is a recommendation, not a final decision. The St. Paul City Council will make a final decision after a review of the record and may adopt, reject, or modify these Findings of Fact, Conclusions of Law, and Recommendation. Pursuant to St. Paul Legislative Code § 310.05 (c-1), the City Council shall not make a final decision until the parties have had the opportunity to present oral or written arguments to the City Council. Parties should contact Shari Moore, City Clerk, City of St. Paul, 170 City Hall, 15 W. Kellogg Blvd., St. Paul, Minnesota 55102, to ascertain the procedure for filing exceptions or presenting arguments.

MEMORANDUM

I. The Parties' Arguments

The City argues that Licensee's license should be revoked because of the seriousness of the illegal activity about which Licensee was aware and tolerated. The sale of narcotics from Licensee's store created a public safety hazard for the neighborhood. In addition, the City argues that the numerous guns kept in the store also posed a safety hazard for the community. The City argues that these activities posed a significant threat to public safety such that an upward deviation from the City's presumed sanctions is warranted in this case.

Licensee argues that when he first told an undercover Officer that he could buy synthetic marijuana from Licensee's employee, Mouine, he was attempting to get a message to Mouine that he knew that Mouine was selling drugs. Licensee stated that, previous to the officer's visit, Mouine had denied the charge. Licensee stated that he had never seen drugs on Mouine. Licensee also made the point that no synthetic marijuana was found in Dollar Plus when the police searched the store. Licensee argues that if he did not see the drugs and if the guns were not his, he should not be held accountable for the activity that went on in his store.

Licensee also stated that he was originally an employee at the store. He purchased the store from the previous owner. He also explained that Mouine was a co-owner at first and that Mouine was “part of the deal” when Licensee purchased the business. Eventually he bought Mouine’s share of the store and became the sole owner. He also notes that since he moved to the United States in 1995, he has had no legal violations. He blames Mouine for the violations and asks for a second chance.

A preponderance of the evidence shows that Licensee had knowledge of the criminal activity that occurred in his store. Licensee facilitated the activity by referring customers to buy narcotics from Mouine. At the very least, Licensee knew about the drug sales that were occurring in his store for almost a year and he did nothing to stop the activity. Licensee also knew that loaded guns were unsafely kept in his store, and his arguments at the hearing show he believed the gun possession was justified. Contrary to Licensee’s argument that the guns were needed because the neighborhood was not safe, it is evident that the guns were kept because the drug dealing in the store made Licensee and Mouine feel that they needed protection.

Officer Sams testified credibly that the caliber and number of guns in the store would have no justification except to protect the store’s drug dealing enterprise. Officer Sams also credibly testified that both the guns and the drugs posed a danger to the surrounding community.

II. The Penalty and the Matrix

The City’s penalty matrix³⁴ penalties are “presumed to be appropriate for every case; however the council may deviate therefrom in an individual case where the council finds and determines that there exist substantial and compelling reasons making it more appropriate to do so.”³⁵ According to the matrix, the presumptive penalty for Licensee’s first-time violation is a \$2000 fine.³⁶ However, Licensee’s violations make this case appropriate for an upward deviation from the matrix penalty.

There was no evidence that Licensee’s business is a neighborhood asset. The greater weight of the evidence indicates that the business’s drug sales negatively impacted the neighborhood, and the guns in the store were a safety hazard. In fact, the City’s investigation began because the community was complaining about people, including juveniles, becoming sick and overdosing on the narcotics they bought at Dollar Plus. In his closing statement, Licensee stated that the neighborhood in which Dollar Plus is located is scary. Ironically, the activity that Licensee tolerated in his store contributed to the problems in the neighborhood of which he complains.

The City is not required to endorse or be a partner to illegal and unsafe activity by licensing a business that is harming city residents. The sanction sought by the City is reasonable given the impact on the community of the activity the City proved was

³⁴ St. Paul Legislative Code §310.05 (m).

³⁵ *Id.*

³⁶ *Id.*

occurring inside the business. The Administrative Law Judge recommends that Licensee's tobacco license be revoked.

B. J. C.