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**STATE OF MINNESOTA
IN COURT OF APPEALS
A16-0633**

In the Matter of the Rental Dwelling
Licenses held by Mahmood Khan

**Filed March 20, 2017
Affirmed
Hooten, Judge**

Minneapolis City Council
File No. 16-00032

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Considered and decided by Hooten, Presiding Judge; Schellhas, Judge; and Smith,
Tracy M., Judge.

UNPUBLISHED OPINION

HOOTEN, Judge

Relator challenges the City of Minneapolis's decision to revoke his rental dwelling licenses. Relator argues that (1) the exclusion of evidence relating to potential fair housing claims violated his due process rights; (2) an ordinance cited by the city does not support the revocation of his licenses; (3) the administrative hearing officer lacked jurisdiction over the matter; and (4) relator was denied due process because the hearing officer was biased. We affirm.

FACTS

Relator Mahmood Khan owns 50 residential properties in Minneapolis and holds rental dwelling licenses for 42 of those properties. The majority of Khan's properties were purchased and licensed in 2008, with approximately five properties purchased and licensed in 2009, 2010, and 2011, respectively. One of Khan's tenants does handy work at Khan's properties and monitors the properties for nuisance issues in exchange for a discount on his rent.

Khan's properties have a substantial history of city ordinance violations. From the time that Khan obtained licenses for the properties through March or April 2015, Khan's properties generated 1,390 requests for services. Requests for services are complaints generated by a tenant, a neighbor, or the housing inspections division of the city's department of regulatory services (the department), about a property.¹ The requests for services required 2,246 site visits by housing inspectors, which resulted in the department sending 1,016 violation letters to Khan detailing 3,550 violations. The department issued Khan 61 administrative citations for work that was not completed in the timeframes set by the department.

In October 2010, the city council revoked the rental license for one of Khan's properties because of two incidents of illegal occupancy in the basement of the residence. *In re Khan*, 804 N.W.2d 132, 135 (Minn. App. 2011). When inspecting the property, a city

¹ It is unclear from the record whether the department, Khan's tenants, or neighbors of his properties were the primary source of the 1,390 requests for services generated by Khan's properties.

housing inspector observed that the tenants were illegally using part of the basement as a bedroom. *Id.* The city issued an order to Khan to discontinue the unlawful occupancy of the basement, and when the city inspected the property approximately one and a half months later, the basement was no longer occupied. *Id.* Approximately 13 months after the second inspection, a subsequent group of tenants contacted the city to report electrical and other problems with the property. *Id.* The inspector who investigated the complaint observed that the basement unit was once again being illegally occupied as a bedroom. *Id.* The city began proceedings to revoke Khan's license for that property, and the city council eventually revoked his license. *Id.* at 135–36. Khan appealed, and this court affirmed the license revocation decision. *Id.* at 143.

In August 2013, the city began the process of revoking another of Khan's rental dwelling licenses. *Khan v. Minneapolis City Council*, No. A14-0455, 2014 WL 7237193, at *1 (Minn. App. Dec. 22, 2014). The city had issued seven "blue tag notices" to Khan between September 2011 and December 2012, directing him to address garbage disposal problems at the subject property. *Id.* The city sent Khan a notice in February 2013, informing him that his license for the property could be revoked if there were any further garbage disposal violations. *Id.* The city issued another blue tag notice in April 2013. *Id.* The city began revocation proceedings, and the city council eventually revoked Khan's license. *Id.* Khan appealed, and, in December 2014, this court again affirmed the city council's license revocation decision. *Id.* at *2–*3.

In February 2015, less than two months later, the department began the process of revoking all of Khan's remaining 42 rental licenses and issued a notice of revocation,

indicating that the department was seeking to revoke all of his rental licenses because of his two prior license revocations. The applicable city ordinance provides:

The following minimum standards and conditions shall be met in order to hold a rental dwelling license under this article. Failure to comply with any of these standards and conditions shall be adequate grounds for the denial, refusal to renew, revocation, or suspension of a rental dwelling license or provisional license, or for the imposition of reasonable conditions or restrictions upon such a license pursuant to section 259.165.

. . . .

(13) a. Any person(s) who has had an interest in two (2) or more licenses revoked pursuant to this article or canceled pursuant to section 244.1925 or a combination of revocations or cancellations shall be ineligible to hold or have an interest in a rental dwelling license or provisional license for a period of five (5) years.

Minneapolis, Minn., Code of Ordinances (MCO) § 244.1910(13)(a) (2017). Khan timely appealed from the notice of revocation.

On March 6, 2015, the department issued Khan a notice of director's determination of noncompliance, indicating that the city had determined that good cause existed for its adverse license action pursuant to MCO § 244.1910(19) (2015).² The notice gave Khan ten days to bring his rental properties into compliance.

On March 18, 2015, the department issued a third notice, a notice of revocation of Khan's 42 remaining rental licenses based on the two prior revocations and for good cause.

² We cite the 2015 version of MCO § 244.1910(19) because it was in effect at the time the city began the process of revoking Khan's remaining licenses. The ordinance has since been amended in a manner not relevant to this appeal.

Because Khan had already appealed from the February revocation notice, the department added the good cause licensing standard as a basis for revoking Khan's licenses.

After an evidentiary hearing of Khan's appeal, the hearing officer recommended that all of Khan's remaining rental licenses be revoked, determining that both the two prior license revocations and good cause grounds for revocation were met. The matter was referred to the community development and regulatory services committee of the city council, and the committee held a hearing and adopted the hearing officer's recommendation. The city council subsequently considered the matter and revoked Khan's licenses. Khan petitioned this court for a writ of certiorari, which this court granted. The city stayed the revocation pending the resolution of this appeal.

D E C I S I O N

A city's revocation of a rental license is a quasi-judicial decision reviewable through a writ of certiorari. *Khan*, 804 N.W.2d at 136. "A city council's decision may be modified or reversed if the city violated constitutional provisions, exceeded its statutory authority, made its decision based on unlawful procedure, acted arbitrarily or capriciously, made an error of law, or lacked substantial evidence in view of the entire record submitted." *Montella v. City of Ottertail*, 633 N.W.2d 86, 88 (Minn. App. 2001). "The party seeking reversal has the burden of demonstrating error." *Id.* On certiorari review, an appellate court "will uphold the decision if the lower tribunal furnished any legal and substantial basis for the action taken." *Staehele v. City of St. Paul*, 732 N.W.2d 298, 303 (Minn. App. 2007) (quotation omitted).

I. The hearing officer did not violate Khan’s due process rights by prohibiting him from presenting evidence of potential federal or state fair housing claims.

Khan argues that his due process rights were violated because the hearing officer did not permit him to “present an anti-discrimination defense” to the city’s efforts to revoke his rental licenses. We disagree.

Khan sought to subpoena a number of witnesses to testify regarding the problem of homelessness in the Twin Cities metropolitan area and the need for affordable housing. The hearing officer denied Khan’s request for the issuance of the subpoenas primarily on the ground of relevance. Khan argues that, by not allowing him to subpoena witnesses or present evidence regarding potential disparate impact claims under the Fair Housing Act (FHA), 42 U.S.C. §§ 3601–19 (2012), or the Minnesota Human Rights Act (MHRA), Minn. Stat. §§ 363A.01–.44 (2016), that his tenants could have against the city as a result of his license revocations, the hearing officer violated his due process rights.

The United States and Minnesota constitutions provide that no person shall be deprived of property “without due process of law.” U.S. Const. amend. XIV, § 1; Minn. Const. art. I, § 7. “Generally, due process requires adequate notice and a meaningful opportunity to be heard.” *Staeheli*, 732 N.W.2d at 304.

Though Khan contends that the hearing officer deprived him of due process by prohibiting him from introducing evidence relevant to his “Fair Housing defenses,” the hearing officer’s authority was narrow. In relevant part, MCO § 2.100(g)(3) (2017) provides that a hearing officer has the authority to “[d]etermine whether a violation occurred.” MCO § 244.1960(c) (2017) provides that the decision issued by the hearing

officer “shall determine whether the building, or dwelling units therein, meets the licensing standards . . . and shall specify the factual and legal basis for the determination.” This language indicates that the hearing officer’s authority is limited to determining whether a basis existed under MCO §§ 244.1910(13)(a) and 244.1910(19) for revoking Khan’s rental license.

Moreover, as the hearing officer observed, the “Fair Housing evidence” Khan sought to introduce was irrelevant. The question of whether the city discriminated against protected individuals by revoking Khan’s licenses only became an issue after the city council revoked his licenses. Similarly, Khan had no standing to bring a claim under the FHA or the MHRA because he had not yet suffered an injury at the time of the hearing.³ *See Havens Realty Corp. v. Coleman*, 455 U.S. 363, 372, 102 S. Ct. 1114, 1121 (1982) (stating that party needs to have suffered injury in fact to have standing for FHA claim); Minn. Stat. § 363A.28, subd. 1 (2016) (providing that “[a]ny person aggrieved by a violation of [the MHRA]” may bring suit). Therefore, the hearing officer did not violate Khan’s due process rights by refusing to allow him to present evidence on fair housing issues.

³ Even if Khan has standing, his argument seems to be that the city, by enforcing its ordinances, is taking action that would deprive his tenants, most of whom are members of protected classes, of housing. But, such an argument is speculative, especially in light of the possibility that his tenants may just as likely maintain that the city should protect them from unsafe living conditions.

II. MCO § 244.1910(13)(a) supports the city’s revocation of Khan’s rental licenses.

MCO § 244.1910 (2017) provides minimum standards that must be met in order to hold a rental dwelling license and states that failure to comply with these standards shall be adequate grounds for the revocation of a rental license. MCO § 244.1910(13)(a) provides that “[a]ny person(s) who has had an interest in two (2) or more licenses revoked pursuant to this article . . . shall be ineligible to hold or have an interest in a rental dwelling license or provisional license for a period of five (5) years.” MCO §§ 244.1930(a) (2017) and 244.1940(a) (2017) set forth the notice requirements and procedures that are to be utilized by the city in determining that there has been noncompliance with its minimum standards. The city revoked Khan’s licenses in part because he previously had two licenses revoked.

A. MCO §§ 244.1930(a) and 244.1940(a) do not invalidate MCO § 244.1910(13)(a) as a basis for revoking rental licenses.

Khan argues that reading MCO §§ 244.1930(a) and 244.1940(a) in conjunction with MCO § 244.1910(13)(a) requires that the licensee must have had four rental licenses revoked, rather than two, before the city can revoke all of his licenses. We disagree.

The interpretation of a city ordinance is a question of law, which we review de novo. *Frank’s Nursery Sales v. City of Roseville*, 295 N.W.2d 604, 608 (Minn. 1980). Although Khan reads MCO §§ 244.1930(a) and 244.1940(a) as invalidating MCO § 244.1910(13)(a) as a basis for revoking his licenses, the language Khan points to only relates to the procedures for giving notice to a licensee that a property violates licensing standards before the city can take action to revoke a license. The ordinances do not specify the grounds for

revocation. Instead, such grounds are provided in MCO § 244.1910, which lays out licensing standards and states that failure to comply with any of the standards “shall be adequate grounds” for the revocation of a license.

The plain language of MCO § 244.1910(13)(a) provides that having had two rental licenses revoked constitutes sufficient grounds to revoke all of a licensee’s rental licenses. It is undisputed that Khan met this criteria. Any argument of Khan’s regarding MCO §§ 244.1930(a) and 244.1940(a) relates only to the notice that Khan received, but Khan does not argue that he received insufficient notice. Given the arguments presented here, we conclude that MCO § 244.1910(13)(a) provided a valid basis for revoking Khan’s licenses.

B. MCO § 244.1910(13)(a) is not unconstitutionally vague.

Khan argues that MCO § 244.1910(13)(a) is unconstitutionally vague because it fails to state when the five-year period of ineligibility begins. We disagree.

We presume that a municipal ordinance is constitutional, and “[t]he burden of proving that an ordinance is unreasonable rests on the party attacking its validity.” *Hard Times Cafe, Inc. v. City of Minneapolis*, 625 N.W.2d 165, 171 (Minn. App. 2001) (quotation omitted). “Courts should exercise extreme caution before declaring a statute void for vagueness.” *Id.* The language of the ordinance provides that “[a]ny person(s) who has had an interest in two (2) or more licenses revoked . . . shall be ineligible to hold or have an interest in a rental dwelling license or provisional license for a period of five (5) years.” MCO § 244.1910(13)(a).

The ordinance indicates that a licensee becomes ineligible to hold a rental license

once the licensee has had two or more licenses revoked. The “two or more” language demonstrates that the period of ineligibility does not begin automatically when a licensee has two licenses revoked by the city council and those revocations are upheld on any appeal filed by the licensee. Instead, the period of ineligibility begins when the city council takes action to enforce the ineligibility by revoking all the licensee’s remaining licenses. If the licensee appeals the revocation, the period of ineligibility begins when the appeal is final.⁴ We conclude that the ordinance is not unconstitutionally vague.⁵

III. The hearing officer had jurisdiction to conduct the appeal proceedings.

Khan argues that the hearing officer lacked subject matter jurisdiction to determine whether grounds existed for the revocation of his license. Specifically, Khan argues that an appeal must be taken from the director’s recommendation of revocation, rather than from the notice he received. Khan contends that the ordinances require that the director send a letter to the city council and that “[w]ithout the required letter from the [d]irector to the [c]ity [c]ouncil recommending action concerning [Khan’s] [l]icenses, there was no jurisdiction for [Khan’s] appeal to proceed.”

⁴ We note that if the period of ineligibility began at any earlier point, a significant portion of the ineligibility period would have expired by the time Khan was unable to rent his properties. For example, if the ineligibility period started when the city took action to revoke Khan’s licenses in February 2015, more than two years of the five-year period would have elapsed by the time this court issued its opinion, and Khan could petition for review of this opinion to the supreme court, further prolonging the length of the appeal proceedings. Meanwhile, Khan has been able to continue renting to his tenants throughout the revocation proceedings.

⁵ Because we conclude that MCO § 244.1910(13)(a) supports the city’s revocation decision, we need not address Khan’s arguments regarding the good cause ground for revocation, MCO § 244.1910(19).

Khan's argument is based on MCO § 244.1940(a)(3), which provides that a notice of revocation must state "[t]hat the director has referred the matter to the city council with a recommendation to deny, not renew, revoke, or suspend the license or provisional license." The notice must also state "[t]hat the city council will deny, refuse to renew, revoke, or suspend the license or provisional license unless the owner appeals the determination within fifteen (15) days after receipt of the notice." MCO § 244.1940(a)(4). The city concedes that neither of the notices of revocation included this language, though the first notice stated, "If you do not appeal this action within 15 days from the date of this notification, the [c]ity [c]ouncil may take action to [r]evoke your license(s)."

We conclude that the city's omission of the required language did not deprive the hearing officer of jurisdiction. Khan's argument that the hearing officer lacked subject matter jurisdiction only relates to the notice that must be given to the licensee, and Khan presents no argument regarding why failure to comply with all requirements of a notice provision should deprive the hearing officer of subject matter jurisdiction.

Khan also notes that MCO § 244.1960(a) (2017) provides that "[a]ny person wishing to appeal *a determination of the director recommending . . . revocation . . . of a license . . . shall file a written notice of appeal with the department of regulatory services within fifteen (15) days.*" (Emphasis added). But, this provision does not require that the director recommend revocation *to the city council*. Khan's argument that the director is required to recommend revocation to the city council before issuing a notice of revocation and before a hearing officer can hold an evidentiary hearing and make a determination of whether there is a basis for revocation is illogical. Such a requirement would entail making

a recommendation to the city council before all of the relevant evidence is introduced. Furthermore, the notice that Khan received was entitled “Notice of Revocation of Rental License,” clearly indicating that the department was seeking to revoke Khan’s rental licenses. We conclude that Khan has not shown that the hearing officer lacked jurisdiction to determine whether the city had a basis to revoke Khan’s rental licenses.

IV. The city’s process for hiring and compensating administrative hearing officers did not violate Khan’s due process rights.

Khan argues that the city’s procedure for hiring and compensating administrative hearing officers violates due process. “Whether procedural due-process rights have been violated is a question of law, which we review de novo.” *Khan*, 804 N.W.2d at 137.

“Parties to an administrative proceeding are entitled to a decision by an unbiased decisionmaker.” *Buchwald v. Univ. of Minn.*, 573 N.W.2d 723, 727 (Minn. App. 1998), *review denied* (Minn. Apr. 14, 1998). “The test for determining whether a decisionmaker is unbiased is whether the decisionmaker’s situation could tempt the average man as a judge to forget the burden of proof required to rule against an alleged violator.” *Khan*, 804 N.W.2d at 137 (quotation omitted). We presume that the proceeding was conducted in a regular fashion, and the party claiming that the decisionmaker was biased has the burden of showing that the decision was reached improperly. *Id.*

Khan made a similar argument to this court in his appeal from the city’s first license revocation action. *Id.* at 137–38. In that case, this court rejected the argument that the “hearing officer’s level of compensation create[d] in him a direct, personal, substantial pecuniary interest to render decisions favorable to the city.” *Id.* at 138–39. Specifically,

this court held that “[a]bsent evidence that hearing officers have a direct, personal, substantial pecuniary interest in rendering decisions favorable to the municipality that hires and selects them, a landlord’s due-process rights are not violated when such hearing officers preside over rental-license-revocation hearings.” *Id.* at 134. In the present matter, Khan has failed to show that the hearing officer had such an interest in rendering decisions favorable to the city that his due process rights were violated.

Khan attempts to distinguish his arguments in his previous appeal by claiming that he has a greater financial stake in this case because all 42 of his remaining rental licenses are at stake. Khan relies on *Tumey v. Ohio*, 273 U.S. 510, 47 S. Ct. 437 (1927), in making this argument. In that case, the United States Supreme Court stated, “That officers acting in a judicial or quasi-judicial capacity are disqualified by their interest in the controversy to be decided is of course the general rule. Nice questions, however, often arise as to what the degree or nature of the interest must be.” *Tumey*, 273 U.S. at 522, 47 S. Ct. at 441 (citations omitted). Although Khan attempts to use *Tumey* for the proposition that this court should be more “sensitive” to claims of bias when the litigant has a greater stake in the controversy, the focus under *Tumey* is the hearing officer’s interest in the controversy, not the financial interests of the litigant. Moreover, Khan makes no argument regarding why the hearing officer was biased against him.

Next, Khan argues that the city set up a system of hiring administrative hearing officers, rather than have license revocation proceedings litigated in district court, in order to ensure favorable results. Khan notes that the city’s benchbook for hearing officers states that the city chose to set up an administrative hearing process because it found the criminal

justice system, which it previously used to enforce its ordinances, to be “somewhat unsatisfactory.” The city listed a number of reasons why it found the criminal justice system unsatisfactory, including that “[t]he criminal justice system does not always recognize [c]ity ordinance violations as serious or important” and “[j]udges sometimes are unwilling to hold trials over what are perceived to be minor problems, or if a trial is conducted, only nominal penalties are imposed.”

Khan cites the above reasons as showing that the city enacted the system to be able to improperly restrict the hearing officer from hearing issues that a district court might be able to hear. However, the city explained why an administrative hearing process is more appropriate than the criminal justice system, including that the higher burden of proof is not appropriate for most administrative violations, the possibility of serving jail time is not an appropriate penalty, and the cost of a criminal prosecution often outweighs the penalty imposed. Furthermore, Khan makes no claim that the hearing process for license revocations deprived him of due process. We conclude that Khan has failed to show that the hearing officer was biased against him or that the city’s hiring and compensation procedures for administrative hearing officers violated his due process rights.

In sum, Khan has not met his burden of demonstrating error in the city council’s revocation of his licenses. Based on the record and the arguments presented to us, we cannot conclude that the city’s decision to revoke all of Khan’s licenses violated constitutional provisions, was the product of an unlawful procedure, was arbitrary or capricious, was based on an error of law, or was unsupported by substantial evidence.

Affirmed.