



MINNESOTA OFFICE OF ADMINISTRATIVE HEARINGS

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June 2, 2011

Shari Moore
City Clerk
310 City Hall
15 West Kellogg Blvd.
St. Paul, MN 55102

Re: *In the Matter of the Licenses Held by Brothers Sales, Inc., d/b/a
Brothers Auto Sales, Inc., for the Premises Located at 1161
University Avenue West in Saint Paul
OAH Docket No. 3-6020-22048-3*

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 a copy of the digital recording of the hearing. If you would like a copy of the digital recording of the hearing, please contact us at 651-361-7906.

Sincerely,

A handwritten signature in cursive script that reads "Kathleen D. Sheehy".

KATHLEEN D. SHEEHY
Administrative Law Judge

Telephone: (651) 361-7848

KDS:nh

Enclosure

cc: Kyle Lundgren
Keith Schweiger

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CITY ATTORNEY

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

In the Matter of the Licenses Held by Brothers
Sales, Inc., d/b/a Brothers Auto Sales, Inc., for
the Premises Located at 1161 University Avenue
West in Saint Paul

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

This matter came on for hearing on May 18, 2011, before Administrative Law Judge Kathleen D. Sheehy, in Room 220 City Hall, County Commissioners' Office, 15 West Kellogg Boulevard, St. Paul, Minnesota. The OAH record closed at the conclusion of the hearing.

Kyle Lundgren, Assistant City Attorney, 400 City Hall, 15 West Kellogg Boulevard, St. Paul, MN 55102, appeared for the City of St. Paul's Department of Safety and Inspections (DSI).

Keith Schweiger, owner of Brothers Auto Sales, Inc. (Licensee), 1161 University Avenue West, St. Paul, MN 55104, appeared without counsel.

STATEMENT OF THE ISSUES

1. Did the Licensee violate license conditions 7 and 8 by allowing a vehicle to be parked on a public sidewalk on April 12, 2011?
2. If so, is the recommended licensing sanction appropriate?

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

FINDINGS OF FACT

1. Keith Schweiger has operated Brothers Sales, Inc., at 1161 University Avenue West in St. Paul since approximately June 2006. The business holds a motor vehicle dealer license for new vehicles, a second-hand dealer license for motor vehicles, and an auto repair garage license.¹ The

¹ Ex. 1-3.

property contains a parking lot and a building with an office and a small repair bay off of Dunlap Street.²

2. The licenses are subject to the following conditions:

Condition 3: At least six parking spots shall be reserved for customer and employee parking.

Condition 4: Vehicles for sale shall not be parked in the public streets or alleys adjoining the site.

Condition 7: At no time shall vehicles be parked in the driveway or in the public right-of-way.

Condition 8: Cars for sale may not be parked on the street or public right-of-way.³

3. On May 15, 2009, a city inspector noticed that scooters and a dealer car were parked on the sidewalk adjacent to the lot. The inspector talked to the manager and went over the license conditions with him. On August 5, 2009, the Deputy Director of DSI wrote to the Licensee about cars parked on the right-of-way and advised him that he was required to comply with all license conditions. The City took no further action with regard to these violations of license conditions.⁴

4. On March 16, 2010, a city inspector photographed one of the Licensee's cars parked on the sidewalk adjoining the parking lot. She also photographed tires and other parts that were being stored outside the dealership building.⁵

5. On April 5, 2010, a city inspector observed that an SUV bearing dealer plates, with its hood opened for repairs, was parked in the Licensee's driveway across a public sidewalk. The inspector photographed the vehicle.⁶

6. On April 16, 2010, the City issued a Notice of Violation with regard to the violations of license conditions observed on March 16, 2010, and April 5, 2010. The Licensee did not contest these violations and paid a \$500 fine.⁷

7. On October 8, 2010, a city inspector observed a car parked on the sidewalk adjoining the Licensee's parking lot. The vehicle belonged to the Licensee.⁸

² Testimony of Kristina Schweinler.

³ Ex. 2.

⁴ Ex. 1-1.

⁵ Ex. 1-1.

⁶ Ex. 1-1.

⁷ Ex. 1-1 (May 7, 2010).

8. On October 20, 2010, the City issued a second Notice of Violation with regard to the above violation. The Licensee did not contest the violation but indicated, when he paid the \$1,000 fine, that a customer (not one of his employees) had parked the vehicle there.⁹

9. On April 12, 2011, the dealership was open for business and two employees were present, but Mr. Schweiger was not. The city inspector happened to drive by and observed a late-model BMW convertible parked on the sidewalk adjoining the parking lot. The vehicle had no license plates or dealer tags identifying its ownership. She photographed the vehicle.¹⁰ The photographs reflect that the vehicle was parked entirely on a public sidewalk, just inches away from a stop sign.¹¹

10. The BMW did not belong to the Licensee, nor was the Licensee attempting to sell it. A customer, who is also a personal friend of Mr. Schweiger's, was test-driving the BMW that day. The customer parked it on the sidewalk and went looking for Mr. Schweiger. When an employee informed the customer that Mr. Schweiger was not on the premises that day, the customer left the car parked on the sidewalk and went out to lunch at a nearby restaurant.¹²

11. On April 18, 2011, the City issued a Notice of Violation to the Licensee for violating conditions 7 and 8 of the license on April 12, 2011.¹³

12. Pursuant to the City's penalty matrix, the presumptive penalty for a third violation of license conditions within 18 months is a \$2,000 fine and a ten-day suspension of the licenses.¹⁴

13. On April 26, 2011, the Licensee requested a hearing.¹⁵

14. The City issued a Notice of Administrative Hearing on May 6, 2011, which scheduled the hearing to take place on May 18, 2011.¹⁶

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 authority to hear this matter pursuant to St. Paul Legislative Code § 310.05(c).

⁸ Ex. 1-1.

⁹ Ex. 1-1 (Nov. 2, 2010); Testimony of Keith Schweiger.

¹⁰ Ex. 1-1; Test. of Kristina Schweinler.

¹¹ Ex. 3.

¹² Exs. A & B; Test. of Keith Schweiger.

¹³ Ex. 4.

¹⁴ St. Paul Legislative Code § 310.05(m).

¹⁵ Ex. 5.

¹⁶ Ex. 6.

2. The hearing in this matter was conducted in accordance with the applicable portions of the procedures set forth in section 310.05 of the St. Paul Legislative Code.

3. The City gave proper notice of the hearing in this matter and has fulfilled all procedural requirements of rule or law.

4. The City has the burden of proving by a preponderance of the evidence that adverse action is warranted with respect to the licenses held by Brothers Auto Sales, Inc.

5. The St. Paul City Council may take adverse action against any or all licenses or permits, licensee or applicant for a license, on the basis that the licensee or applicant has failed to comply with any condition set forth in the license or in a resolution granting or renewing the license.¹⁷

6. The City demonstrated by a preponderance of the evidence that on April 12, 2011, the Licensee failed to comply with condition 7 of the license, which prohibits the parking of any vehicles on the public right-of-way.

7. The City failed to demonstrate that the Licensee violated condition 8 of the license, because the Licensee did not own the vehicle and he was not attempting to sell it on April 12, 2011.

8. Adverse action includes suspension of licenses and imposition of fines.¹⁸

9. The penalty matrix contained in the St. Paul Legislative Code sets out presumptive penalties for violations of conditions placed on a license. 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.¹⁹

10. The presumptive penalty for a third appearance for violating license conditions is a \$2,000 fine and a ten-day suspension.²⁰

11. The City's recommended closure for ten days and imposition of a \$2,000 fine is consistent with the penalty matrix.

¹⁷ St. Paul Legislative Code § 310.06 (b)(5).

¹⁸ St. Paul Legislative Code § 310.01.

¹⁹ *Id.*, § 310.05(m).

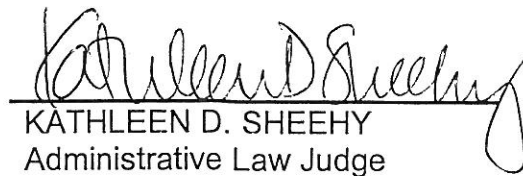
²⁰ *Id.*

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

RECOMMENDATION

It is respectfully recommended that the St. Paul City Council take adverse action against the licenses held by Brothers Sales, Inc., d/b/a Brothers Auto Sales, Inc.

Dated: June 2, 2011


KATHLEEN D. SHEEHY
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 reviewing the record and may adopt, reject or modify the Findings of Fact, Conclusions and Recommendation contained herein. Pursuant to Section 310.05 of the St. Paul Legislative Code, the City Council's final decision shall not be made until this Report has been made available to the parties to the proceeding and the Licensee has been provided an opportunity to present oral or written arguments alleging error on the part of the Administrative Law Judge in the application of the law or the interpretation of the facts and an opportunity to present argument relating to any recommended adverse action. The Licensee and any interested parties should contact Shari Moore, Saint Paul City Clerk, 290 City Hall, 15 West Kellogg Blvd., St. Paul, MN 55102, to ascertain the procedure for presenting argument.

MEMORANDUM

The Licensee's position is that it cannot direct or control where customers choose to park and that, if a customer parks illegally, the appropriate remedy is to have the police issue a ticket and tow the vehicle, not to hold the Licensee responsible for the violation. As the City argued during the hearing, this position reflects a basic misunderstanding of the conditions placed on the license. The Licensee is responsible to ensure that its vehicles and those of its customers are parked in compliance with license conditions. The Licensee is required to maintain adequate parking for customers on the lot (condition four) and to ensure that any vehicles associated with the business are not parked on a public sidewalk (condition seven). If Mr. Schweiger is not there personally to ensure that customers do not park on the sidewalk, it is his responsibility to instruct his employees to prevent that from happening. It would not be appropriate to require the use of police resources to address an ongoing licensing problem when an administrative remedy is available. The violation occurred as alleged, and some licensing sanction is appropriate.

K.D.S.