



## MINNESOTA OFFICE OF ADMINISTRATIVE HEARINGS

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March 23, 2011

Kyle Lundgren, Assistant City Attorney  
400 City Hall  
15 Kellogg Blvd., West  
Saint Paul, MN 55102

**Re: *In the Matter of All Licenses Held by Recovery Corp. d/b/a Icon Auto Corp.***  
**OAH Docket No. 16-6020-21832-2**

Dear Mr. Lundgren:

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. Our file in this matter is now being closed.

Sincerely,

A handwritten signature in cursive script that reads "Manuel J. Cervantes" with a small flourish at the end.

MANUEL J. CERVANTES  
Administrative Law Judge

Telephone: (651) 361-7945

MJC:mo  
Encls.

cc: Charles Severson

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE ST. PAUL CITY COUNCIL

In the Matter of Adverse Action Against  
All Licenses Held by Icon Recovery  
Corp. d/b/a Icon Auto Recovery Corp.  
and Icon Recovery Corp. d/b/a Icon  
Recovery Corp. for the premises  
located at 817 Vandalia Street, St. Paul

**FINDINGS OF FACT,  
CONCLUSIONS AND  
RECOMMENDATION**

The above matter came on for hearing before Administrative Law Judge Manuel J. Cervantes on February 24, 2011, at 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 Department of Safety and Inspections (DSI) of the City of St. Paul (the City). Charles Severson, CEO and owner of Icon Recovery Corp. d/b/a Icon Auto Recovery Corp. and Icon Recovery Corp. d/b/a Icon Recovery Corp. (collectively, "the Licensee"), appeared on behalf of the corporation.

**STATEMENT OF THE ISSUES**

1. Did the Licensee fail to maintain a twenty-four-hour-on-duty storage lot in the early morning of December 28, 2010, in violation of St. Paul Legislative Code § 361.12 (3)?

2. If so, should the St. Paul City Council affirm DSI's assessment of a \$1,000 matrix fine, based on a second violation against the licenses of Icon Recovery Corp., under St. Paul Legislative Code § 310.05 (2)(m)?

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

**FINDINGS OF FACT**

1. The Licensee operates four businesses from 817 Vandalia Street in St. Paul. He has the following licenses issued by the City: 1) an Auto Body Repair Shop

license, 2) an Auto Body/Painting license, 3) a Tow Truck & Wreckers license, and 4) a Second Hand Dealer license.<sup>1</sup>

2. On June 5, 2008, a city inspector personally provided the Licensee with a list of certain conditions that had been placed on the Tow Truck/Wrecker license. The inspector explained the conditions to Licensee at that time. Included on the list, at Condition 21, is the requirement that the Licensee remain open and accessible to the public twenty-four hours per day. The Licensee signed off on having received the list of conditions, indicating he understood them.<sup>2</sup>

3. The City received a number of complaints from the public about the towing business of Icon Recovery. Among the complaints was that Icon did not remain open at all times.<sup>3</sup>

4. On December 10, 2010, the City issued a Notice of Violation to the Licensee for failing to remain open twenty-hours per day on November 3, 2010, in violation of St. Paul Legislative Code Sec. 361.12. A \$500 first offense matrix fine was recommended.<sup>4</sup> The Licensee did not contest the fine and the City received its payment of \$500 on December 20, 2010.<sup>5</sup>

5. On December 23, 2010, DSI asked the St. Paul Police to conduct a proactive compliance check on the Licensee's premises to determine whether it was open.<sup>6</sup>

6. On December 28 at 2:44 a.m., a St. Paul Police officer drove onto Licensee's business property. The chain link fence gates were open. The grounds were lighted. The officer toured the lot; which he described to be the approximate size of one-fourth of a football field. The officer saw no activity. The officer did not see any lights on in the building. The officer proceeded to the main service door of Icon Towing. The officer was familiar with this entrance because he had responded to this entrance on a prior occasion due to a customer disturbance.<sup>7</sup>

7. Not unlike on the first offense, the officer knocked on the service door.<sup>8</sup> No one answered. The officer did not see any temporary signage on or near the main entrance indicating, for instance, that the attendant would return in 5 minutes. The officer returned to his vehicle and, in an attempt to draw the attention of anyone inside, he sounded his siren a couple of seconds which he described as being very loud. No

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<sup>1</sup> Testimony of the Licensee (Lic. Test.), Rozek Test., Deputy Director of DSI, Exhibits 4-3 and 6-3.

<sup>2</sup> Rozek Test., Exs. 5, 6-1, 7, St. Paul Legislative Code Sec. 361.12.

<sup>3</sup> Rozek Test.

<sup>4</sup> Exs. 6-1, 8-1.

<sup>5</sup> Ex. 9.

<sup>6</sup> Ex. 6-1.

<sup>7</sup> Officer Ator Test.

<sup>8</sup> Compare Ex. 8-1 and 10-1.

one answered. Finally, after a few minutes, the officer blasted his air horn. Again, no one answered. The officer reported his observations to his superior.<sup>9</sup>

8. The Licensee was there on the morning of December 28, which is why the gate was open. He had no cars that had been impounded in his lot; otherwise the gate would have been locked.<sup>10</sup>

9. The Licensee said he may have been working in the auto painting booth, which is closed off from the rest of the building when the officer was on the premises. His building is the size of a football field. He has a sign on his tow business entrance that states that the public should call a (his) cell phone number for assistance. Licensee has his cell phone on vibration mode, should he be in the midst of operating loud equipment.<sup>11</sup>

10. On January 7, 2011, the City issued a second Notice of Violation to the Licensee for failing to remain open 24 hours per day, in violation of St. Paul Legislative Code Sec. 361.12. The City assessed a second offense matrix fine of \$1000 and full compliance was recommended.<sup>12</sup>

11. The Licensee timely contested the January 7, 2011 Notice of Violation.<sup>13</sup>

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

### CONCLUSIONS

1. The Administrative Law Judge and the St. Paul City Council have jurisdiction to hear this matter pursuant to St. Paul Legislative Code §§ 310.05-.06.

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, the City has the burden of proving facts at issue by a preponderance of the evidence.<sup>14</sup>

4. St. Paul Legislative Code § 361.12 requires that a wrecker/towing licensee maintain an office which is accessible to the public twenty-four hours a day.<sup>15</sup>

5. The City has shown, by a preponderance of the evidence, that the Licensee, while in his building working in his paint shop, was not accessible to the public on December 28, 2010.

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<sup>9</sup> Officer Ator Test.

<sup>10</sup> Lic. Test., Ex. A.

<sup>11</sup> Lic. Test.

<sup>12</sup> Rozek Test., Ex. 10-1, St. Paul Legislative Code § 310.05 (2)(m).

<sup>13</sup> Ex. 11.

<sup>14</sup> Minn. R. 1400.7300, subp. 5.

<sup>15</sup> St. Paul Legislative Code § 310.10 (3), Ex. 5 at 21.

6. St. Paul Legislative Code § 310.06 (b) authorizes the Council to take adverse action against a licensee who violates a condition of the license or any provision of the Legislative Code. Adverse action includes a variety of disciplinary actions ranging from fines to license revocation.<sup>16</sup>


7. St. Paul Legislative Code § 310.05 (2)(m) authorizes the City Council to assess a presumptive penalty of \$1000 for a second violation of the same legislative code.

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

### RECOMMENDATION

IT IS HEREBY RECOMMENDED that the St. Paul City Council AFFIRM DSI's imposition of a \$1,000 fine against the licenses of Icon Recovery Corp. d/b/a Icon Auto Recovery Corp. and Icon Recovery Corp. d/b/a Icon Recovery Corp. based on a second violation of the same legislative code.

Dated: March 23, 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. Parties should contact Kyle Lundgren at 400 City Hall, 15 Kellogg Blvd., West, St. Paul, MN 55102, to learn the procedure for filing exceptions or presenting argument.

### MEMORANDUM

There really is no significant dispute in the facts. The City did not hotly contest the fact that, based on his testimony, the Licensee was on the premises on the early morning of December 28, 2010. The Licensee does not contest that the officer was

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<sup>16</sup> St. Paul Legislative Code § 310.05.

there at 2:44 a.m. and that he did not respond to the officer's knocks. The issue then is under these circumstances, did the Licensee operate a twenty-four-hour-on-duty storage lot on this morning as required by the St. Paul legislative code? This ALJ thinks not.

The Licensee stated that he had no impounded cars on his lot on the morning of December 28 and that he had no expectation that the public would appear at his property that morning. He argued that he should be relieved of his obligation to have someone in the office that morning and, by inference, on any of those occasions where he has no impounded cars.

The City, on the other hand, argued that the legislative code does not make such distinctions. The code does not say, "that a twenty-four-hour-on-duty storage lot is required, unless there are no impounded cars in the lot." The ALJ finds the City's argument persuasive. To read the code otherwise, would be to import language into the code that is not there.

Next, the Licensee argued that even though he did not answer the officer's knock, he was available by telephone as indicated by signage on the entrance door. The facts indicate that Licensee was on the other side of a huge building, working in the auto body shop secluded by walls and ear protection. The Licensee testified that there was no way that he could have heard the officer. Licensee carries his cell phone on vibration mode for that reason. Again, the ALJ agrees with the City that being "on duty" does not mean being available by telephone, absent other circumstances.

If the Licensee had done something more to show he was available, for instance, placing a lighted sign at the entrance indicating "OPEN, BUT WORKING IN THE BACK, CALL CELL PHONE 651-XXX-XXX", Licensee may have had a stronger case.

Next, the Licensee made an economic hardship argument. He stated that as a small tow operator, that it makes no sense for him to have a fulltime staff on hand under these circumstances. If the City Council agrees, this can be the subject of amendment to the twenty-four-hour-on-duty requirement.

In short, the ALJ finds that the City met its burden of proof in establishing the Licensee's violation of the twenty-four-hour-on-duty ordinance and condition. The record therefore supports the assessment of the second violation matrix penalty. The ALJ recommends that the City Council AFFIRM the Department's recommendation.

**M.J.C.**

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS  
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**CERTIFICATE OF SERVICE**

<b>Case Title: <i>In the Matter of All Licenses Held by Recovery Corp. d/b/a Icon Auto Corp.</i></b>	<b>OAH Docket No. 16-6020-21832-2</b>
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Mary Osborn certifies that on Wednesday, March 23, 2011, she served a true and correct copy of the attached Findings of Fact, Conclusions and Recommendation; by placing it in the United States mail with postage prepaid, addressed to the following individuals:

Kyle Lundgren, Assistant City Attorney 400 City Hall 15 Kellogg Blvd., West Saint Paul, MN 55102	Charles J. Severson Icon Auto Corp. 817 Vandalia Street St. Paul, MN 55114
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