

SAINT PAUL CITY COUNCIL

In Re adverse action against all licenses held by
El Pantano LLC d/b/a El Pantano Plus,

DEPARTMENT OF SAFETY AND
INSPECTION'S EXCEPTIONS TO
AUGUST 16, 2011 REPORT OF
ADMINISTRATIVE LAW
JUDGE

EXCEPTIONS TO AUGUST 31, 2011 REPORT OF ADMINISTRATIVE LAW JUDGE :

In her Findings of Fact, Administrative Law Judge Kathleen D. Sheehy made 25 Findings of Fact. Based on the testimony provided and exhibits submitted at the hearing held on June 8, 2011, the Department of Safety and Inspections submits the following additional and amended:

FINDINGS OF FACT

11. DSI received Officer Redmond's report regarding this incident on May 10, 2010. Seven months later, after delay caused by waiting for the police reports to become public, on December 28, 2010, DSI requested more information about his discussions with the Licensee's employees. Officer Redmond replied that he had ~~only~~ a vague memory of employees are the door stating that Jacobo was causing problems inside the bar before he was asked to leave.

14. El Pantano's manager also asserted that their practice is to have security personnel ask customers for identification; after identification is provided, the customer is allowed to pay the cover charge. He also said that Aafter the cover charge is paid, the customer's wrist or top of the hand is marked with a stamp that says "Admit." and that El Pantano ~~The Licensee~~ does not mark the wrists of customers with an "X" made by marker pen.

Based on the Findings of Fact of the Administrative Law Judge, as amended and added above, the Department of Safety and Inspections requests that the Council make the following amended

CONCLUSIONS OF LAW

5. The City has ~~not~~ demonstrated by a preponderance of the evidence that on May 8, 2010, the Licensee violated condition #11 by allowing an underage person into the bar without a special event permit.

10. Pursuant to § 310.05(m)(v) of the St. Paul Legislative Code, this would be either the Licensee's third appearance within 18 months and fourth appearance within ~~18~~24 months, or fourth and fifth appearance within 24 months, depending on whether the case that is currently on

appeal is counted. The presumptive penalty for a third appearance for violations of license conditions is a \$2,000 fine and ten-day suspension; the presumptive penalty for a fourth appearance is revocation. The City Council may deviate from the presumed penalties in an individual case where the council finds and determines that there exist substantial and compelling reasons making it more appropriate to do so.

11. ~~Assuming this~~ As this is a fourth appearance regardless of whether the case on appeal is counted (based on those appearances from the February, March, May and November of 2010 violations), the City's recommendation to revoke all licenses is supported by the penalty matrix contained in § 310.05, and revocation of all licenses is warranted. ~~There are substantial and compelling reasons, however, to impose sanctions other than revocation in this matter.~~

12. Even if both the case on appeal and the May 20th, 2010 violation were discounted, and El Pantano only was before the Council for a third appearance within eighteen months due to the November 2010 violations, there exists substantial and compelling reasons making it appropriate for the City Council to deviate from the penalty matrix and impose revocation. Those reasons include:

A. Pursuant to § 310.05(m)(ii) of the Saint Paul Legislative Code, "the occurrence of multiple violations shall be grounds for departure from such penalties in the council's discretion". Multiple violations are present in the November 20, 1010 adverse action in that Licensee violated condition #6 of its license when it failed to warn its patrons, and also violated condition #2 when it failed to provide all security video requested from that day;


B. Given that El Pantano's first adverse action in February 2010 also involved multiple violations (no worker's compensation insurance and allowing a 19-year-old to be present), El Pantano generated five separate violations within the space of ten months.

C. El Pantano's licenses were issued on August 19, 2009, which means that it generated five separate violations within the first sixteen months it was open, four of which were violations of its license conditions.

The Department of Safety and Inspections further requests that the Council accept the Recommendation but decline to adopt the Memorandum of the Administrative Law Judge.

Respectfully Submitted,

Dated: 9-23-2011



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Representing the Dept. of Safety and Inspections