



MINNESOTA OFFICE OF ADMINISTRATIVE HEARINGS

600 North Robert Street
Saint Paul, Minnesota 55101

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

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

April 22, 2011

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

Re: *In the Matter of Adverse Action Against the City of St. Paul Taxicab License Application of Michael Spann*
OAH No. 16-6020-21882-2

Dear Ms. Moore:

Enclosed herewith and served upon you by mail is the Administrative Law Judge's **Findings of Fact, Conclusions of Law 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 cursive script that reads "Manuel J. Cervantes/dsc".

MANUEL J. CERVANTES
Administrative Law Judge

Telephone: (651) 361-7945

MJC:dsc
Enclosure
cc: Kyle Lundgren
Michael Spann

RECEIVED
APR 25 2011
CITY ATTORNEY

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE ST. PAUL CITY COUNCIL

In the Matter of Adverse Action Against the
City of St. Paul Taxicab License
Application of Michael Spann

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

The above matter came on for hearing before Administrative Law Judge Manuel J. Cervantes (ALJ) on April 13, 2011, at the Ramsey County Commission Conference Room in St. Paul, Minnesota. The record closed at the conclusion of the hearing on that date.

Kyle Lundgren, Assistant City Attorney, appeared on behalf of the City of St. Paul (the City), Department of Safety and Inspections (DSI). Michael Spann (Applicant) appeared on his own behalf without counsel.

STATEMENT OF ISSUES

1. Does the five-year prohibition from taxicab licensure under St. Paul Legislative Code (SPLC) § 376.16 (e)(4)a apply to the Applicant's circumstance?
2. Did the Applicant demonstrate either that 1) the barring offense (felonious theft) was not related to the occupation of taxicab driver and/or 2) provide sufficient evidence of rehabilitation, thereby falling within an exception to the prohibition under SPLC § 376.16 (e)(4); and entitling the Applicant to a taxicab license?

After careful consideration of the files, records, and proceedings herein, the ALJ concludes that the Applicant is barred from obtaining a taxicab license for five years subsequent to the discharge from probation, or until February 16, 2017. Moreover, the Applicant did not demonstrate that either of the exceptions apply and, therefore, the ALJ recommends that the St. Paul City Council affirm DSI's denial of Applicant's taxicab license application.

Based upon all the proceedings herein, the ALJ makes the following:

FINDINGS OF FACT

1. The Applicant has been licensed by the City as a taxicab driver, off and on, from August 2002 through March 2009.¹ On March 18, 2009, the Applicant's

¹ Exs. 1-3, Testimony of Tom Ferrara.

license was canceled because of failure to renew.² On January 18, 2011, the Applicant submitted the current application for taxicab licensure. His application indicates that he lived at 890 Sterling Street South, Maplewood from 1999 to 2008 and at 2196 Sixth Street East, St. Paul from 2008 to the present.³

2. The Applicant has been married to his wife, R.L.S., since January 28, 1991. The Applicant and M.S.J., a son from a former marriage, received Supplemental Security Income (SSI) from the Social Security Administration.⁴ The Applicant received SSI benefits from January 1998 through August 2005.⁵

3. The Applicant and M.S.J. also received Medical Assistance (MA) from Ramsey County from December 2002 through April 2005. Applicant's MA application did not disclose that his wife also resided at 890 Sterling and that she received income from employment with Allina Hospital.⁶ Based on this misrepresentation, the Applicant received \$12,751 more MA than he was entitled to.⁷

4. The Applicant was charged with Wrongfully Obtaining Assistance-Felony Level Theft on December 5, 2005.⁸ He pled guilty and was sentenced on February 16, 2007.⁹ The district court judge sentenced the Applicant to 13 months incarceration, stayed on the condition that he fulfill the terms of his probation, including two days in jail, with credit for time served, 5 years probation, restitution, and 100 hours of community service.¹⁰ The Applicant is currently scheduled to be discharged from probation on February 15, 2012.

5. At the hearing, the Applicant denied that he lived at 890 Sterling during the time he received MA and denied that he committed the felony fraud that he pled to. He blamed his wife, as his payee,¹¹ for the misrepresentations.¹²

6. The overwhelming documentary evidence indicates that the Applicant did reside at 890 Sterling Street South, including five enumerated domestic assault calls to that residence from November 2000 to June 2004, wherein Applicant reported to police that he resided at that address.¹³ This, coupled with his recent application for license which lists 890 Sterling as his address¹⁴ and his plea of guilty to the underlying facts

² Ex. 1-2.

³ Ex. 4-1.

⁴ Ex. 8a-2.

⁵ Ex. 8a-4

⁶ Ex. 8a-2.

⁷ Ex. 8a-4.

⁸ Ex. 8a

⁹ Ex. 8-4.

¹⁰ *Id.*, Test. of T. Ferrara.

¹¹ The Applicant stated before the hearing that he is illiterate.

¹² Test. of Applicant.

¹³ Ex. 8a-3.

¹⁴ Ex. 4-1.

during the fraud as stated in the criminal complaint, which lists 890 Sterling as his address, makes his testimony incredible.¹⁵

7. SPLC § 376.16 (e)(4)a requires that a taxicab license applicant wait five years from discharge from felony level probation before making an application, unless the applicant can show that the felony conviction is not related to the occupation of taxicab driver or upon evidence of rehabilitation.¹⁶

8. Not all felony convictions are a bar to a taxicab occupation. DSI conducts a review on a case by case basis by obtaining the underlying charging documents and police reports. However, in this case, felony theft is related to cab driving.¹⁷

9. A felony level theft offense is considered a serious crime involving honesty.¹⁸

10. A special relationship exists between a taxicab driver and a customer that is predicated on confidence, trust, and safety. A customer enters a cab driven by a complete stranger. The customer has a reasonable expectation that the City has vetted the qualifications of every prospective driver, including their honesty. A primary purpose of regulating taxicab drivers is to ensure that a customer is safe and is in contact with an honest driver who will not defraud, over-charge, or use the customer's credit card number for ulterior purposes.¹⁹

11. The Applicant's willingness to commit a serious theft makes him unfit to drive a cab in St. Paul. Moreover, the criminal complaint makes no reference that he was earning income from cab driving during the time he was receiving MA.²⁰ The Applicant was driving on average 30-40 hours per week.²¹

12. In the seven year period of driving a taxicab in St. Paul, the Applicant's license has not been disciplined.²²

13. The Applicant submitted neither documentation nor testimony of rehabilitation for the period since his conviction in 2007.

14. On February 8, 2011, subsequent to a criminal background investigation, the City issued its Notice of Intent to Deny License based on its discovery that the Applicant pleaded guilty to Wrongfully Obtaining Assistance-Felony Level Theft on February 16, 2007.²³

¹⁵ Ex. 8a-3.

¹⁶ Test. of Christine Rozek.

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.*

²¹ Test. of Applicant.

²² *Id.*, Ex. 1-1.

²³ Exs. 9-1, 8-2, 8-4.

Based upon the above Findings of Fact, the ALJ makes the following:

CONCLUSIONS OF LAW

1. The ALJ and the St. Paul City Council have jurisdiction to hear this matter pursuant to Minn. Stat. § 14.55, SPLC §§ 310.05, and 310.06 (b)(6)b., and 376.16 (e)(4)a. and b.

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

3. As the party proposing that certain action be taken, i.e., denial of a license, the City has the burden of establishing facts that support the license denial by a preponderance of the evidence.²⁴

4. SPLC § 376.16 (e)(4) a., in relevant part, states,

Prerequisites to License. Eligibility to be licensed to operate a taxicab shall be as follows: ...[t]he Applicant shall not be under sentence or have been discharged from sentence for any felony conviction within five (5) years immediately preceding application for a license....

5. The City has shown, by a preponderance of the evidence, that the Applicant committed a felony level theft offense for which he pleaded guilty on February 16, 2007. He is currently on probation until February 15, 2012. The Applicant is prohibited from obtaining a taxicab license until February 15, 2017 unless he can establish that he qualifies for one of the exception under SPLC § 376.16 (e)(4)b.²⁵

6. Minn. Stat. § 364.03, subd. 1, in relevant part, states,

...no person shall be disqualified from public employment, nor shall a person be disqualified from pursuing, practicing, or engaging in any occupation for which a license is required solely or in part because of a prior conviction of a crime or crimes, unless the crime or crimes for which convicted directly relate to the position of employment sought or the occupation for which the license is sought.

7. Minn. Stat. § 364.03, subd. 2, states,

In determining if a conviction directly relates to the position of public employment sought or the occupation for which the license is sought, the hiring or licensing authority shall consider:

²⁴ Minn. R. 1400.7300, subp. 5.

²⁵ If the Applicant can demonstrate successful completion of the terms of his probation and can demonstrate that he has been rehabilitated, as contemplated by Minn. Stat. § 364.03, subd. 3, a taxicab license may be granted before February 15, 2017.

(1) the nature and seriousness of the crime or crimes for which the individual was convicted;

(2) the relationship of the crime or crimes to the purposes of regulating the position of public employment sought or the occupation for which the license is sought;

(3) the relationship of the crime or crimes to the ability, capacity, and fitness required to perform the duties and discharge the responsibilities of the position of employment or occupation.

8. In drafting its code in 2006, the City patterned its ordinance, SPLC § 376.16 (e)(4) b., after Minn. Stat. § 364.03. SPLC § 376.16 (e)(4) b. states,

[t]he license inspector may grant, pursuant to Minn. Stat. § 364.03, an exception ... upon evidence that either the offense is not related to the occupation of taxicab driver, or upon evidence of rehabilitation.

9. The City considered the nature and seriousness of the theft offense and concluded it was a serious crime.²⁶ This factor weighs against the Applicant.

10. The City considered the relationship of the crime to the purpose of regulating taxicab drivers and concluded that a special relationship exists between a taxicab driver and a customer that is based on trust, confidence, and safe transportation. The customer has a reasonable expectation that he will be safe and not be defrauded, overcharged, or short-changed. The nature of a theft offense casts a cloud on confidence and undermines the trust the public and customers alike may have in the Applicant. This factor weighs against the Applicant.²⁷

11. The City considered the relationship of the crime of theft to the Applicant's ability, capacity, and fitness required to perform the responsibilities of taxicab driver and concluded the Applicant is unfit to be licensed to drive a taxicab because of his willingness to deceive Ramsey County to commit a serious theft.²⁸

12. Minn. Stat. § 364.03, subd. 3, states,

(a) A person who has been convicted of a crime or crimes which directly relate to the public employment sought or to the occupation for which a license is sought shall not be disqualified from the employment or occupation if the person can show competent evidence of sufficient rehabilitation and present fitness to perform the duties of the public employment sought or the occupation for which the license is sought.

²⁶ Test. of C. Rozek, Minn. Stat. § 364.03, subd. 2 (1) .

²⁷ *Id.*, Minn. Stat. § 364.03, subd. 2 (2).

²⁸ *Id.*, Minn. Stat. § 364.03, subd. 2 (3).

Sufficient evidence of rehabilitation may be established by the production of:

(1) a copy of the local, state, or federal release order; and

(2) evidence showing that at least one year has elapsed since release from any local, state, or federal correctional institution without subsequent conviction of a crime; and evidence showing compliance with all terms and conditions of probation or parole; or

(3) a copy of the relevant Department of Corrections discharge order or other documents showing completion of probation or parole supervision.

(b) In addition to the documentary evidence presented, the licensing or hiring authority shall consider any evidence presented by the applicant regarding:

(1) the nature and seriousness of the crime or crimes for which convicted;

(2) all circumstances relative to the crime or crimes, including mitigating circumstances or social conditions surrounding the commission of the crime or crimes;

(3) the age of the person at the time the crime or crimes were committed;

(4) the length of time elapsed since the crime or crimes were committed; and (5) all other competent evidence of rehabilitation and present fitness presented, including, but not limited to, letters of reference by persons who have been in contact with the applicant since the applicant's release from any local, state, or federal correctional institution.

13. The following facts constitute a mitigating factor: the MA fraud overlapped with the Applicant's taxicab driving for the years 2002-2005. The criminal prosecution process took about fourteen months, from charging in 2005 to a guilty plea in early 2007. Apparently, the Applicant continued to drive until 2009 when his license lapsed.²⁹ The Applicant's taxicab license record is absent any disciplinary sanctions for the seven years while he drove in St. Paul.³⁰

14. Conversely, it does not appear that the Applicant was forthright in telling the police that he had been earning income from cab driving during receipt of MA.

²⁹ Ex. 1-1.

³⁰ *Id.*

15. The Applicant has failed to offer sufficient evidence of rehabilitation as required by SPLC § 376.16 (e)(4) b. and Minn. Stat. §364.03. The Applicant is presently unfit to possess a taxicab license because he cannot demonstrate that he has been successfully discharged from probation nor has he demonstrated any of the other elements enumerated in Minn. Stat. § 364.03, subd. 3.

16. The City has met its burden in establishing that the denial of the Applicant's 2011 taxicab license application was appropriate.

Based upon the above Conclusions of Law, the ALJ makes the following:

RECOMMENDATION

IT IS HEREBY RECOMMENDED that the St. Paul City Council AFFIRM DSI's denial of Applicant's 2011 taxicab license application.

Dated: April 22, 2011



MANUEL J. CERVANTES
Administrative Law Judge

Reported: Digitally recorded (no transcript prepared)

NOTICE

This report is a recommendation, not a final decision. The St. Paul City Council will make the final decision after a review of the record and may adopt, reject, or modify the Findings of Fact, Conclusions, and Recommendation. Under St. Paul Legislative Code § 310.05(c-1), the City Council shall provide the Licensee an opportunity to present oral or written arguments alleging error in the application of the law or the interpretation of the facts and to present argument related to the recommended adverse action contained in this Report. A party should contact Lyle Lundgren at (651) 266-8710 to learn the procedure for filing exceptions or presenting argument.

MEMORANDUM

There is little dispute in the material facts in this case, thereby leaving the application of relevant law to these facts. The undisputed facts are that the Applicant has possessed a St. Paul taxicab license, off and on, from 2002-2009. When he was not licensed, it was attributable to the fact that he had let the cab license expire. To his credit, the Applicant's license has not been disciplined.

In 2007, the Applicant pled guilty to felonious theft of MA benefits and was sentenced to five years probation, in addition to other conditions. In applying the

relevant City legislative code, the City looked to the requisite factors contained in Minn. Stat. § 364.03. This statute requires the City to consider the seriousness of the theft offense, the relationship of the theft offense to the purpose of regulating taxicab drivers, and in light of the offense does the Applicant have the ability, capacity, and fitness to perform the duties of a taxicab driver.

The City considered each of these elements and determined that the offense was serious, that there is a reasonable expectation from the public and customers alike not to be cheated by a cabdriver and that a conviction of theft undermines this expectation. Because of this mistrust, the Applicant is not fit to perform the duties of cabdriver.

Moreover, the Applicant's testimony at hearing also cast doubt upon his fitness to drive a cab in St. Paul. An element of rehabilitation is to accept responsibility for one's conduct. Admitting to the MA fraud is accepting responsibility. However, at the hearing the Applicant denied that he committed the fraud and denied that he lived at 890 Sterling while receiving MA benefits. Instead, he blamed his wife, as his payee, for the misrepresentations leading to conviction. The documentary evidence, including his application of January 18, 2011 for cab licensure, leads to a different conclusion. In short, the Applicant has not been honest with the ALJ.

Generally speaking, Minn. Stat. § 364.03 evinces a public policy that persons who commit serious offenses should not be barred from public employment forever. Instead, if an offender can demonstrate that rehabilitation has occurred subsequent to release from probation, then the offender should be considered for that employment if s/he would otherwise qualify, but for the offense. Subdivision 3 enumerates examples of the types of evidence that may be sufficient to demonstrate that rehabilitation has occurred.

In the present case, the Applicant failed to offer any evidence of rehabilitation. For the reasons set forth above, the ALJ recommends that the St. Paul City Counsel affirm the denial of Applicant's taxicab license application.

M.J.C.