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Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A22-1131**

Approving Adverse Action Against the Liquor and Entertainment B
Licenses Held by RAS Ethiopian Bar & Restaurant LLC
d/b/a RAS Restaurant & Lounge
(License ID #20100000062) at 2516 7th Street West.

**Filed April 17, 2023
Affirmed; motion granted
Connolly, Judge**

City of St. Paul
File No. RES 22-882

Robert M. McClay, McClay Alton, P.L.L.P. St. Paul, Minnesota (for relator)

Lyndsey Olson, St. Paul City Attorney, Theresa A. Skarda, Assistant City Attorney, St. Paul, Minnesota; and

Peter G. Mikhail, LeVander, Gillen & Miller, P.A., Eagan, Minnesota (for respondents)

Considered and decided by Slieter, Presiding Judge; Connolly, Judge; and Larkin,
Judge.

NONPRECEDENTIAL OPINION

CONNOLLY, Judge

Relator, a bar and restaurant licensed by respondent city, challenges the revocation of its entertainment and liquor licenses, arguing that respondent's procedure in revoking the licenses violated relator's due-process rights because respondent did not afford relator an opportunity for a hearing before the revocation. We affirm.

FACTS

On May 6, 2022, respondent City of St. Paul's attorney sent relator RAS Ethiopian Bar & Restaurant a notice of violations of its liquor and entertainment licenses to both the address of the premises and the address on relator's license. The notice reminded relator of prior violations in 2014, 2015, and 2019 and stated that this was the third set of violations in 18 months. It listed current violations as: (1) serving minors with alcohol, (2) allowing minors to drink alcohol, (3) failing to make videos available to police on January 21, 2022, (4) failing to provide a requested copy of a video, (5) failure to allow police admission, (6) failing to take reasonable steps to prevent people from leaving with alcoholic beverages, and (7) failing to immediately notify police of unlawful behavior of individuals. The notice then told relator that respondent was recommending the penalty of revocation of relator's licenses and gave relator three options.

The first option was that, if relator did not contest the revocation of its licenses, it could do nothing before May 20, 2022, when it would be presumed that relator did not contest the revocation and the matter would be placed on the city council consent agenda for approval of the revocation. The second option was that, if relator admitted the facts but contested the revocation, it could send a letter no later than May 20, 2022, admitting the facts and requesting a public hearing before the city council, and a hearing would be scheduled at which relator could appear and make a statement. The third option was that, if relator disputed the facts supporting the revocation, it could send a letter no later than May 20, 2022, disputing the facts and requesting a hearing before an administrative law judge at which both relator and respondent could appear, present evidence, and examine

and cross-examine witnesses; this hearing would be followed by a public hearing. The notice concluded with a boldface restatement that:

If you have not contacted me by May 20, 2022, I will assume that you do not contest the imposition of the penalty recommended by [the Department of Safety and Inspections] and the revocation of your licenses. In that case the matter will be placed on the City Council Consent Agenda for approval of the recommended penalty.

By May 20, 2022, relator had done nothing, so respondent placed the revocation of relator's licenses on the consent agenda for the June 15, 2022, city council meeting. Relator was notified on June 7, 2022, that this had been done by U.S. mail that was again sent to both the address of the premises and the address on relator's license.

On June 14, 2022, the day before the city council meeting, relator's attorney sent an email message to a council member's aide. The message stated that: (1) relator disputed the facts and requested a hearing; (2) the revocation was not justified and relator should have a chance to respond; (3) relator's owner had not replied to the May 6, 2022, notice of violations before the May 20, 2022, deadline because he did not receive the notice before that date, "due in part to the fact that one copy was sent to a prior residential address"; (4) the notice of violations did not provide the time, place, and date of the hearing; (5) due process required that the owner receive reasonable notice and a hearing before revocation and time to prepare a defense; and (6) the attorney was unable to attend the city council meeting to represent relator because of "a requirement to be isolated under CDC guidelines." The message did not challenge the fact that a copy of the notice had been sent

to the licensed premises or argue that relator did not receive it there. A letter version of this email, dated June 14, 2022, was sent to the president of the St. Paul City Council.

On June 15, 2022, respondent's attorney's office sent a letter replying to the email. The letter said that the attorney's office had been asked to review the matter, that the decision to remove the matter from the council's consent agenda was discretionary, and that the record showed that relator had been served with the notice of violation by U.S. Mail sent to both the address of the premises and the address on relator's license. Respondent's council held its meeting, at which relator's representatives were present but were not allowed to present a case. The council passed a resolution revoking relator's license.¹

On appeal, relator argues that, because its licenses were revoked without a hearing, it was denied due process.

DECISION

“Municipal authorities have broad discretion to determine the manner in which liquor licenses are issued, regulated, and revoked,” and judicial review of a liquor license revocation is “limited to determining whether the city council exercised reasonable discretion, or whether it acted capriciously, arbitrarily or oppressively.” *Bourbon Bar & Cafe Corp. v. City of St. Paul*, 466 N.W.2d 438, 440 (Minn. App. 1991).

¹ On July 27, 2022, relator's request for reconsideration of the revocation decision was denied. Because this event was obviously not before the city council at the time it made the revocation decision, respondent moves that references to it be stricken from relator's brief and addendum. Relator does not oppose this motion in its reply brief. Respondent's motion is granted.

“No suspension or revocation [of a license] takes effect until the license or permit holder has been given an opportunity for a hearing.” Minn. Stat. § 340A.415 (2022). Relator claims that it “was denied a hearing on the merits” because, at the June 15 city council meeting, it was “denied any process,” “not permitted to speak . . . let alone present a defense or a counterargument,” and “relegated to the status of a spectator.” But the city council meeting was just that: a city council meeting. It was not a hearing, and relator’s case was on the agenda only so the city council could consent to the revocation of its licenses, not so relator could present a case.

The notice of violation twice stated that, if relator did nothing before May 20, 2022, it would be assumed that relator contested neither the facts nor the revocation and the licenses would be revoked. Thus, relator was not “denied a hearing” when the city council refused to let its meeting become a hearing at which relator could present its case; relator rather chose not to have a hearing by not responding to the notice of violations until June 14, 2022, some 25 days after the May 20, 2022, deadline for requesting a hearing. Simply appearing at the city council meeting on June 15, 2022, was not one of the options given in the notice of violation. Respondent did not breach its statutory duty to give relator “an opportunity for a hearing” before revoking the license. *See* Minn. Stat. § 340A.415.

Relator argues further that it was deprived of due process because the notice of violation did not specify a time and place of a hearing, relying on St. Paul, Minn., Legislative Code § 310.05(b) (2023) (stating that, when an adverse action against will be considered by the council, the “licensee shall have been notified in writing that adverse action may be taken against the license . . . , and that he or she is entitled to a hearing before

action is taken by the council. The notice shall be served or mailed a reasonable time before the hearing date, and shall state the place, date, and time of the hearing.”) But, until relator informed respondent whether it was contesting the factual basis for the violation or only the penalty, respondent would not have known whether to schedule a public hearing or an administrative hearing. It would have been premature to schedule a hearing before knowing which of the three options in the notice of violation relator had chosen. Relator also argues that requiring a response to the notice to be made before a particular date was a deprivation of due process because “the time limit is not founded on any rule,” but a notice telling a licensee to take one of three options and specifying no time limit for doing so would be unenforceable.

Relator relies on *Hymanson v. City of St. Paul*, 329 N.W.2d 324 (Minn. 1983), in which the notice of violation sent on July 8, 1982, stated that a public hearing at which both the licensee and neighborhood residents would be heard would be held on August 10, 1982; following the hearing, the revocation was upheld and the licensee’s motion for a permanent injunction against the revocation of licenses in district court was denied. *Hymanson*, 329 N.W.2d at 326. The licensee in *Hymanson* was not given the options of doing nothing or having an administrative hearing; he was merely told to appear at a public hearing, and he complied. *Id.* Relator was given three options and chose the option of doing nothing, having been told in the notice that this option would result in revocation of the licenses without a hearing.

Relator also relies on *Resolution Revoking License # 000337 West Side Pawn*, 587 N.W.2d 521 (Minn. App. 1998). But relator’s reliance is misplaced: *West Side Pawn*

concluded that the licensee of a pawn shop received adequate notice of a hearing on the decision to revoke his license although (1) he was on vacation when the notice arrived, (2) he did not recognize that the plain envelope which had arrived at his residence during his absence required immediate attention, (3) he usually received mail relative to the pawn shop at its business address, and (4) the city was not responsible for his failure to read his mail. *West Side Pawn*, 587 N.W.2d at 522. Moreover, *West Side Pawn* held that a licensee's actual receipt of a notice of violation is not required; the requirement is only that a notice be mailed to the licensee's address. *Id.* Otherwise, licensees could avoid revocation indefinitely by simply denying receipt of a notice. Relator's failure either to read the notice sent to its premises or to comply with the instructions the notice gave to those who wanted a hearing cannot be attributed to respondent and does not mean that relator was deprived of due process or of the opportunity to have a hearing.

Affirmed, motion granted.