

RECEIVED
MAY 03 2018
CITY ATTORNEY

April 30, 2018

Ms. Therese Skarda, Esq.
Civil Division
400 City Hall and Court House
15 West Kellogg Boulevard
Saint Paul, MN 55102

via fax 651-298-5619 & USPS

RE.: Bamboo Hut
Intent to Revoke License
License ID#: 20170002881

Dear Ms. Skarda:

I have just been retained to represent Bamboo Hut to defend them against the City's intent to revoke their licenses.

I write in response to your letter dated April 23, 2018.

As you are aware, the facts are rather complex and numerous. First, it is my position and request that I be given some time to adequately investigate and review this matter before I can properly respond and either admit or deny facts you have alleged in your letter.

Second, I respectfully request that this matter be set on for an administrative hearing before an Administrative Law Judge.

Finally, by this letter, I request that the City provide me with all the evidence it intends to introduce at the hearing and other evidence it may have in its possession so that I can properly mount a defense.

Thank you.

Sincerely,

Der Yang, Esq.
Attorney for Bamboo Hut

cc: Client
File

1001 Johnson Parkway, Ste. B1
St. Paul, MN 55106-2131
T: 651.955.2372
F: 651.344.0610
der@villagelawyer.org

ATTACHMENT 18



CITY OF SAINT PAUL
Mayor Melvin Carter

*Civil Division
400 City Hall
15 West Kellogg Blvd.
Saint Paul, Minnesota 55102*

*Telephone: 651 266-8710
Facsimile: 651 298-5619*

May 22, 2018

NOTICE OF ADMINISTRATIVE HEARING

Der Yang
Village Lawyer, LLC
1001 Johnson Pkwy, Suite B1
St. Paul, MN 55106

RE: Liquor On Sale 101-180 Seats, Liquor On Sale-Sunday, Entertainment (A) and Gambling Location licenses held by Bamboo Hut, LLC d/b/a Bamboo Hut for the premises located at 1626 White Bear Avenue in Saint Paul
License ID #: 20170002881
OAH Docket No: 60-6020-35246

Dear Ms. Yang:

Please take notice that an administrative hearing has been scheduled on the following dates, times and location concerning the Liquor On Sale 101-180 Seats, Liquor On Sale-Sunday, Entertainment (A) and Gambling Location licenses held by Bamboo Hut, LLC d/b/a Bamboo Hut for the premises located Location licenses held by Bamboo Hut, LLC d/b/a Bamboo Hut for the premises located at 1626 White Bear Avenue in Saint Paul:

Date: July 10, 2018
Time: 9:30 a.m.

Date: July 11, 2018 (continuing as necessary)
Time: 1:30 p.m.

Date: July 12, 2018 (continuing as necessary)
Time: 1:30 p.m.

Location: Office of Administrative Hearings
600 Robert Street North
St. Paul, MN 55101

The hearing will be presided over by an Administrative Law Judge from the State of Minnesota Office of Administrative Hearings:

Name: Judge James LaFave
Office of Administrative Hearings
600 North Robert Street
St. Paul, MN 55101

Telephone: (651) 361-7881

The Council of the City of Saint Paul has the authority to provide for hearings concerning adverse action against such licenses, under Chapter 310, including sections 310.05 and 310.06, of the Saint Paul Legislative Code. Adverse action may include revocation, suspension, denial, fines and other penalties or conditions.

Evidence will be presented to the administrative law judge that may lead to adverse action against the Liquor On Sale 101-180 Seats, Liquor On Sale-Sunday, Entertainment (A) and Gambling Location licenses held by Bamboo Hut, LLC d/b/a Bamboo Hut:

On July 18, 2017 you provided a letter to the Department of Safety and Inspections (DSI) which stated that the previous business operators would have no involvement with your business. This information was provided as part of your license application.

On July 18, 2017 you were issued Entertainment (A) and Gambling Location licenses.

On November 3, 2017 you were issued Liquor On Sale 101-180 Seats, Liquor On Sale-Sunday licenses with 6 conditions.

On February 24, 2018 at approximately 0033 hours a call was made to the Saint Paul Emergency Operations Center reporting a riot/shooting at the Bamboo Hut, 1626 White Bear Avenue N. Saint Paul Police Officers ("SPPD") responded and asked to see the video. The manager on duty identified himself as Teng Ly, 12-21-1978 and told officers he could not immediately provide a copy of the video.

Teng Ly is one of the previous business operators.

Not immediately making video available is a violation of Condition #6 of your license which requires that you make *"surveillance video immediately available for viewing by SPPD following a serious incident."*

On February 27, 2018, you were sent a letter from the Department of Safety and Inspections (DSI). The letter requested a copy of all interior and exterior video surveillance from February 23, 2018 at 9:00 p.m. to 1:00 a.m. on February 24, 2018. The letter instructed you to deliver a copy of the video surveillance in a readable format to DSI no later than 4:30 p.m. on March 2, 2018. You delivered the video on March 2, 2018. DSI staff and SPPD viewed the video and found that the video's time stamp display was inaccurate as it was one hour later than the actual time. This is a violation of your license. Condition #6 states that you must ensure that *"accurate date and time of day are visible on all recorded video."*

The video showed that you are not operating your establishment as a Restaurant in accordance with Saint Paul Legislative Code Section 409.02 and that you allowed the consumption of alcohol outside of the seating area. DSI staff who viewed the video noted that the majority of dining tables and seating areas were unused, customers were standing and many of them were consuming alcohol. This is a violation of two conditions of your license. Condition #1 of your license states: *"Licensee agrees to operate the establishment in compliance with Section 409.02 of the City of Saint Paul Legislative Code as a "Restaurant".* Condition #3 of your license states: *"The sale, service, consumption, and/or display of alcohol is limited to the seating area shown on the plans dated 07/17/2017 and submitted with the application, which is the area having an address number of 1626. No sale, service, consumption, and/or display of alcohol is permitted in the space having an address number of 1624, which is immediately adjacent to and south of the 1626 numbered space."*

The video also showed customers in the premises after 12:30 a.m. and being served alcohol after 12:00 a.m. This is a violation of your license. Condition #2 of your license states: *"Licensee agrees to close the establishment at 12:00 a.m. midnight. All patron/customers shall vacate the premises by 12:30 a.m. each day of the week as per Section 409.02 of the City of Saint Paul Legislative Code."*

The video also showed an individual who DSI staff and SPPD believed to be wait staff delivering a case of bottled beer to a customer's table and customers removing the bottles from the box and consuming them. Customers at the same table were observed taking bottles of liquor and pouring their own shots and/or drinks. This is a violation of Saint Paul Legislative Code § 409.02 which states: *"On-sale shall mean the sale of liquor by the glass for consumption on the premises only."* Additionally, *Saint Paul Legislative Code § 409.26 (b) (6) prohibits after hours display and consumption of alcoholic beverages.*

On March 6, 2018, the District Council Land Use Committee held a meeting at Bamboo Hut. You were present at the meeting and admitted that you were aware alcohol was served in the vacant retail space at 1624 White Bear Avenue on February 23, 2018 and February 24, 2018. The vacant retail space is not a part of the licensed premises. This was a violation of license condition #3 which states: *"The sale, service, consumption, and/or display of alcohol is limited to the seating area shown on the plans dated 07/17/2017 and submitted with the application, which is the area having an address number of 1626. No sale, service, consumption, and/or display of alcohol is permitted in the space having an address number of 1624, which is immediately adjacent to and south of the 1626 numbered space."*

On March 29, 2018, at 12:30 a.m., SPPD came to the licensed premises on a proactive police visit. Officers documented the license violations they observed under CN 18-063-754. Specifically, the officers observed a male exit the premises and then walk back inside once he saw the marked squad cars. Shortly after, Teng Ly came to speak to the officers at their squad cars. He told the officers that he was the manager/bartender that night.

While waiting for Teng Ly to let them in, the officers could see multiple people sitting/standing around the bar in clothing that made the officers think they were not employees. One of the officers saw a male drinking a beer while standing outside looking through the window. Once the officers came inside, they observed at least eight (8) people walking away from the bar and leave the establishment. This is a violation of your license. Condition #2 states: *"Licensee agrees to close the establishment at 12:00 a.m. midnight. All patron/customers shall vacate the premises by 12:30 a.m. each day of the week as per Section 409.02 of the City of Saint Paul Legislative Code."* Saint Paul Legislative Code § 409.26 (b) (6) prohibits after hours display and consumption of alcoholic beverages.

On March 31, 2018, SPPD conducted a proactive police visit at your establishment. They observed a number of violations of your license conditions. They documented the violations they observed under CN#18-065-271. Specifically, officers walked through the inside of the restaurant at 12:30 a.m. and found several people inside who did not appear to be employees. Officers identified these individuals and many admitted they were not employees of the restaurant. They also identified Fuchy Ly. Fuchy told officers he was an employee of the restaurant. Teng Ly, was also present and identified himself as the manager. Officers reminded him that there were to be no customers inside after 12:30 a.m. Fuchy Ly is one of the previous business operators. Condition #2 of your license states: *"Licensee agrees to close the establishment at 12:00 a.m. midnight. All patron/customers shall vacate the premises by 12:30 a.m. each day of the week as per Section 409.02 of the City of Saint Paul Legislative Code."*

On March 31, 2018 at 4:46 p.m. SPPD was called to 1646 White Bear Avenue on a disorderly conduct call. While on scene they observed that that restaurant was closed for a private event. While they spoke with the complainant they observed what appeared to be a wedding reception occurring at the address.

On April 3, 2018, the Department of Safety and Inspections sent you a letter requesting a copy of all interior and exterior video camera surveillance for March 28, 2018 11:00 p.m. through 1:00 a.m. on March 29, 2018. You were instructed to deliver a copy of the video surveillance in a readable format no later than 4:30 p.m. on April 6, 2018. The requested video surveillance was never received. This is a violation of your license. The relevant portion of license condition #6 states: "*In all other cases, licensee shall provide a copy of the surveillance video to the requestor within 48 hours.*"

On April 5, 2018, at approximately 9:35 p.m., Saint Paul Police conducted a proactive visit (CN #18-069-363). Officers came in contact with a patron who appeared to be under the influence of alcohol and possibly overserved. The patron told officers he had been drinking inside the restaurant. The patron was acting disorderly by actively holding the exterior doors shut as customers were trying to enter. This is violation of Saint Paul Legislative Code § 409.26 (b) (4) which prohibits the sale of alcoholic beverages to an obviously intoxicated person.

On April 7, 2018, at approximately 12:30 a.m., Saint Paul Police conducted a proactive visit (CN #18-070-390). When the officers came to the front door, they found it was locked but when they looked in, they saw at least six (6) people inside drinking. These individuals did not appear to be employees because they were wearing street clothes. An older male came to the front door to tell the officers that the business was closed and went back inside without allowing the officers inside. One officer saw Teng Ly, manager of the business, escorting five (5) people out of the business, some appeared to be heavily intoxicated. When the officers spoke to Teng Ly, they told him they were here to document if all customers were out of the establishment by 12:30 a.m. Teng Ly apologized and admitted that the individuals he just escorted out of the business were customers from a bridal shower that was held at the restaurant that night.

Saint Paul Legislative Code Section 310.06 provides that adverse action may be taken against your license based on any one or more of the following grounds:

Section 310.06 (b) (6) (a): "*The license or applicant (or any person whose conduct may by law be imputed to the licensee or applicant) has violated, or performed any act which is a violation of, any of the provision of these chapters or of any statute, ordinance or regulation reasonably related to the licensed activity, regardless of whether criminal charges have or have not been brought in connection therewith;*"

Section 310.06 (b) (6) (c): "*The licensee or applicant (or any person whose conduct may by law be imputed to the licensee or applicant) has engaged in or permitted a pattern or practice of conduct of failure to comply with laws reasonably related to the licensed activity or from which an inference of lack of fitness or good character may be drawn.*"

Section 310.06 (b) (7): *“The activities of the licensee in the licensed activity created or have created a serious danger to the public health, safety or welfare, or the licensee performs or has performed his or her work or activity in an unsafe manner.”*

Section 310.06 (b) (8): *“The licensed business, or the way in which such business is operated, maintains or permits conditions that unreasonably annoy, injure or endanger the safety, health, morals, comfort or repose of any considerable number of members of the public.”*

Due to the serious nature of the activity you allowed to occur at the licensed premises, the continued involvement of the previous owners and your disregard of your license conditions, the licensing office will recommend an upward departure to revocation of your Liquor On Sale 101-180 Seats, Liquor On Sale-Sunday, Entertainment (A) and Gambling Location licenses.

The licensee has the right to be represented by an attorney before and during the hearing or can represent him/herself. The licensee may also have a person of his/her choice representing his/her interests, to the extent not prohibited as unauthorized practice of law.

The hearing will be conducted in accordance with the requirements of Minnesota Statutes sections 14.57 to 14.62 and such parts of the procedures under section 310.05 of the Saint Paul Legislative Code as may be applicable.

At the hearing, the Administrative Law Judge will have all parties identify themselves for the record. The City will then present its witnesses and evidence, each of whom the licensee or attorney may cross-examine. The licensee may then offer in rebuttal any witnesses or evidence it may wish to present, each of whom the City's attorney may cross-examine. The Administrative Law Judge may in addition hear relevant and material testimony from persons not presented as witnesses by either party who have a substantial interest in the outcome of the proceeding; for example, the owners or occupants of property located in close proximity to the licensed premises may have substantial interest in the outcome of the proceeding. Concluding arguments may be made by the parties. Following the hearing, the Judge will prepare Findings of Fact, Conclusions of Law, and a specific recommendation for action to be taken by the City Council.

The licensee should bring to the hearing all documents, records and witnesses which may be needed to support its position. Subpoenas may be available to compel the attendance of witnesses or the production of documents in conformity with Minnesota Rules, part 1400.7000.

If you think that this matter can be resolved or settled without a formal hearing, please contact the undersigned. If a stipulation or agreement can be reached as to the facts, that stipulation will be presented to the Administrative Law Judge for incorporation into his or her recommendation for Council action.

If you fail to appear at the hearing, your ability to challenge the allegations will be forfeited and the allegations against you which have been stated earlier in this notice may be taken as true. If non-public data is received into evidence at the hearing, it may become public unless objection is made and relief requested under Minnesota Statutes, Section 14.60, subdivision 2.

Der Yang - Bamboo Hut

May 22, 2018

Page 7

If you have any questions, you can call me at 266-8710.

Sincerely,

A handwritten signature in black ink, appearing to read "Therese A. Skarda". The signature is fluid and cursive, with the first name being the most prominent.

Therese Skarda
Assistant Saint Paul City Attorney
License No.: 024989

cc: Judge James LaFave, Office of Administrative Hearings, P.O. Box 64620, St. Paul, MN 55164-0620
Larry M. Salterman, 5005 Old Cedar Lake Road, St. Louis Park, MN 55416-1621
Bryan Larson, 375 Jackson Street, Ste. 700W, St. Paul, MN 55101-1810
Chuck Repke, Executive Director, District 2 Community Council Greater East Side
1365 Prosperity Avenue, St. Paul, MN 55106

STATE OF MINNESOTA)
) ss.

AFFIDAVIT OF SERVICE BY U.S. MAIL

COUNTY OF RAMSEY)

Julie Kraus, being first duly sworn, deposes and says that on the 22nd day of May she served the attached **NOTICE OF ADMINISTRATIVE HEARING** and a correct copy thereof in an envelope addressed as follows:

Der Yang
Village Lawyer, LLC
1001 Johnson Pkwy, Suite B1
St. Paul, MN 55106

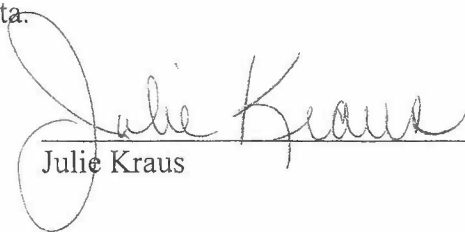
Judge James LaFave
Office of Administrative Hearings
P.O. Box 64620
St. Paul, MN 55164-0620

Larry M. Salterman
5005 Old Cedar Lake Road
St. Louis Park, MN 55416-1621

Bryan Larson
375 Jackson Street, Ste. 700W
St. Paul, MN 55101-1810

Chuck Repke, Executive Director
District 2 Community Council Greater East Side
1365 Prosperity Avenue
St. Paul, MN 55106

(which is the last known address of said person) depositing the same, with postage prepaid, in the United States mail at St. Paul, Minnesota.


Julie Kraus

Subscribed and sworn to before me
this 22nd day of May, 2018


Notary Public

