



MINNESOTA OFFICE OF ADMINISTRATIVE HEARINGS

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August 16, 2011

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

Re: *In the Matter of the Adverse Action Against All Licenses Held by Mazatlan, LLC d/b/a Mazatlan*
OAH No. 8-6020-22021-3

Dear Ms. Moore:

Enclosed herewith and served upon you by mail is the Administrative Law Judge's **Findings of Fact, Conclusions and Recommendation** in the above-entitled matter. Also enclosed is the official record, with the exception of the recording of the hearing. If you would like a copy of that recording, please contact our office in writing or by telephone at 651-361-7906. Our file in this matter is now closed.

Sincerely,

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

ERIC L. LIPMAN
Assistant Chief Administrative Law Judge

Telephone: (651) 361-7842

ELL:dsc
Enclosure
cc: Kyle Lundgren
Boris Parker

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE SAINT PAUL CITY COUNCIL

In the Matter of the Adverse Action Against
All Licenses Held by Mazatlan, LLC d/b/a
Mazatlan

**FINDINGS OF FACT,
CONCLUSIONS AND
RECOMMENDATION**

This matter came on for hearing before Administrative Law Judge Eric L. Lipman on June 15, 2011, at the Ramsey County Courthouse in St. Paul, MN 55102. The hearing record closed at end of the evidentiary hearing

Kyle Lundgren, Assistant City Attorney, 400 City Hall, 15 West Kellogg Blvd., St. Paul, Minnesota 55102, appeared on behalf of the Department of Safety and Inspections (the Department or DSI). Boris Parker, Parker & Wenner, P.A., appeared on behalf of the Licensee, Mazatlan, LLC, d/b/a Mazatlan (Licensee or Mazatlan).

STATEMENT OF ISSUES

1. Should regulatory action be taken against the licenses held by Mazatlan, because it failed to timely remit surveillance recordings in May of 2010?
2. Should regulatory action be taken against the licenses held by Mazatlan, because it failed to timely remit surveillance recordings in early 2011?
3. Should regulatory action be taken against the licenses held by Mazatlan, because its employees furnished alcohol to persons who were obviously intoxicated?

As discussed more fully below, the Administrative Law Judge concludes that while Mazatlan should be sanctioned for its failure to timely remit video surveillance recordings as requested by City officials, the record does not support the City's claim of illegal alcohol sales. Additionally, the Administrative Law Judge recommends that the City Council downwardly depart from the presumptive penalty for Mazatlan's fourth violation – imposing a severe monetary penalty in lieu of revocation of its licenses.

Based upon all the proceedings herein, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. Mr. Jorge Sanchez, and his wife Blanca Sanchez, are the owners of Mazatlan, LLC, d/b/a Mazatlan. Their restaurant and bar is located at 567 Stryker Avenue in the city of St. Paul, Minnesota. Mazatlan holds restaurant, entertainment, gambling and liquor licenses issued by the City.¹

2. Mazatlan has held a liquor license since on August 2, 2007. As part of the grant of this license, the City conditioned the liquor service upon the observance of certain liquor control measures – including:

Condition #2: The licensee will provide and maintain working video surveillance cameras and equipment to record activity on [these] premises prior to issuance of the license in accordance with SPPD recommendations. Tapes and recordings must be maintained for a minimum of thirty (30) days, and there shall be an employee on staff at all times during business hours with the ability to make them immediately available to the St. Paul Police Department and/or the Department of Safety and Inspections (DSI) upon request.²

3. The City Council of the City of Saint Paul has imposed regulatory penalties upon Mazatlan on two earlier occasions – on September 10, 2008 and on February 16, 2011.³

Demand for the Recordings from May 14, 2010

4. On May 14, 2010, a 25-year old female patron of Mazatlan, Dionna Vasquez, was battered by another bar patron as Ms. Vasquez exited the establishment.⁴

5. As part of the investigation of this assault, on May 19, 2010, Sergeant Scott Payne of the Saint Paul Police Department requested copies of the surveillance camera recordings near the time of in the incident.⁵

6. Ruby Valdovinos, the manager of Mazatlan, told Sergeant Payne that she would contact the restaurant's camera vendor, Compatek, and instruct its technicians to download the requested recordings.⁶

¹ Exhibit C-7; Testimony of Christine Rozek.

² Exs. C-7, C-8, C-9 and D-15.

³ Exs. C-7 and C-9.

⁴ Ex. C-1.

⁵ Ex. C-4; Testimony of Scott Payne.

⁶ *Id*; Testimony of Ruby Valdovinos.

7. During the conversation between Sergeant Payne and Ms. Valdovinos there was a misunderstanding as to the requested date and time of the sought-after recordings; Ms. Valdovinos thought the officers wanted recordings from April 14, 2010 – instead of May 14, 2010.⁷

8. When Sergeant Payne telephoned Mazatlan a few days later, he was told that the system did not keep recordings for more than 30 days, and therefore, recordings from April 14, 2010 were no longer available. When Sergeant Payne explained that he sought recordings from May 14, 2010, and not April 14, 2010, Ms. Valdovinos pledged to obtain these recordings for the Saint Paul Police.⁸

9. At this same time, Mazatlan was changing and upgrading its video camera surveillance system so as to be able to store more recordings – and presumably better comply with the requirement that a full 30 days worth of recordings from its cameras be available for later review.⁹

10. As it changed systems, the hard drive containing the requested May 14, 2010 recordings was unhooked from the recording equipment and left in Ms. Valdovinos' office. The surveillance recordings from May 14 were never drawn out of this equipment or otherwise furnished to the Saint Paul Police Department.¹⁰

Over-service and Failure to Remit Recording Claims from Early 2011

January 15, 2011

11. On Saturday, January 15, 2011, at approximately 11:30 p.m., Officer Derrick Boone of the Saint Paul Police Department made a "pro-active" visit to Mazatlan. St. Paul police officers undertake such visits whenever their duties do not require them elsewhere, so as to be visible in the community. In the view of Officer Boone, and others, these proactive visits have a positive affect upon reducing the number and seriousness of disturbances that occur near "bar closing time."¹¹

12. During Officer Boone's January 15 visit, he observed a male sitting at the north side of the bar. The male, Craig Montgomery, attempted to stand up and appeared to trip over the bar rail and fall to the barroom floor. Mr. Montgomery appeared to be intoxicated. Mr. Montgomery's companions pledged to Officer Boone that they were going to bring Montgomery home.¹²

⁷ Exs. C-4 and C-5; Test. of S. Payne; Test. of R. Valdovinos.

⁸ *Id.*

⁹ Ex. B; Test. of R. Valdovinos.

¹⁰ Test. of R. Valdovinos.

¹¹ See, Exs. D-1, D-2 and D-4; Testimony of Derrick Boone.

¹² Ex. D-1; Test. of D. Boone.

13. While at the Mazatlan site, Officer Boone did not observe bar or wait staff serve Mr. Montgomery an alcoholic beverage.¹³

14. Officer Boone left Mazatlan and undertook a traffic stop on Stryker Avenue.¹⁴

15. Following the conclusion of the traffic stop, Officer Boone returned to Mazatlan. He observed several males, including security personnel from the restaurant escorting Mr. Montgomery down the sidewalk. The men told Officer Boone that they were assisting Mr. Montgomery so that Montgomery would not be tempted to drive his truck home.¹⁵

16. After speaking with Mr. Montgomery for a few moments, and observing Montgomery's difficulty in walking without assistance, Officer Boone took Montgomery into custody and transported him to a detoxification facility.¹⁶

17. On January 19, 2011, the Department of Safety and Inspections sent a letter to Mazatlan requesting a copy of recordings from Mazatlan's video surveillance system for the hours of 9:00 p.m. through 12:00 midnight on January 15, 2011. The letter established a deadline of January 26, 2011 for Mazatlan to furnish the requested recordings.¹⁷

January 22, 2011

18. On January 22, 2011, at approximately 1:00 a.m., Officer Boone made a proactive visit to Mazatlan. During the visit, Officer Boone was approached by a man who stated that another bar patron – later identified to be Steven Cardenas – was drunk and had touched the man inappropriately.¹⁸

19. When the report was made, Officer Boone was separated from Mr. Cardenas across a crowded bar area. And while Boone had not observed Mazatlan staff serve Mr. Cardenas an alcoholic beverage, he could observe that Cardenas was intoxicated and having difficulty maintaining his balance.¹⁹

20. Mazatlan's security team ushered Mr. Cardenas out of the restaurant.²⁰

¹³ Test. of D. Boone; *compare also*, Testimony of Joseph Thomas.

¹⁴ Ex. D-1; Test. of D. Boone.

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ Ex. D-3.

¹⁸ Ex. D-4.

¹⁹ Ex. D-4; Test. of D. Boone.

²⁰ *Id.*

21. At approximately 2:50 a.m. that same morning, Officer Boone was called to the area adjacent to Mazatlan to assist a paramedic team from St. Paul Fire and Ambulance. Mr. Cardenas was lying on the eastern sidewalk of Stryker Avenue, unconscious. At the scene, Cardenas was unresponsive to paramedics and his body temperature had dropped too low for the ambulance to transport him to a detoxification facility. Instead, the paramedics rushed Mr. Cardenas to Regions Hospital for treatment.²¹

22. At the time Officer Boone responded to this radio call, the temperature in St. Paul was approximately four degrees Fahrenheit.²²

23. While Mr. Cardenas recalls patronizing Mazatlan on the evening of January 20, 2011, he does not know how he ended up on the sidewalk after he exited the establishment.²³

24. On January 25, 2011, the Department of Safety and Inspections sent a letter to Mazatlan requesting a copy of recordings from Mazatlan's video surveillance system for the hours of 12:00 midnight through 2:30 a.m. on January 22, 2011. The letter established a deadline of January 31, 2011, by which Mazatlan was to furnish the recordings.²⁴

25. On February 4, 2011, DSI received a set of compact discs from Mazatlan. Yet, DSI officials were not able to view them, because the recordings were not in a file format that was familiar to Department officials.²⁵

26. On that same day, DSI wrote to Mazatlan instructing it to furnish player software to the Department so that the recordings could be viewed. The letter established a deadline of January 31, 2011 for Mazatlan to furnish the needed software.²⁶

27. By way of a facsimile sent on February 4, 2011, Mazatlan furnished some hand-written instructions on how to access the needed video software, but licensing officials had difficulty in interpreting these instructions.²⁷

²¹ *Id.*

²² *Id.*

²³ *Id.*

²⁴ Ex. D-6.

²⁵ Ex. D-7.

²⁶ *Id.*

²⁷ Exs. D-8 and D-9.

28. On February 11, 2011, DSI sent an additional letter requesting the video player software, and established a deadline of February 18, 2011 for Mazatlan to furnish the needed software.²⁸

29. On February 14, 2011, DSI received a facsimile from Mazatlan with additional hand-written instructions. Still, licensing officials were not able to access the furnished materials.²⁹

30. DSI forwarded the instructions, a 4 Gigabyte flash drive and 4 computer discs that it had received from Mazatlan to the St. Paul Police Department Crime Lab. DSI inquired whether the lab technicians could interpret the instructions or otherwise view the files on the discs or flash drive.³⁰

31. At the Saint Paul Police Department's Crime Lab, video technicians are not permitted to run executable computer files from the computer that the lab has connected to the Internet. To maintain the integrity of its computer network, the lab's policy provides that executable files may only be run on a stand-alone computer that is not connected to either the Internet or the remainder of the Police Department's computer system.³¹

32. Kelly Hervin, a Criminalist with the St. Paul Police Department's Crime Lab, did not download the file converter for files in a "264 format" from the Internet – and likewise did not transfer any executable computer files for such a converter to the Crime Lab's stand-alone computer.³²

33. On March 21, 2011, DSI wrote to Mazatlan stating that technicians from the Saint Paul Police Department Crime Lab were unable to view the recordings. The letter established a deadline of March 28, 2011 to either provide the video player software to the Saint Paul Police Department, or to contact Kelly Hervin at the Police Crime Lab so as to resolve the technical issues.³³

34. No one from Mazatlan inquired of Ms. Hervin between March 21 and March 28, as to whether the technical issues relating to viewing the videos had been resolved.³⁴

35. After the LIEP Office reviewed police reports from January 15 and 22, 2011, the City determined that the Licensee had violated the St. Paul Legislative Code

²⁸ Ex. D-9.

²⁹ Testimony of David Schoen; Exs D-12 and D-13.

³⁰ *Id.*

³¹ Testimony of Kelly Hervin.

³² *Id.* Exs D-12 and D-13.

³³ Ex. D-11.

³⁴ Test. of K. Hervin; Test. of R. Valdovinos.

and issued a Notice of Violation. The Notice of Violation informed the Licensee of the nature of the violation, the proposed fine, and the opportunity to request a hearing before an Administrative Law Judge.³⁵

36. On April 27, 2011, counsel for Mazatlan requested a hearing before an Administrative Law Judge.³⁶

37. On May 9, 2011, the City Attorney's office issued the Notice of Hearing setting this matter for an evidentiary hearing.

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

CONCLUSIONS OF LAW

1. The Administrative Law Judge and the St. Paul City Council have jurisdiction to hear this matter pursuant to Minn. Stat. § 340A.415 and St. Paul Legislative Code §§ 310.05, 310.06 and 324.11.

2. The City of St. Paul 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 action be taken, the City has the burden of proving facts at issue by a preponderance of the evidence.

4. Failure to timely remit video surveillance recordings from January 15, 2011, constitutes a third violation of the conditions of Mazatlan's license within an eighteen month period.

5. Failure to timely remit video surveillance recordings from January 22, 2011, constitutes a fourth violation of the conditions of Mazatlan's license within an twenty-four month period

6. Under Saint Paul Legislative Code §310.05 (m) (1), the presumptive penalty for a third violation of restaurant license conditions is a \$2,000.00 penalty and a ten (10) day suspension of Mazatlan's licenses.

7. Under Saint Paul Legislative Code §310.05 (m) (1), the presumptive penalty for a fourth violation of license conditions is revocation of Mazatlan's licenses.

8. As to the third violation of the conditions of Mazatlan's licenses, there are no substantial or compelling reasons in the record to justify a deviation from the application of the presumptive penalty.

³⁵ Ex. D-17.

³⁶ Ex. D-18.

9. As to the fourth violation of the conditions of Mazatlan's licenses, there are AD substantial reasons in the record to deviate from the application of the presumptive penalty.

10. Minn. Stat. § 340A.502 prohibits any person from selling, giving, furnishing or in any way procuring "for another alcoholic beverages for the use of an obviously intoxicated person."

11. Additionally, pursuant to section 409.26(b)(4) of the St. Paul Legislative Code it is a violation of a liquor license to sell alcoholic beverages to an intoxicated person.

12. While Craig Montgomery was "obviously intoxicated" on January 15, 2011, as those terms are used in Minn. Stat. § 340A.502, the hearing record does not support a finding that any agent of Mazatlan sold, gave, furnished or in any procured alcohol for Mr. Montgomery at a time when Mr. Montgomery was obviously intoxicated.

13. While Craig Montgomery was "intoxicated" on January 15, 2011, as those terms are used in section 409.26(b)(4) of the St. Paul Legislative Code, the hearing record does not support a finding that any agent of Mazatlan sold alcohol to Mr. Montgomery at a time when Mr. Montgomery was intoxicated.

14. While Steven Cardenas was "obviously intoxicated" on January 22, 2011, as those terms are used in Minn. Stat. § 340A.502, the hearing record does not support a finding that any agent of Mazatlan sold, gave, furnished or in any procured alcohol for Mr. Cardenas at a time when Mr. Cardenas was obviously intoxicated.

15. While Steven Cardenas was "intoxicated" on January 22, 2011, as those terms are used in section 409.26(b)(4) of the St. Paul Legislative Code, the hearing record does not support a finding that any agent of Mazatlan sold alcohol to Mr. Cardenas at a time when Mr. Cardenas was intoxicated.

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 respectfully recommends that: the St. Paul City Council:

1. IMPOSE a \$2,000.00 penalty and a ten (10) day suspension of Mazatlan's licenses as a sanction for its failure to make surveillance recordings from May 14, 2010, "immediately available" to the St. Paul Police Department.

MEMORANDUM

The hearing record in this case demonstrates that the Licensee failed to timely remit copies of video surveillance recordings when asked to do so by City officials.

Mazatlan knew the importance of maintaining compliance with this license condition, and invested sums to maintain compliance, but was lackluster in its response to requests from the City to furnish recordings. Moreover, its management was slow to respond at a time when it knew the penalties for such inaction and could have no doubt as to the City earnestness in receiving the requested materials.

Specifically, the May 14, 2010 surveillance recordings sat in Ms. Valdovinos' office and Mazatlan did not resolve the issues relating to viewing the 2011 recordings before March 28, 2011 – despite its responsibility to do so.³⁷ These failures properly subject Mazatlan to regulatory sanctions.

Yet, in the view of the Administrative Law Judge, these omissions do not justify revocation of all of Mazatlan's licenses. Particularly because the Police Department's video technician, Ms. Hervin, could have undertaken some fairly simple workarounds to obtain an H.264 format converter from the Internet and use such a converter on the Crime Lab's stand-alone computer.³⁸ If Ms. Hervin had used a converter and the recordings not worked, or if License Condition 2 had stated that digital recordings must be in particular format, the equities of this case would be very different.

Moreover, the City even refused the Licensee's offer at a trial to undertake the conversion of the recordings in the hearing room and to play the recordings on that date. Thus, at the end of the evidentiary hearing, the record is still not clear as to what Mazatlan furnished before March 28, 2001 – a doubt that counsels some leniency in the application of sanctions and against revocation of licenses.

Had the City accepted the Licensee's invitation to convert the computer files at the hearing, the record might be clearer as to whether Mazatlan staff sold alcohol to intoxicated persons. Instead, without any eyewitness accounts of staff misconduct, the City relies wholly on an inference: It argues that because Messrs. Montgomery and Cardenas were highly intoxicated when they left Mazatlan, Mazatlan's staff must have broken alcohol service laws. Such an inference obliges one to assume that in a busy and crowded establishment like Mazatlan, these men could not easily obtain alcoholic drinks from their sober companions. In the view of the Administrative Law Judge, that is simply a step too far – particularly when revocation of all of the establishment's licenses is the result.

In this respect, this case differs significantly from that *In the Matter of All Licenses Held by DRJ, Inc., d/b/a Diva's Overtime Lounge*, OAH Docket No. 11-6020-

³⁷ Ex. D-11.

³⁸ Test. of. K. Hervin; Exs D-12 and D-13.

1173279 (2006), in which St. Paul Police Officers observed the complained-of liquor violation as those violations took place.³⁹

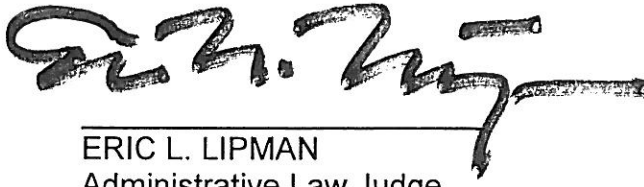
For these reasons, the best result would be a series of monetary penalties and license suspensions, but regulatory sanctions that stop short of license revocation.

E. L. L.

³⁹ *In the Matter of All Licenses Held by DRJ, Inc., d/b/a Diva's Overtime Lounge*, OAH Docket No. 11-6020-1173279 (2006) (“[T]here is persuasive evidence that it was after 2:30 a.m. when Officer Hartnett observed ten people in Diva's with drinks in their hands. Sgt. Gromek also provided credible testimony that it was 2:36 a.m. when he observed three people consuming alcoholic beverages in the pool table area.”) (<http://www.oah.state.mn.us/aljBase/602017359.rt.htm>); see also, St. Paul City Council Resolution No. 06-892 (<http://www.oah.state.mn.us/aljBase/final/602017359.pdf>).

2. IMPOSE an additional \$2,000.00 penalty and an additional ten (10) day suspension of Mazatlan's licenses a sanction for its failure to make surveillance recordings from January 15, 2011, "immediately available" to the St. Paul Police Department.
3. DISMISS the allegation that agents of Respondent Mazatlan sold alcohol to an obviously intoxicated person on January 15, 2011.
4. DISMISS the allegation that agents of Respondent Mazatlan sold alcohol to an obviously intoxicated person on January 22, 2011.

Dated: August 16, 2011.



ERIC L. LIPMAN
Administrative Law Judge

Reported: Digitally recorded
No transcript prepared

NOTICE

The St. Paul City Council is requested to serve notice of its final decision upon each party and the Administrative Law Judge by first-class mail.