



MINNESOTA OFFICE OF ADMINISTRATIVE HEARINGS

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June 17, 2014

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Shari Moore
City Clerk
City of St. Paul
290 City Hall
15 W Kellogg Blvd
Saint Paul, MN 55102

Re: *In the Matter of More 4 A Buck, Inc.*
OAH 82-6020-31361

Dear Ms. 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 651-361-7898, or by e-mail at Suzanne.segl@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 Kendra McCausland at (651) 361-7870 or kendra.mccausland@state.mn.us.

Sincerely,

BARBARA J. CASE
Administrative Law Judge

BJC:klm
Enclosure
cc: Geoffrey S. Karls
Donald Buckrey

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JUN 18 2014
CITY ATTORNEY

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE CITY OF ST. PAUL

In the Matter of the Auto Repair Garage
and Second Hand Dealer Motor Vehicle
Licenses held by More 4 A Buck, Inc.,
License #20100001573

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

This matter came on for a hearing before Administrative Law Judge Barbara J. Case on May 2, 2014.

Geoffrey Karls, Assistant City Attorney, appeared on behalf of the City of St. Paul. Respondent Donald Buckrey (Respondent or Licensee) appeared on his own behalf.

STATEMENT OF THE ISSUE

Whether the Respondent violated various conditions set forth on his license and whether therefore under Saint Paul Legislative Code § 310.06(b)(5), the City Council of St. Paul is warranted in issuing a fine of \$500.

Based upon relevant authority and all of the files, records and proceedings in this matter, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. Licensee is the owner of More 4 A Buck, Inc., an auto repair garage and second hand dealer on 1176 Dale Street North in St. Paul, Minnesota.¹

2. On October 22, 1999, a Special Condition Use Permit was issued to Licensee to allow for outdoor sales of used cars, License #20100001573.²

3. On June 4, 2010, Licensee agreed to certain license conditions imposed by the City of Saint Paul (City). Licensee signed an agreement which listed the conditions being placed on his license.³ The conditions were:

1. The building shall be painted and maintained in good condition.

¹ Ex. 1.

² Ex. 2. and 3.

³ Ex.6.

2. Parking areas and driveways shall be paved with a permanent, durable and dustless surface according to an approved site plan. The following parking spaces shall be striped and no cars shall be parked outside of the striped areas: 35 spaces-For-sale cars on the north side of the building. 6' spaces-For cars awaiting repair or pick-up or employee parking on the east side of the building. 6' spaces-For customer and employee parking on the side of the building, including one handicapped space. There shall be no cars parked on the Dale Street frontage of the site except the seven cars in the first row of for-sale cars in the north lot. Driveways and maneuvering lanes measuring at least 20 feet wide shall be maintained on the site.
3. All vehicles parked outdoors on the lot must be completely assembled with no parts missing. Vehicle salvage is not permitted.
4. Vehicle parts, partially disassembled vehicles, tires, oil, vehicle hoist or similar items will not be stored outdoors. Trash will be stored in the covered dumpster shown on the site plan at the rear of the building.
5. No repair of vehicles will occur on the exterior of the lot or on the public right-of-way.
6. Landscaping/screening shall be installed as follows: 1) A wooden post and beam fence shall be installed on the Dale Street frontage of the car sales area with four feet of landscaping, as required in an approved site plan, in front of the fence. 2) A bollard and chain barrier shall be installed between the two driveways. 3) Landscaping, as required in an approved site plan, shall be installed between the southern drive/parking area and the railroad right of way.
7. Lighting on the site shall conform to the standards outlined in Section 62.110 of the zoning code.
8. Licensee agrees to maintain the site in accordance with the approved site plan on file with DSI dated 10/27/99. This includes, but is not limited to the striping of vehicle parking spaces, landscaping, fencing, bollards and chains, etc.
9. Licensee must comply with all federal, state and local laws.
10. No auto body repair or auto body spray painting is allowed.

11. Vehicles intended for-sale must at all times be clearly marked with easily identifiable signage designating them as for-sale vehicles.⁴
4. On September 1, 2010, Licensee was issued a new alarm permit, an auto repair garage license and a second hand dealer license.⁵
5. On April 26, 2012, the City's Department of Safety and Inspections (DSI) conducted an inspection of the premises, resulting in a finding of violation of License Conditions 2, 3, and 4.⁶
6. On July 3, 2012, Licensee's property was inspected a second time. A DSI license inspector observed violations of License Conditions 2, 3, and 4.⁷
7. On August 14, 2012, a DSI license inspector conducted an inspection and observed violations of License Conditions 2, 3, 4, and 5.⁸
8. A DSI Inspector conducted an inspection on September 21, 2012, revealing a car parked in the alley on the south side of the lot, one parked in a landscaping triangle, and cars covered in tarps that had been there for more than 90 days.⁹
9. On October 17, 2012, the City Attorney's Office (CAO) issued Licensee a Notice of Violation, giving him until October 29, 2012 to respond.¹⁰
10. On November 2, 2012, Licensee requested a hearing to contest the \$500 penalty.¹¹
11. On November 20, 2012, St. Paul City Council file #12-328 ordered Licensee to pay a \$1,000 penalty based on violations from four separate inspections.¹²
12. On December 29, 2012, a fine letter was sent requiring payment of the \$1,000 penalty by December 21, 2012.¹³
13. On April 30, 2013, inspection revealed that the premises remained out of compliance with the license conditions, cars were parked out of conformance with the site plan, cars were without parts, and items unrelated to Licensee's license were displayed around the lot.¹⁴

⁴ *Id.*

⁵ Ex. 1.

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

¹⁴ Ex.1. and Testimony of Kristina Schweinler (Test. K. Schweinler).

14. On July 23, 2013, used tires were found being displayed for sale. Licensee is not licensed to sell used tires. Selling used tires was also a violation of Condition 6 of Licensee's license.¹⁵

15. The DSI received numerous complaints regarding Licensee's car lot from neighbors of the property, the city council person representing the neighborhood and a developer considering property next door to Licensee's premises. The complainants stated that the property looked more like junkyard than a used car lot. As a result of those complaints a DSI licensing supervisor sent an inspector to the premises.¹⁶

16. On February 13, 2014, a DSI code inspector discovered numerous license condition violations by Licensee. DSI recommended a \$500 penalty against the Auto Repair Garage and Second Hand Dealer license for those violations. DSI further required that Licensee bring his establishment into compliance with the conditions on his license with no further violations.¹⁷

17. The conditions witnessed by the inspector on February 13, 2014, were documented with photographs. These violations include cars parked on the lot with parts missing (not completely assembled and not operable), vehicle parts and windshields and other trash being stored outdoors, inoperable cars covered with tarps, vehicles not parked in accordance with the site plan including being parked in drive lanes and in the alley, and some vehicles completely covered in snow and numerous cars with nothing to indicate they were for sale.¹⁸ All of these conditions are violations of the terms of the Licensee's license.¹⁹

18. Licensee holds a second hand motor vehicle dealer and auto vehicle repair license. Licensee is permitted to do such things as oil changes and interior work on vehicles. Body work such as fixing collision damage is not allowed under the license.²⁰

19. On February 20, 2014, a Notice of Violation was sent to Licensee. The Notice of Violation identified the license conditions observed to have been violated during the February 13, 2014 inspection, and recommended that a \$500.00 fine be imposed.²¹

20. On February 28, 2014, Licensee sent a reply letter indicating that he disputed the facts alleged by DSI and requested a hearing. However, none of the facts presented by DSI as of February 13, 2014 were actually contested in the letter.²²

¹⁵ *Id.*

¹⁶ Test. K. Schweinler.

¹⁷ Ex. 8.

¹⁸ Test. of J. Hoffman and C. Tilley, Test. K. Schweinler and Ex. 7 and Ex. 8.

¹⁹ Test. K. Schweinler.

²⁰ Test. of K. Schweinler and Ex. 6.

²¹ Ex. 8.

²² Ex. 9.

21. Licensee offered no evidence at hearing to show that he was not in violation of the conditions of his license at the time the violations were observed by the DSI inspector or at any time subsequent to the inspections.²³

22. Licensee asserts that he is unable to comply with the license conditions because thieves steal parts from any working cars he parks on his lot and because he has been unable to change his site plan to allow him to operate in a manner he believes would be workable.²⁴

23. Licensee believes that the fee which must accompany an application for a new site plan is unfair and, therefore, he has not proceeded with his application for a new site plan.²⁵

24. Licensee asserted that a large snowstorm and the location of a neighbor's tree blocks some access to his lot and caused cars to be parked in locations not allowed under the current site plan.²⁶

25. Licensee asserted that a tow truck is needed to put the cars into proper spaces. Licensee maintained that a tow truck cannot access his lot due to the placement of a tree by the east gate of the property.²⁷

26. Licensee asserted that the snow covering the cars on the lot was needed to defend against thieves. Licensee contended that, for security reasons, he stores none of his saleable cars outdoors.²⁸

Based on the Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS OF LAW

1. The City and the Administrative Law Judge have jurisdiction in this matter pursuant to Minn. Stat. § 14.50 and Saint Paul Legislative Code §§ 310.05 and 310.06.

2. The Respondent received timely and proper notice of the hearing in this matter.

3. The City has complied with all relevant procedural requirements of statute and rule.

4. Saint Paul Legislative Code §§ 310.05 and 310.06 provides that the City may take adverse action against a licensee if the licensee has failed to comply with any condition set forth in the licensee's license.

²³ Test. of Don Buckrey.

²⁴ *Id.*

²⁵ *Id.*

²⁶ Test. of D. Buckrey.

²⁷ Test. of D. Buckrey.

²⁸ Test. of D. Buckrey and Ex. 9.

5. The City has sufficient factual and legal grounds to impose sanctions against Licensee because of the Respondent's failure to comply with the conditions of his license as set forth in the foregoing Findings of Fact.

6. An order by the St. Paul City Council taking disciplinary action against the Respondent's license is in the public interest.

Based upon the foregoing Conclusions of Law, the Administrative Law Judge makes the following:

RECOMMENDATION

IT IS HEREBY RESPECTFULLY RECOMMENDED that the St. Paul City Council impose a \$500.00 penalty against Donald Buckrey's license #20100001573 as a second hand motor dealer and auto repair garage.

Dated: June 17, 2014



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, and Recommendation. Pursuant to Saint 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

The Licensee has a long history of being out of compliance with the conditions of his license. The license inspectors have been reasonable and patient in their attempts to help Licensee bring his lot into compliance. However, Licensee holds everyone and everything, except himself, responsible for his failure to maintain his lot in compliance with the conditions of his license.

The City has responded to complaints from Licensee's neighbors about the conditions of his lot. As documented in photographs, Licensee's lot looks like a junk yard, not a used car lot. Cars on the lot are missing large pieces and some cars on the lot have tarps draped over them. These conditions violate the fundamental requirements

of Licensee's agreement with the City that cars on the lot must be in working order with no missing parts and that cars must be clearly marked for sale if in fact they are for sale. Licensee explained that cars were missing parts because parts were stolen. Regarding some conditions, Licensee maintained that he was ignorant of the requirements of his license. However, the evidence shows that he has cars parked with missing parts for long periods of time, that working on vehicles on the outside of his lot is a violation of his license conditions and that the City has repeatedly explained these and other conditions of his license to him. Licensee has continued to ignore information with which he does not agree.

The Licensee was informed of the process for applying for a new site plan. It is possible that some of the issues he believes are contributing to his ongoing violations could be addressed through such an application. Yet, Licensee has not submitted an application and the required fee. Instead, he chooses to fight with the City over his continuing noncompliance. Considering Licensee's long history of license violations and the neighborhood complaints, the \$500.00 dollar sanction is justified.

B. J. C.