

THE COUNCIL OF THE CITY OF SAINT PAUL

City of St. Paul,

Plaintiff

v.

**MEMORANDUM IN SUPPORT OF DENYING
ADVERSE ACTION**

Jason Lonnie Gabbert,

Respondent

BACKGROUND

The Respondent has held a peddler's license issued by the City of St. Paul since 2002.

On November 5, 2014, the Respondent was convicted of Theft by Swindle in Ramsey County District Court. Upon learning of this conviction, the City Attorney moved for adverse action against the Respondent's peddler's license. The City Attorney provided the Administrative Law Judge (ALJ) with evidence of the Respondent's conviction, as well as the criminal complaint filed against the Respondent. On April 21, 2016, the ALJ granted summary judgment to the City and issued a recommendation that the Council revoke the Respondent's peddler's license. The ALJ's recommendation was as follows:

"The citizens of St. Paul have a right to rely on the honesty, fitness and good character of peddlers licensed by the City. Here, Respondent engaged in a scheme involving the sale of 50 tickets to a Vikings game for cash. He then reprinted the tickets, causing them to be voided and defrauding the buyer out of the money paid for the tickets. The sale of the tickets, while perhaps not technically undertaken under

Respondent's peddler license, is certainly akin to legitimate activities undertaken by peddlers. Respondent's crime was grounded on fraud and dishonesty, and supports the drawing of an inference under Section 310.06 that he lacks the fitness and good character required of peddlers licensed by the City and rightfully demanded by City residents. Respondent's fraudulent and dishonest scheme, coupled with his conviction for the crime of theft by swindle, provides a substantial and compelling reason for the City County to revoke his peddler license.

Code 310.06(c), cited by the ALJ, states:

The licensee or applicant (or any person whose conduct may by law be imputed to the licensee or applicant) has engaged in or permitted a pattern or practice of conduct of failure to comply with laws reasonably related to the licensed activity or from which an inference of lack of fitness or good character may be drawn.

A criminal conviction for an offense occurring outside of the City of St. Paul is not among the thirteen criteria included in Code 310.06 for which adverse action against a peddler's license may be taken. Therefore, the existence of the conviction has no relevance to the Respondent's license.

The only issues, then, for the Council to decide are those stated in Code 310.06(c):

- (1) Did the Respondent's conduct leading to the conviction constitute a failure to comply with laws reasonably related to the licensed activity?
- (2) Did the Respondent act in a manner which supports the drawing of an inference that he lacks the fitness and good character expected of peddlers?

To grant summary disposition and recommend adverse action against the Respondent's license, the ALJ must rely on facts provided by the moving party. To

support the motion for summary disposition, the City Attorney submitted as an evidentiary exhibit the criminal complaint. The City Attorney cited specific allegations in the criminal complaint as if they were factual, arguing that the Respondent's crime was akin to the activities for which he is a licensed peddler and the nature of the offense proves the Respondent lacks the fitness and good character required of peddlers. The ALJ concurred, citing specific allegations in the complaint as if they were factual.

The ALJ's order for summary disposition and recommendation for revocation may not be considered by the Council because the ALJ had no facts on which to base the decision.

The burden of proof regarding the Respondent's conduct falls upon the City Attorney. The only "evidence" the City Attorney submitted to the ALJ was the criminal complaint. A criminal complaint, however, is merely an accusation of conduct, not proof that the alleged conduct occurred. When determining guilt or punishment in a criminal or civil matter, a Court may only rely on facts established in the trial record, not unproven allegations contained in a criminal complaint. In this matter, no facts regarding the Respondent's conduct were provided to the ALJ. Rather, the ALJ erroneously accepted the allegations in the criminal complaint as fact and passed judgement based on that information. If no facts exist to support the ALJ's recommendation, it is inappropriate for the Council to take adverse action based upon it.

The Respondent's record as a peddler is impeccable.

The Respondent has been a licensed peddler since 2002. In that time, he has engaged in tens of thousands of transactions with citizens and visitors of the City in which hundreds of thousands of dollars have been exchanged. All of his peddling endeavors have occurred at or near large events in the direct proximity of large crowds and numerous police officers. Not once in his 14 years as a peddler has the Respondent been the subject of a complaint, either by a citizen or law enforcement officer.

In 2011, while peddling in a neighborhood adjacent to the Minnesota State Fair, the Respondent identified two individuals selling counterfeit admission tickets. The Respondent alerted nearby police officers, who arrested the individuals, saving countless fairgoers and the Minnesota State Fair itself from being defrauded. The Respondent was a cited source in the StarTribune newspaper's account of the incident. That story is attached as Respondent's Exhibit A.

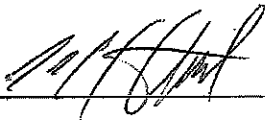
CONCLUSION

The city attorney seeks revocation of the Respondent's license due to a single, isolated incident that occurred 31 months ago outside of the City, was unrelated to the Respondent's peddler's license and did not consist of circumstances which would infer that the Respondent is unfit or lacks the good character rightfully demanded of peddlers. Given most serious first-time violations of the City Code are handled with sanctions less severe than license revocation, it is questionable why such drastic, permanent adverse action is being sought nearly three years after the offense and more than a year after the conviction. The Respondent has done a substantial amount of peddling since the initial incident and conviction. Had the City Attorney reviewed

the trial record or discussed the incident with the Respondent prior to moving for adverse action, the City Attorney would have realized that the Respondent did not engage in any conduct which could jeopardize his peddler's license and all parties would have been spared the inconvenience of this proceeding.

Given the absence of facts to support adverse action, the Respondent's peddler's license must remain valid and in good standing.

RESPECTFULLY SUBMITTED this 16th day of May, 2016.

BY:  _____

Jason L. Gabbert
Respondent

RESPONDENT'S EXHIBIT A

NORTH METRO

State Fair, cops watch for fake tickets

Two arrests of suspected counterfeiters come as fair officials consider using high-tech scanners.

By Matt McKinney (<http://www.startribune.com/matt-mckinney/10645411/>) Star Tribune |

SEPTEMBER 1, 2011 — 11:15PM

It took an undercover investigation, a juvenile informant and a brief foot chase for police to nab their target Monday: a man accused of selling fake State Fair tickets.

The arrest of Richard J. Hazeltine III, 39, of St. Paul, was the second of a suspected ticket counterfeiter in recent days. One legitimate ticket reseller estimates that hundreds of phony tickets have been sold, and ticket counterfeiting is one reason that the State Fair might start using high-tech ticket scanners connected by buried fiber-optic cables.

Three fair employees visited the Delaware State Fair earlier this summer to examine its ticket scanning system, said Brienna Schuette, fair spokeswoman.

"It's something we're actually looking into," Schuette said. "We have a company coming out to study it this year."

Schuette had no estimate for the number of fake tickets sold each year or how much money the fair loses as a result.

Hazeltine's arrest came just two days after a Brooklyn Park man was arrested Saturday on the accusation of selling counterfeit fair tickets for \$10 each to people waiting to board an express bus at Northtown Mall.

One victim from Andover knew the man and contacted police when she arrived at the fair and found the ticket was fake.

Then, on Monday night, St. Paul police took a boy into custody after he was seen selling fake tickets on Midway Parkway near the fair's main gate.

The boy said someone named Ricky gave him the tickets and told him he would make \$2 for every ticket he sold for \$10.

Undercover officers helped the boy arrange a meeting with Ricky at a McDonald's restaurant near the intersection of Snelling and University Avenues. Ricky didn't show. Two more attempts to set up a meeting failed.

St. Paul police officers working nearby saw someone who matched Ricky's description getting into a cab. They stopped the cab and after a brief foot chase, took Hazeltine into custody.

He had \$14 and six counterfeit State Fair tickets with him, along with some recent purchases: a 10-pack of socks, a bottle of vodka, two packs of cigarettes, a box of Little Debbie snack cakes and a meal from McDonald's, police said.

Hazeltine told police he got the tickets from someone else and had convinced two boys he saw selling water to State Fair visitors that they could make more money selling his tickets, according to police records. The boy was released to his mother by St. Paul police.

Hazeltine was issued a citation and was taken to Ramsey County jail to be held on unrelated felony warrants.

Jason Gabbert, who sells tickets legally, makes a few dollars purchasing tickets for \$9 at Cub Foods to resell them for \$11 at the fair's main gate. A fair ticket normally costs \$12.

Gabbert, who has to get a peddler's license from the city of St. Paul, said he was tipped off to a pair of guys selling counterfeits Saturday when he heard they were selling them for \$9, too little to make any profit from real tickets. He said the fakes were very good,



(<http://stmedia.startribune.com/images/1/BISPING0828GALLERY.jpg>)

BRUCE BISPING, STAR TRIBUNE

Minnesota State Fair goers got turned upside down and around as they roared the Rockit ride at the midway on 8/27/2011.

but the color was slightly off and the lines along the bar code were fuzzy.

"The public had no reason to suspect anything was amiss, and ticket takers had no reason not to accept the tickets," he said.

Matt McKinney • 612-217-1747

mckinney@startribune.com 612-673-7329 _mattmckinney