



MINNESOTA OFFICE OF ADMINISTRATIVE HEARINGS

600 North Robert Street
Saint Paul, Minnesota 55101

Mailing Address:
P.O. Box 64620
St. Paul, Minnesota 55164-0620

December 8, 2014

Voice: (651) 361-7900
TTY: (651) 361-7878
Fax: (651) 361-7936

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

**Re: *In the Matter of All Licenses held by Pet Enterprises Motortech, Inc.,
d/b/a Pet Auto Repair***
OAH 8-6020-31892

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 Katie Lin at (651) 361-7911 or katie.lin@state.mn.us.

Sincerely,

A handwritten signature in black ink that reads "Eric Lipman /kj".

ERIC L. LIPMAN
Administrative Law Judge

ELL:kjl
Enclosure
cc: Geoffrey S. Karls
Jon Paulson

RECEIVED
DEC 09 2014
CITY ATTORNEY

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE CITY OF ST. PAUL

In the Matter of All Licenses Held by
Pet Motortech, Inc., d/b/a Pet Auto
Repair, for the premises at 44 Acker
Street in St. Paul, Minnesota

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

This matter came on for hearing before Administrative Law Judge Eric L. Lipman on November 7, 2014, at the St. Paul offices of the Office of Administrative Hearings.

Geoffrey Karls, Assistant City Attorney, appeared on behalf of the city of St. Paul (City). Jon Eric Paulson, Paulson Law Firm, PLLC, appeared on behalf of Pet Motortech, Inc., d/b/a Pet Auto Repair (Pet Motortech).

STATEMENT OF THE ISSUES

1. Whether regulatory action should be taken against the licenses held by Pet Motortech?
2. Whether the recommended penalty of \$2,000, and a ten-day suspension of operations, are reasonable under St. Paul Legislative Code § 310.05(m)(2) (2014)?

SUMMARY OF CONCLUSIONS

In the view of the Administrative Law Judge, Mr. Takuanyi “engaged in ... a pattern or practice of conduct of failure to comply with laws reasonably related to the licensed activity,” as those terms are used in St. Paul Legislative Code § 310.06(b)(6)(c) (2014). For this reason, the Administrative Law Judge recommends that the St. Paul City Council impose a \$2,000 fine, and a 10-day suspension of operations, for Pet Motortech’s failures to abide by the conditions of its business licenses.

Based on the evidence in the hearing record, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. Pet Motortech holds leases on two adjacent parcels on the south side of Acker Street in St. Paul: 18 Acker Street East and 44 Acker Street East.¹
2. On September 25, 2013, the St. Paul City Council granted a series of business licenses to Pet Motortech for operations at 44 Acker Street East. The Council

¹ Exs. 1 through 3; Testimony of Patrick Takuanyi; Test. of Lawrence R. Zangs.

conferred upon Pet Motortech a license to engage in business as a Second Hand Dealer, Motor Vehicle Auto Repair and Painting Shop, and an Auto Repair Garage. The grant of licenses was conditioned upon Patrick Takuanyi, President of Pet Motortech, agreeing to certain limits upon his business operations.²

3. Among the conditions that Mr. Takuanyi agreed to in return for obtaining the licenses, were:

[Condition] 7. There shall be no exterior storage of vehicle parts, tires; oil or any other similar materials associated with the business. Trash and discarded vehicle parts will be stored in a covered dumpster. Licensee shall obtain and maintain an active Hazardous Waste Generator License from Ramsey County Solid Waste Division and; shall abide by the provisions of that license with respect to the safe handling and disposal of waste oil, filters, tires, batteries, etc.

...

[Condition] 9. All repair work must occur within an enclosed building. No repair of vehicles may occur on the exterior of the lot or in the public right-of-way.³

4. In the spring of 2014, the license renewal notice for operations at 18 Acker Street East went unanswered and the license renewal fees were not timely paid.⁴

5. Licensing fees that are not timely received by the due date for renewal are subject to application of a late fee.⁵

6. The City regards liability for a late fee as an “adverse action.”⁶

7. On March 14, 2014, city officials received a request from Mr. Takuanyi that the Pet Motortech licenses be revised to cover activities on both sites under a single set of licenses, with its business address listed as 44 Acker Street East. Mr. Takuanyi made the request so as to better assure that he received renewal notices and to avoid added fees for what was, in fact, a single, integrated business operation.⁷

8. On March 24, 2014, a city licensing inspector and fire inspector made a site visit to Pet Motortech’s Acker Street facilities. During the site visit, licensing inspector Lawrence R. Zangs noted the presence of components for a yet-to-be

² Ex. 1-1 and 2; *see also*, Conditions Affidavit and Resolution 13-1416 (St. Paul City Council, September 25, 2013).

³ *Id.*

⁴ Ex. 1-1; Test. of L. Zangs.

⁵ Test. of L. Zangs; *see also*, St. Paul Leg. Code § 310.09(d) (2014).

⁶ Ex. 1-1; Test. of L. Zangs; *see also*, St. Paul Leg. Code §§ 310.01, .05(m) (2014).

⁷ Ex. 1-1; Test. of L. Zangs. *See also*, Ex. 3.

assembled paint booth on the parcel. Inspector Zangs expressed concern that Pet Motortech would undertake automobile painting operations without first obtaining the required inspections or equipment approvals.⁸

9. The City requires installation, and approval of, a specialized paint booth for painting of automobiles.⁹

10. At the request of city officials, Mr. Takuanyi submitted an acknowledgement stating that Pet Motortech would not undertake automobile painting until the needed inspections and approvals were completed. Mr. Takuanyi wrote:

I understand that I would only be allowed to perform auto repair work and auto body work within the building at 18 Acker St E, and cannot paint vehicles in this building. I would only paint vehicles in the paint booth located at 44 Acker St E once I have installed a paint booth under permit and the paint booth has been inspected and approved for operation in writing by city inspection staff.

I agree not to use the building with an address of 18 Acker St E for anything other than the storage of vehicles until I receive written approval from the Department of Safety and Inspections (DSI) authorizing me to conduct auto repair within the building.¹⁰

11. Following receipt of this acknowledgement, and a \$500 late fee, the City issued a consolidated set of business licenses covering both Acker Street parcels. The revised licenses were subject to a modified Condition 9:

*All repair work must occur within an enclosed building. No repair of vehicles may occur on the exterior of the lot or in the public right-of-way. No painting of vehicles or of any other kind painting activity is allowed on the licensed premises unless and until the licensee has installed a paint booth under permit and that paint booth has been inspected and approved for operation by city inspection staff.*¹¹

The May 27, 2014 Inspection – Automobile Painting

12. On May 27, 2014, DSI inspector Lawrence R. Zangs made a site visit to the Acker Street parcels. During their visit, the DSI inspector noticed a recently-painted vehicle inside the building at 18 Acker Street East.¹²

⁸ Test. of L. Zangs.

⁹ See Exs. 1-1, 2 and 3; Test. of L. Zangs; see also, St. Paul Leg. Code § 423.01(c).

¹⁰ Ex. 3; Test. of L. Zang; Test. of P. Takuanyi.

¹¹ Exs. 1-1 and 2.

¹² Ex. 4-2 and 6-1; Test. of L. Zangs.

13. During the inspection visit, Mr. Takuanyi told Inspector Zangs that a former employee had painted the car on the premises without his knowledge.¹³

14. Inspector Zangs photographed the recently-painted automobile as evidence of what he saw on May 27, 2014.¹⁴

15. The best reading of the hearing record is that automobiles were painted at Pet Motortech during the spring and summer of 2014.¹⁵

16. At the evidentiary hearing, Mr. Takuanyi disclaimed that a former employee painted the automobile that is depicted in Inspector Zangs' photograph and that he made any representation regarding a former employee's conduct to Mr. Zangs. At the evidentiary hearing, Mr. Takuanyi testified that the vehicle – a Nissan Maxima – was painted at a licensed automobile painting shop, AA Auto Repair, LLC, from the latter's facility at 102 Acker Street East. He maintains that after the paint was applied to the vehicle, Pet Motortech employees pushed the newly-painted automobile down from AA Auto Repair to 18 Acker Street East where the paint would dry.¹⁶

17. In support of his contention that the automobile was painted at 102 Acker Street East, and not at Pet Motortech, Mr. Takuanyi produced a series of five invoices, purportedly from AA Auto Repair, reflecting automobile painting work. The invoices note that various painting work was performed on five different models of automobiles during the period between Monday, June 2, 2014 and Friday, August 15, 2014.¹⁷

18. As evidence that painting work was accomplished at 102 Acker Street East, and newly-painted vehicles were routinely pushed the length of a city block to 18 Acker Street East, so as to dry, the invoices are quite weak. First, as noted by the City during the evidentiary hearing, the purported invoices are sequentially numbered – from 10755 through 10760. There is reason to doubt that Pet Motortech was AA Auto Repair's only customer during this ten-week period.¹⁸

19. Additionally, the dates on which the work was allegedly performed, and the invoice generated, do not follow the same order. Work which purportedly was performed on June 2, 2014, and invoiced on that date, is reflected in Invoice No. 10759. Yet, work that purportedly was performed later in time is reflected on invoices with lower invoice numbers.¹⁹

¹³ Test. of L. Zangs.

¹⁴ Ex. 4-2.

¹⁵ Exs. 4-2 and 10; Test. of L. Zangs; Test of M. Popehn.

¹⁶ Test. of P. Takuanyi.

¹⁷ Exs. A through F. Two invoices reflect work on a "2005 Mercedes E320" in June of 2014.

¹⁸ *Id.*

¹⁹ Exs. B through F.

The May 27, 2014 Inspection – Storage of Tires

20. During the May 27 site visit, Inspector Zangs also noted that dozens of old automobile tires were stacked in the small walkway that divides 18 Acker Street East from 44 Acker Street East. Inspector Zangs informed Mr. Takuanyi that the company was not permitted to store refuse, including automobile tires, outside of an enclosed space. He noted that if the tires were not promptly removed, the City would abate the problem and assess the costs of removing the tires to Pet Motortech.²⁰

21. By late August of 2014, Pet Motortech had removed some, but not all, of the used tires from the Acker Street parcels.²¹

The September 2014 Complaint

22. Michael Popehn lives on Sycamore Street East in St. Paul, approximately 60 yards due north of the Pet Motortech facility on Acker Street.²²

23. Late in afternoon of September 13, 2014, while he was preparing his dinner, Mr. Popehn smelled the strong odor of paint. From the deck of Popehn house, the activities of Pet Motortech facility are visible.²³

24. Mr. Popehn is also an amateur photographer. Using a digital camera equipped with a telephoto lens, Mr. Popehn took a series of photographs of Mr. Takuanyi performing work on a Mazda Protégé at 44 Acker Street East. The photographs depict Mr. Takuanyi using a mechanical sprayer to apply a gaseous substance to the automobile.²⁴

25. Believing that Mr. Takuanyi's activities exceeded the terms of his business licenses, Mr. Popehn forwarded copies of his photographs to city officials.²⁵

26. At the evidentiary hearing, Mr. Takuanyi asserted that the Popehn photographs do not reflect him painting the Mazda Protégé on September 13, 2014. Instead, he asserted that he was applying lacquer thinner with the power sprayer to remove paint from the automobile. Characterizing paint removal as "body work," he maintains that the photographs depict activities that are permitted by his business licenses.²⁶

²⁰ Ex. 4-1; *see also*, Ex. 2 (Condition 7: "There shall be no exterior storage of vehicle parts, tires; oil or any other similar materials associated with the business. Trash and discarded vehicle parts will be stored in a covered dumpster").

²¹ Ex. 6-1; Test. of L. Zangs.

²² Test. of Michael Popehn.

²³ *Id.*

²⁴ *Id.*; Ex. 10.

²⁵ Test. of M. Popehn.

²⁶ Test. of P. Takuanyi.

27. On September 26, 2014, the DSI sent Pet Motortech a Notice of Intent to Impose Penalty and License Suspension. In the notice City officials asserted that Pet Motortech had violated the conditions of its business licenses and for this misconduct it would seek a \$2,000 penalty and a ten-day suspension of Pet Motortech's business licenses.²⁷

28. The Licensee timely notified the Department of his desire to appeal the violation and requested an administrative hearing.²⁸

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

CONCLUSIONS OF LAW

1. This matter is properly before the City of St. Paul and the Administrative Law Judge pursuant to Minn. Stat. § 14.55 and St. Paul Legislative Code §§ 310.05-.06 (2014).

2. The City gave proper notice of the hearing and has fulfilled all of the relevant substantive and procedural requirements of law and rule.

3. As the party proposing that certain adverse action be taken, the City has the burden of proving the facts at issue by a preponderance of the evidence.

4. The City has proven by a preponderance of the evidence that between May 27 and September 13, 2014, Pet Motortech failed to abide by the conditions of its licensure.

5. Application of a fine in this case would be a second "adverse action" for Pet Motortech within the past year. Under the penalty matrix contained in St. Paul Legislative Code § 310.05(m)(2), the recommended penalty for a second adverse action is \$1,000.

6. Pet Motortech provided no substantial or compelling reasons to justify a downward departure from the presumptive penalty.

7. There is substantial and compelling evidence in the hearing record for an upward departure from the presumptive sanction in the penalty matrix.²⁹ Specifically, Mr. Takuanyi "engaged in or permitted a pattern or practice of conduct of failure to comply with laws reasonably related to the licensed activity," as those terms are used in St. Paul Legislative Code § 310.06(b)(6)(c).

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

²⁷ Ex. 6-1 and 6-2.

²⁸ Ex. 7.

²⁹ See St. Paul Legislative Code § 310.05(m)(ii).

RECOMMENDATION

Based upon these Conclusions, the Administrative Law Judge respectfully recommends that the St. Paul City Council impose a \$2,000 fine, and a 10-day suspension of operations, for Pet Motortech's failures to abide by the conditions of its business licenses.

Dated: December 8, 2014



ERIC L. LIPMAN
Administrative Law Judge

Reported: Digitally recorded

NOTICE

This report is a recommendation, not a final decision. The St. Paul City Council will make the final decision after reviewing the record and may adopt, reject or modify the 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, St. Paul City Clerk, 310 City Hall, 15 Kellogg Boulevard West, St. Paul, MN 55102, to ascertain the procedure for presenting argument.

MEMORANDUM

While Mr. Takuanyi vigorously disputes that he (or Pet Motortech) has undertaken the painting of automobiles at the Acker Street site, the hearing record does not support this claim. Not only are there reasons to doubt the authenticity and accuracy of the invoices bearing the name "AA Auto Repair," the claim that Pet Motortech employees regularly pushed vehicles that were still wet with paint down a city street strains credulity.

Moreover, even if these claims were credited, the regulatory violations that Pet Motortech acknowledges warrant a stern response. Warehousing used tires in open piles, and power spraying harsh chemicals on to automobiles in the facility's driveway, are practices that violate the company's licenses and put the public at risk.

On this record, imposition of a \$2,000 fine, and a ten-day suspension of operations, is appropriate.

E. L. L.