



MINNESOTA OFFICE OF ADMINISTRATIVE HEARINGS

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July 17, 2013

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

Re: *In the Matter of the Taxicab Driver license held by Mahad Hussein
Jama d/b/a Mahad Hussein Jama for the City of Saint Paul,
License #: 20100002987
OAH 61-6020-30408*

Dear Ms. Moore:

Enclosed herewith are the **FINDINGS OF FACT, CONCLUSIONS OF LAW AND RECOMMENDATION** in the above-entitled matter. Also enclosed are the original documents. Our file in this matter is now closed.

Sincerely,

A handwritten signature in cursive script that reads "M. Kevin Snell/km".

M. KEVIN SNELL
Administrative Law Judge
Telephone: (651) 361-7843

MKS.km

Enclosure

cc: Daphne Lundstrom
Mahad Hussein Jama

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE COUNCIL OF THE CITY OF SAINT PAUL

In the Matter of the Adverse Action against
the Taxicab Driver License held by Mahad
Hussein Jama for the City of St. Paul

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

The above matter came on for hearing before Administrative Law Judge M. Kevin Snell on April 30, 2013, at the Office of Administrative Hearings (OAH), St. Paul, Minnesota. The record closed on April 30, 2013, at the conclusion of the hearing.

Daphne A. Lundstrom, Assistant St. Paul City Attorney, appeared at the hearing as attorney for the City of St. Paul (City). The Licensee, Mahad Hussein Jama, appeared on his own behalf, without legal counsel.

Also present for the hearing at OAH was Mr. Abdiwahab D. Farah, a qualified interpreter for the Somali language, who was accepted by the ALJ to interpret, as necessary, for Petitioner.

STATEMENT OF THE ISSUE

The issue is whether the St. Paul City Council should take the adverse action of revocation and denial of the renewal of Licensee's taxi driver license, as recommended by the Department of Safety and Inspections.

SUMMARY OF CONCLUSION

The ALJ concludes that Licensee violated provisions of the City of St. Paul Legislative Code (Code) related to his taxi driver license. However, the ALJ also concludes that revocation of the license would be inconsistent with both the Code and applicable case law.

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

FINDINGS OF FACT

1. The City issued Licensee a Taxicab Driver license on August 31, 2010.¹ The license is scheduled to renew on July 13, 2013, but is under review due to this proceeding.²

2. At approximately 1:05 a.m., on May 11, 2012, two Minneapolis police officers from the 5th Precinct were on night watch and traveling northbound in their patrol vehicle on Grand Avenue South, in Minneapolis. As they were doing so, Licensee, driving his Blue and White Taxi, passed them.³

3. As Licensee passed them by, both officers received the strong smell of freshly burnt marijuana. After Licensee stopped at a stop sign, the officers pulled alongside of Licensee and also stopped. The officer driving the squad car got out and approached the Licensee and inquired about the marijuana smoke. Licensee had a wooden paraphernalia box on his lap, which contained a marijuana hash pipe. Licensee handed the officer the box containing the marijuana and pipe.⁴

4. The officer returned to the squad, backed it up and turned on the squad's video camera and microphone to record the remainder of the stop. He returned to the driver's side door and asked Licensee why he was smoking marijuana. Licensee said he only took "one hit." The officer asked Licensee where he bought the marijuana. The Licensee replied, "I buy it from, like, a black dude."⁵

5. The officer then returned to the squad with Licensee's driver's license. He and his partner then ran motor vehicle and driver's license checks through the squad's on-board computer. The check verified that Licensee is the owner of the taxicab.⁶

6. The officers prepared and issued Licensee a citation for having marijuana in a motor vehicle, a misdemeanor, in violation of Minn. Stat. § 152.027, subd. 3. The officer returned to Licensee's vehicle, gave Licensee the citation, and told Licensee to go home and "don't work anymore tonight."⁷

7. The officers promptly logged the paraphernalia box and pipe into evidence,⁸ together with the video recording of the stop.⁹

¹ Exhibit 4-3, Testimony of Thomas P. Ferrara, Licensing Inspector, St. Paul Department of Safety and Inspections.

² Exs. 4-5, 6.

³ Testimony of James Golget, City of Minneapolis Police Officer from the 5th Precinct; Ex. 1-1.

⁴ *Id.*; Ex. 2-1.

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

⁸ Test. of J. Golget; Ex. 1-3.

⁹ Ex. 2-2, the Video Chain of Custody Report.

8. Licensee was convicted, under Minn. Stat. § 152.027, subd. 3, of having Marijuana in Motor Vehicle, a misdemeanor, for the May 11, 2012 incident when he was operating his taxicab. Licensee paid the fine imposed and did not contest the citation.¹⁰

9. On November 19, 2012, Licensee submitted his Taxicab Driver Renewal License Application (Renewal Application) to the City of St. Paul Department of Safety and Inspections.¹¹

Procedural Findings

10. On January 9, 2013, the Assistant City Attorney of the City of St. Paul issued a Notice of Intent to Revoke License (Revocation Notice) to Licensee, sent to the address on his driver's license and on his Renewal Application.¹²

11. On January 24, 2013, Licensee appealed the Revocation Notice, in writing, and requested to be heard by an Administrative Law Judge.¹³

12. On February 5, 2013, a copy of the Notice of Administrative Hearing was sent via first class mail to Licensee at his address as it appears on Licensee's driver's license and from the Affidavit of Service by United States Mail on file herein.¹⁴

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

CONCLUSIONS

Jurisdiction

1. The Administrative Law Judge and the St. Paul City Council have jurisdiction in this matter based upon Minn. Stat. § 14.55, the City of St. Paul Legislative Code (Code) § 310.05, and Minn. R. 1400.8505 to 1400.8612.

2. The City of St. Paul gave proper notice of the hearing in this matter, and has fulfilled all relevant substantive and procedural requirements of statute, code, or rule. This matter is, therefore, properly before the St. Paul City Council and the Administrative Law Judge.

¹⁰ Ex. 3-2; Testimony of Mahad Jama.

¹¹ Ex. 5.

¹² Exs. 5, 7, 8-1.

¹³ Ex. 9-2.

¹⁴ Exs. 7, 10.

Burden of Proof

3. The City has the burden of proving, by a preponderance of the evidence, that the Licensee committed a licensing violation, and that the proposed adverse action is warranted.¹⁵

Alleged Licensing Violations

1. Minn. Stat. § 152.027, regarding “other” controlled substance offenses, provides in relevant part:

...

Subd. 3. **Possession of marijuana in a motor vehicle.** A person is guilty of a misdemeanor if the person is the owner of a private motor vehicle, or is the driver of the motor vehicle if the owner is not present, and **possesses on the person, or knowingly keeps or allows to be kept within the area of the vehicle normally occupied by the driver or passengers,** more than 1.4 grams of marijuana. This area of the vehicle does not include the trunk of the motor vehicle if the vehicle is equipped with a trunk, or another area of the vehicle not normally occupied by the driver or passengers if the vehicle is not equipped with a trunk. A utility or glove compartment is deemed to be within the area occupied by the driver and passengers. (Emphasis added.)

2. Section 310.06 of the Code, regarding revocation, suspension, other adverse actions, or imposition of license conditions, provides, in relevant part:

(a) *Council may take adverse action.* The council is authorized to take adverse action, as defined in section 310.01 above, against any or all licenses or permits, licensee or applicant for a license, as provided in and by these chapters. . . . Such actions shall be initiated and carried out in accordance with the procedures outlined in section 310.05; provided, however, that the formal notice of hearing shall be used to initiate the adverse action without the use of prior procedural steps.

(b) *Basis for action.* Such adverse action may be based on one (1) or more of the following reasons, which are in addition to any other reason specifically provided by law or in these chapters:

...

(6) a. The licensee 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,

¹⁵ Minn. R. 1400.7300, subp. 5.

any of the provisions 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; (emphasis added)

3. Section 376.11 (t) of the code provides:

Safe and legal operation. Every taxicab driver shall operate his or her taxi in accordance with the laws of the state and the city, and with due regard for the safety, convenience and comfort of passengers and the general public.

Violation Found

4. The City demonstrated by a preponderance of the evidence, that on May 11, 2012, Licensee violated Minn. Stat. § 152.027, subd. 3, by having marijuana in his taxicab, a motor vehicle.

5. Violation of § 376.11(t) of the Code is reasonably related to the licensed operation of a taxicab.

6. A taxicab operator's use of marijuana while operating his taxicab demonstrates lack of due regard for the safety, convenience, and comfort of passengers. Therefore, the City demonstrated by a preponderance of the evidence, that on May 11, 2012, Licensee violated section 376.11(t) of the Code by smoking in his taxicab.

7. The City demonstrated by a preponderance of the evidence, that on May 11, 2012, Licensee violated section 310.06, (b)(6)a, through his conviction, under Minn. Stat. § 152.027, subd. 3, of having Marijuana in Motor Vehicle.

Appropriate Sanction

8. Section 310.05(m) of the Code contains a penalty matrix applicable to all license types. The penalty matrix in section 310.05(m) sets out progressive presumptive penalties for violations of provisions of the Code relating to all licensed activities. The progression relates to the first, second, third and appearances before the Council. Most first violation appearances designate a fine. Only one violation, failure to pay license fees, designates revocation for the first offense. These penalties are presumed to be appropriate for every case; however, the Council may deviate from the presumptive penalty in an individual case where the Council finds and determines that there exist substantial and compelling reasons making it more appropriate to do so. When deviating from these standards, the Council shall provide written reasons that specify why the penalty selected was more appropriate.¹⁶

¹⁶ Code § 310.05(m).

9. Pursuant to section 310.05(m) of the Code, the violations found will be Licensee's first appearance before the Council, for which the presumptive penalty is a \$500.00 fine.¹⁷

10. The City's recommendation to revoke Licensee's taxicab license would require a deviation from the penalty matrix. However, the City has failed to prove, by a preponderance of the evidence, any substantial or compelling reason to impose the sanction of revocation in lieu of the \$500.00 fine specified in the penalty matrix.

11. The Administrative Law Judge adopts as Conclusions any Findings that are more appropriately described as Conclusions, and as Findings any Conclusions that are more appropriately described as Findings.

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

RECOMMENDATION

Based upon these Conclusions, the Administrative Law Judge recommends that: the City Council of the City of St. Paul take adverse action against the Taxicab Driver license of Mahad Hussein Jama, the Licensee, in accordance with the penalty matrix of St. Paul Legislative Code section 310.05 (m).

Dated: July 17, 2013



M. KEVIN SNELL
Administrative Law Judge

Reported: Digitally recorded
No transcript prepared

¹⁷ *Id.* at item "(2) Violation of the provisions of the legislative code relating to the licensed activity."

NOTICE

This Report is a recommendation, not a final decision. The Saint 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 Saint Paul, 170 City Hall, 15 W. Kellogg Blvd., Saint Paul, Minnesota 55102, to ascertain the procedure for filing exceptions or presenting arguments.

MEMORANDUM

There are two issues in this matter. First is whether Licensee violated Code § 310.06, (b) (6) a. The ALJ concluded that Licensee did violate the Code. The second issue is the appropriate sanction for the May 11, 2012 violations.

There are four reasons that the ALJ concluded that Licensee violated Code § 310.06, (b)(6)a. First, a determination of whether Licensee was actually smoking in the vehicle, or if, as he claimed at the hearing, a passenger may have been smoking marijuana, is not necessary. The evidence is overwhelming that a significant amount of marijuana smoke was emanating from Licensee's taxicab on May 11, 2012. The simple fact that Licensee permitted that condition to exist is a violation of section 310.06, (b)(6)a., because that condition is imputed to him under the application of the Code section. Second, Licensee admits that he pled guilty to the statutory violation of having marijuana in his motor vehicle. Third, Licensee's denials and explanation of how the box of marijuana came into his possession lack credibility because of his prior inconsistent statements made at the time of the citation. Finally, the testimony of the police officer involved in the stop and citation was direct, without equivocation, and credible.

The Appropriate Sanction

The proposed license revocation raises the important question as to the overall proportionality of the proposed sanction. The revocation of a license is of the utmost significance, and requires that the severity of the sanction reflect the seriousness of the violation, but not exceed the action necessary to protect the public and deter misconduct in the future.¹⁸ The City presented no evidence to support a deviation from the penalty matrix of the Code. In the view of the ALJ, applying the penalty matrix section that calls for a \$500.00 fine for a first appearance is appropriate and adequate for this first violation and appearance.

¹⁸ See, *In re License of Haugen*, 278 N.W.2d 75, 81 (Minn. 1979), *In re Revocation of Family Child Care License of Burke*, 666 N.W.2d 724, 728 (Minn. Ct. App. 2003), *In re Ins. Licenses of Kane*, 473 N.W.2d 869, 878 (Minn. Ct. App. 1991).

Conclusion

Because the City did show by a preponderance of the evidence that Licensee violated Minn. Stat. § 152.027, subd. 3, and thereby violated Code § 310.06, (b)(6)a, by having marijuana in his taxicab, the ALJ respectfully recommends that the City affirm this violation and impose a fine of \$500.00.

M. K. S.