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**STATE OF MINNESOTA
IN COURT OF APPEALS
A18-0123**

In re: Rental License Revocation Appeal for
Stephen Frenz for properties owned by
Equity Residential Holdings, LLC,
National Housing Fund, LLC,
2020 Vision Investments, LLC,
Berkely Holdings, Inc.,
88 Quarters, Inc.,
JAS Duluth, LLC and
92124 Holdings, LLC.

**Filed March 4, 2019
Affirmed
Smith, Tracy M., Judge**

Minneapolis Department of Regulatory Services

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Susan L. Segal, Minneapolis City Attorney, Sara J. Lathrop, Ivan Ludmer, Heather Robertson, Assistant City Attorneys, Minneapolis, Minnesota (for respondent City of Minneapolis Regulatory Services)

Considered and decided by Smith, Tracy M., Presiding Judge; Ross, Judge; and Slieter, Judge.

UNPUBLISHED OPINION

SMITH, TRACY M., Judge

Relator Stephen Frenz challenges the City of Minneapolis's decision (1) to revoke rental-dwelling licenses for properties owned by Equity Residential Holdings LLC (ERH)

and National Housing Fund LLC (NHF) and (2) to hold Frenz and his wife ineligible to hold or have interests in any other licenses for a period of five years. We affirm.

FACTS

The story begins with Minneapolis license-holder Spiros Zorbalas. Through a revocation proceeding spanning from 2010 to 2012, the City of Minneapolis revoked three rental-dwelling licenses in which Zorbalas had interests and declared Zorbalas ineligible to hold or have an interest in a rental-dwelling license for five years.¹ Following the revocations, the city and Zorbalas held discussions to find a way to avoid displacing tenants from the approximately 50 properties that Zorbalas effectively owned. The discussions were soon stymied, however, because the city and Zorbalas could not agree on the extent of ownership that Zorbalas could retain in the properties.

Frenz was asked to become involved in the discussions as a potential third-party manager of the Zorbalas properties. During these discussions, Frenz became aware that the city would not accept Zorbalas's continued ownership in the properties.

¹ Frenz suggests that Zorbalas's licenses were not in fact revoked. However, as the city correctly notes, Frenz raises the issue only in the facts section of his brief and therefore forfeits it on appeal. *See State v. Jackson*, 655 N.W.2d 828, 837 (Minn. App. 2003) ("An issue that is not addressed in the 'argument portion' of a brief is deemed waived on appeal."), *review denied* (Minn. Apr. 15, 2003). In any event, Frenz's suggestion is without merit. The city council decided to stay the Zorbalas revocations "subject to the appeal being filed in a timely manner and diligently pursued by" Zorbalas. Zorbalas's appeal was unsuccessful, *In re Rental Dwelling License ex rel. Zorbalas*, No. A11-892, 2012 WL 686095 (Minn. App. Mar. 5, 2012), *review denied* (Minn. May 30, 2012), and the appeal ended when the United States Supreme Court denied his petition for a writ of certiorari, *Zorbalas v. City of Minneapolis, Minn.*, 568 U.S. 1010, 133 S. Ct. 616 (2012). The stay ended at that time, and Zorbalas's licenses were revoked.

In November 2012, Frenz and Zorbalas formed ERH. They both contributed to ERH the rental properties under their respective control. The ERH operating agreement named as sole members two groups: “AOC Members” and “Frenz Members.” AOC Members were Zorbalas and companies owned by Alpha-Omega Companies Inc. Alpha-Omega Companies Inc. was wholly owned by Zorbalas. Frenz Members were Frenz’s wife, Jennifer Frenz, and companies associated with Frenz. AOC Members and Frenz Members held ownership interests in ERH that corresponded with the value of the properties contributed. AOC Members had 80% ownership of ERH, and Frenz Members had the rest. Frenz and Zorbalas also formed NHF, which was wholly owned by ERH. ERH directly or indirectly controlled more than 60 rental properties in Minneapolis.

Zorbalas was the chief executive officer and Frenz the chief operating officer of ERH. As CEO, Zorbalas was “charged with the general and active management of the Company, including authority and responsibility to manage the day-to-day operation of the Company’s business, subject to the overall direction and control of the Managers.” He was also the chief financial officer, responsible for “the custody of all funds and securities belonging to the Company and for the receipt, deposit, or disbursement of these funds and securities under the direction of the Managers.” The “Managers” were Zorbalas and Frenz.

After the formation of ERH, Frenz notified the city that he had purchased Zorbalas’s properties. In the process of obtaining rental-dwelling licenses on behalf of ERH, Frenz had dealings with many city personnel. Most importantly, Assistant City Attorney Wolf asked Frenz in an email to provide information “regarding any and all partners in [ERH].”

Frenz emailed Wolf a list of ERH members but did not include any AOC Members. Wolf asked for further clarification, stating:

I did receive your list of owners for [ERH], I did a quick check on them and you appear to be the CEO of all the companies and they were all organized in the mid to late 90's. JoAnn wanted me to ask who the shareholders of the Corporations were- If you could let me know (they want to make sure Zorbalas is not involved).

Frenz replied: "We discussed a transfer of ownership that would remove [Zorbalas] from any control. The only difference is that you insisted on him being removed from the equation. I have done exactly as you demanded. Take the gift you have been given and use it wisely." Frenz later admitted that his statements in these emails were not truthful. The city relied on these representations in issuing licenses for the properties. Frenz received license renewals in 2014, 2015, and 2016.

In 2016, through an unrelated matter, the city became aware of Zorbalas's continuing involvement in a number of rental properties within Minneapolis. In a letter to Frenz dated September 16, 2016 (the September 16 letter), the city listed a number of properties (the licensed properties) and directed Frenz to provide the names and addresses of all interest holders, direct or indirect, in the entities owning the licensed properties. The letter specifically directed Frenz to provide an explanation of any legal or equitable interest that Zorbalas had in the entities. Frenz submitted an affidavit in response. In it, he, for the first time, identified AOC Members that had an interest in ERH, but he did not mention Zorbalas.

The city issued a notice of revocation on November 15, 2016.² The notice alleged three grounds for revocation under Minneapolis ordinances: first, that the owner/licensee/manager has had two or more licenses revoked; second, that the rental license application is not current; and third, good cause. After a hearing, an administrative hearing officer (AHO) concluded that the first and second grounds existed but that the third did not. The AHO recommended (1) that licenses for the properties owned by ERH and its wholly owned subsidiary, NHF, (the ERH licenses) be revoked and (2) that, based on those multiple revocations, Frenz and his wife be determined ineligible to hold or have interests in any other licenses. The city council subsequently voted on the matter and adopted the AHO's findings and conclusions.

This appeal follows.

D E C I S I O N

“Any person aggrieved by a final [administrative] decision in a contested case is entitled to judicial review of the decision” through “[a] petition for a writ of certiorari . . . filed with the Court of Appeals.” Minn. Stat. § 14.63 (2018). “A city council’s decision may be modified or reversed if the city violated constitutional provisions, exceeded its

² In his reply brief, Frenz suggests that the city’s action to revoke was not timely because it was commenced after the subject licenses had expired on August 31, 2016. The record does not support this assertion. By ordinance, the city may commence “an action to deny, non-renew, revoke or suspend” prior to “any lapse, surrender, withdraw[al], termination or other loss” of the license to be affected. Minneapolis, Minn., Code of Ordinances (MCO) § 244.1940(b) (2019). In the evidentiary hearing before the administrative hearing officer, Frenz testified that he had renewed the subject licenses in 2016, and his opening brief to this court reflects that fact. The November 15, 2016 notice of revocation therefore issued while the licenses were active, and the city’s action was timely.

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); *see also* Minn. Stat. § 14.69 (2018). “The party seeking reversal has the burden of demonstrating error.” *Montella*, 633 N.W.2d at 88.

Frenz challenges the city council’s decision to (1) revoke the ERH licenses and (2) hold the Frenzes ineligible to hold or have interests in any other licenses. We address each issue in turn.

I. Frenz fails to demonstrate error as to the revocation of the ERH licenses.

MCO § 244.1910(a) (2019) sets “minimum standards and conditions [that] shall be met in order to hold a rental dwelling license.” “Failure to comply with any of [the] standards and conditions . . . [is] adequate grounds for the denial, refusal to renew, revocation, or suspension of a rental dwelling license” MCO § 244.1910(a). The city based its revocations of the ERH licenses on failure to comply with two standards: first, the standard in MCO § 224.1910(a)(13)a, which prohibits persons who have had an interest in two or more licenses revoked from holding or having an interest in a rental-dwelling license for five years; and, second, the standard in MCO § 244.1910(a)(15), which requires a licensee or applicant to have a current, complete, and accurate rental-dwelling application on file. We begin with the second basis for revocation—Frenz’s failure to have a complete and accurate application on file.

Under MCO § 224.1910(a)(15), “[t]he licensee or applicant must have a current, complete, and accurate rental dwelling application on file with the director of regulatory

services in accord with the provisions of section 244.1840.” Section 244.1840, in turn, requires that “[a]ll partnerships, corporations, limited liability companies or other recognized business associations which own a dwelling required to be licensed . . . shall submit, upon request of the director of regulatory services or the director’s designee, the name and address of all partners, shareholders or interest holders.” MCO § 244.1840(1)a (2019). Thus, failure to provide information requested under section 244.1840(1)a renders an application on file inaccurate and results in violation of section 224.1910(a)(15).

The city adopted the AHO’s finding that Frenz failed to provide “complete, honest, accurate applications and disclosures related to the corporate ownership interests” of the properties owned by ERH and NHF, as well as the AHO’s conclusion that Frenz violated the disclosure obligations of section 244.1840 and thus violated section 244.1910(a)(15). It is undisputed that, in the September 16 letter, the city directed Frenz to submit an affidavit listing the name and address of all interest holders in the entities owning the licensed properties. The letter directed Frenz to submit “the name and address of all partners, shareholders or interest holders in any partnership, corporation, limited liability company or other business association which hold any ownership or equitable interest whatsoever” in any of the licensed properties. It further directed that the request “shall be construed broadly to include any subsidiary, parent corporation or entity and any individual that may hold, personally or through an ownership or equitable interest in such an entity, any interest whatsoever in any such corporation, entity or association.” Specifically, the letter demanded “an explanation of any legal or equitable interest that Spiros Zorbalas, or any entities or associations which he may have any interest in, currently maintains, or has

ever maintained in any of the entities, associations, or corporations that have any interest” in the rental-dwelling licenses or properties. Frenz acknowledges the letter to be a request under section 244.1840(1)a.

In response, Frenz submitted an affidavit in which he identified the “members of ERH.” Frenz included four corporations. He did not reveal that those four corporations were owned by Alpha-Omega Companies or that Zorbalas was the 100% owner of Alpha-Omega Companies. Similarly, Frenz identified ERH as the “sole member of NHF” but did not explain Zorbalas’s interests in ERH. Frenz did not explain that Zorbalas was effectively an 80% owner of ERH and, through it, NHF. Nor did Frenz disclose that Zorbalas was the CEO of ERH or that he had significant managerial control over it. Nowhere in Frenz’s affidavit was Zorbalas mentioned.

In arguing that the omission of Zorbalas from his affidavit did not render it inaccurate or incomplete, Frenz contends that section 244.1840(1)a did not require the disclosure of Zorbalas’s involvement because Zorbalas was not an “interest holder” in ERH or NHF. By considering Zorbalas an interest holder, he argues, “[t]he city has acted contrary to its definition of *owner*.” (Emphasis added.) “Owner” is defined under Minneapolis ordinances as “[t]he person who is the last owner of record or the fee owner or the contract purchaser or the agent of the aforementioned person or member resident of a warrant-owned building.” MCO § 244.40 (2019). Frenz interprets “interest holder” to have the same meaning as “owner.” Under his interpretation, for example, the sole interest holder of NHF is ERH as an entity; Zorbalas, who is concealed under layers of other

companies, is not an interest holder, no matter how much of NHF Zorbalas effectively owns.

We are not persuaded by Frenz’s argument. When interpreting an ordinance, we must “read [it] as a whole, . . . giv[ing] effect to all its provisions.” *Waters v. Comm’r of Revenue*, 920 N.W.2d 613, 615 (Minn. 2018) (quotation omitted); *cf. State v. Vasko*, 889 N.W.2d 551, 556 (Minn. 2017) (“The same rules that apply to the interpretation of a statute apply to the interpretation of an ordinance.”). We therefore presume that, if the authors used different words in two provisions, they intended two different meanings. *Johnson v. Paynesville Farmers Union Coop. Oil Co.*, 817 N.W.2d 693, 709 (Minn. 2012). The city used the term “interest holder” in section 244.1840(1)a. Had it meant “owner,” a term that it used (and defined) elsewhere in the ordinances, it would have used that term.

Appellate courts interpreting ordinances must “give words and phrases their plain and ordinary meaning.” *Premier Bank v. Becker Dev., LLC*, 785 N.W.2d 753, 759 (Minn. 2010). “Interest” is defined by *The American Heritage Dictionary* to be “[a] right, claim, or legal share” or “[s]omething in which such a right, claim, or share is held.” *The American Heritage Dictionary of the English Language* 914 (5th ed. 2011). And *Black’s Law Dictionary* similarly defines “interest” as “[a] legal share in something; all or part of a legal or equitable claim to or right in property.” *Black’s Law Dictionary* 885 (10th ed. 2014). Neither of those definitions depends on ownership as that term is defined by the ordinance definition of “owner.” See MCO § 244.40.

Frenz argues, however, that “interest holder” must mean “owner” because, otherwise, section 244.1840(1)a would be unconstitutionally vague as applied to this case.

A statute is unconstitutionally vague if “it fails to give a person of ordinary intelligence a reasonable opportunity to know what is prohibited or fails to provide sufficient standards for enforcement.” *In re Charges of Unprofessional Conduct Against N.P.*, 361 N.W.2d 386, 394 (Minn. 1985). And “[t]he [tolerable] degree of vagueness . . . depends in part on the nature of the enactment.” *Vill. of Hoffman Estates v. Flipside, Hoffman Estates, Inc.*, 455 U.S. 489, 498, 102 S. Ct. 1186, 1193 (1982). Regulation of business behavior “is subject to a less strict vagueness test,” as businesses “can be expected to consult relevant legislation in advance of action” and “to clarify the meaning of the regulation by its own inquiry, or by resort to an administrative process.” *Id.*

Frenz, as a party “challenging the constitutionality of a statute on vagueness grounds[,] must show the ordinance lacks specificity as to its own behavior rather than some hypothetical situation.” *Hard Times Cafe v. City of Minneapolis*, 625 N.W.2d 165, 172 (Minn. App. 2001) (quotation omitted). A person of ordinary intelligence in Frenz’s situation would have clearly understood that “interest holders” under section 244.1840(1)a are broadly defined to include prominent indirect owners such as Zorbalas. The September 16 letter explained that it, as a “request” under section 244.1840(1)a, “shall be construed broadly to include” interest holders of any sort, direct or indirect. Frenz was also asked specifically if Zorbalas was such an interest holder of the enterprise. Frenz fails to make the requisite showing for a successful vagueness challenge.

Frenz’s argument for why his 2016 affidavit satisfied section 244.1840(1)a is thus unavailing. And, apart from the inaccuracy of the affidavit, we also observe that the city adopted the AHO’s finding that Frenz made material misrepresentations and omissions in

2013. In early 2013, when Frenz was applying for licenses on behalf of the then-newly-formed ERH, he was explicitly asked to provide “information regarding any and all partners in [ERH.]” He submitted a list of the ERH members in response, omitting the names of AOC Members. Also, when asked, about a week later, for assurance that Zorbalas was not in the picture, Frenz failed again to disclose Zorbalas’s involvement in ERH. At the hearing before the AHO, Frenz admitted that these representations to the city were not accurate.

Frenz suggests that his false statements in 2013 cannot be used to revoke ERH’s 2016-17 licenses because rental licenses expire each year on August 31. We disagree. Section 244.1910(a)(15) requires applications filed under section 244.1840 to be “current, complete, and accurate.” MCO § 244.1910(a)(15). Section 244.1840 does not require applications to be filed every year. Once a license is issued based on a section 244.1840 application, the licensee can apply for renewal “in such abbreviated form as deemed sufficient by the director to verify current information on file.” MCO § 244.1860 (2019). Modification or, in some cases, refile of a section 244.1840 application is required when the information in the application on file changes. See MCO §§ 244.1840(6), .1870(a) (2019). Nothing in the record suggests, nor does Frenz argue, that ERH’s original applications were modified or replaced since 2013. Therefore, for purposes of MCO § 244.1910(a)(15), the applications on file for ERH’s 2016-17 licenses were those that ERH had submitted several years earlier as the new owner of the properties. The record supports the finding that ERH’s applications were inaccurate at their inception and remained so in 2016.

In sum, Frenz fails to meet his burden to demonstrate error in the city council's decision to revoke the ERH licenses for violation of section 244.1910(a)(15). Because "[f]ailure to comply with *any* of [the] standards and conditions" under section 244.1910(a) is "adequate grounds for the denial, refusal to renew, revocation, or suspension of a rental dwelling license," MCO § 244.1910(a) (emphasis added), we need not address whether the city erred in concluding that the ERH licenses were also in violation of section 244.1910(a)(13)a.

II. Frenz fails to demonstrate error as to his and his wife's ineligibility.

Based on the multiple revocations of the ERH licenses, the city adopted the AHO's recommended findings and conclusions and determined that Stephen and Jennifer Frenz are ineligible to hold or have interests in rental-dwelling licenses for five years. "Any 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(a)(13)a. The city council determined that the Frenzes had interests in the ERH licenses, which numbered more than two, and pronounced both of the Frenzes ineligible to have interests in any other licenses.

Frenz does not dispute that, should the ERH licenses be revoked, he is ineligible. The point of contention is the ineligibility of his wife. Frenz argues that his wife "suffered a constitutional violation" because she was determined ineligible although "no notice of noncompliance or revocation was sent to her" and the city "did not make her a party to any revocation proceeding." This issue is not properly before this court. Jennifer Frenz could have petitioned this court for a writ of certiorari but did not do so. *See Youngstown Mines*

Corp. v. Prout, 124 N.W.2d 328, 349 (1963) (“The test of the right to certiorari, so far as parties are concerned, is whether the person seeking the writ was a party in form or in substance so as to be concluded by the determination of the matters in controversy.”). And, “[g]enerally, one does not have standing to assert the constitutional rights of a third party.” *In re Welfare of Children of J.R.B.*, 805 N.W.2d 895, 906 (Minn. App. 2011) (quotation omitted), *review denied* (Minn. Jan. 6, 2012). We decline to review the constitutionality of the city’s action against Jennifer Frenz.

Affirmed.