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DANIEL L. M. KENNEDY, J.D., M.B.A.
DAVID J. ADELMAN, J.D.

October 13, 2006

Jackie Hanson
City Clerk's Office
350 S. 5th St., Room 304
Minneapolis, MN 55415

Re: In the Matter of the Grocery, Food Manufacturing & Tobacco Dealer Licenses
Held by Amina, Inc. d/b/a 4-You Food Market

Dear Ms. Hanson,

I represent Amina, Inc., the subject of a recent decision of an administrative law judge (ALJ) in case number 11-6010-17272-3 with the caption mentioned above. I am writing to register my client's exceptions to the Findings of Fact, Conclusions of Law, and Recommendation of the ALJ.

For easy reference, I have broken down my comments by referring to the section and paragraph number used by the ALJ in her order.

Statement of Issue

The ALJ states the issue as "whether the Licensee has violated the conditions imposed upon its licenses or Minneapolis Code of Ordinances § 259.250 and, if so, whether good cause exists to take adverse action against the grocery, food manufacturing, and tobacco dealer licenses held by Amina, Inc. d/b/a 4-You Food Market." The correct issue is whether the Licensee has violated Minneapolis Code of Ordinances § 259.250; the conditions imposed on the license are voluntary and unenforceable.

Findings of Fact

2. Although the lease stated that it commenced November 1, 2005, Haider Alnomani testified that he did not commence operating the store until December, 2005, and the license was not issued until December 23, 2005. Everything before December 23, 2005 has no bearing on whether Licensee committed license violations.

6. Same as paragraph 1 above.

8. The City offered evidence of criminal activity stretching back years at this location, and cited specific incidents of criminal activity that occurred months before Amina, Inc. The attempt to tie this activity to my client had the effect of prejudicing the ALJ. There was no evidence that the Licensee was operating the store on December 20, 2005.

9. Same as paragraph 8 above.

12. I do not have a transcribed record of the court proceeding, but I do not recall testimony that this store received the highest number of police calls of any store in Minneapolis. It is admitted, however, that the number of calls was high; there had been more than 100 calls per month since January 2005, the earliest the police provided records. The historically high number of police calls was what caused the police to target Wafana's — the predecessor store under different ownership — before Amina began to operate at that location.

17. The photograph provided by license inspector Daniel Jacobs showed a display case that Amina does not have and has never had. Inspector Jacobs inspects many stores each day, and must have attributed this photo to the wrong store. Presumably, if he had seen individually wrapped cigarillos at Amina, he would have issued a citation; none was issued.

18. The ALJ misunderstood the photographic evidence. The photographed tobacco rolling papers were not "in the tobacco sales cabinet behind the cashier." The photograph depicts them in the bottom shelf of a display case that is not visible to customers, since the bottom shelf has no glass.

19. The City's representatives plainly stated that they were not complaining that the Licensee did not post signs regarding trespassing and loitering — those signs had indeed been posted.

28. The weather records submitted show that the date of the inspection — March 28, 2006 — was the first day that temperatures reached above 45 degrees since 18.5 inches of snow fell earlier that month. It is obvious that the litter shown was an accumulation exposed by the melting of snow, and not the result of lack of due diligence.

35. Both Officer Schoenberger and Officer Snyder credited the drop in crime to the actions of the store owners. It is true that Officer Schoenberger in particular feels that the police had a role to play in encouraging the Licensee to take action, but the fact is that the Licensee was able to do what the police and former store owners were unable to do for years: put an end to a chronic drug- and crime-infested intersection that had plagued the neighborhood for more than a decade. This was accomplished by store employees going out into the street — at high risk of personal injury — and telling drug dealers to keep away. Police calls that had been in the 100+ range for years started falling before

this license revocation action was commenced and continued to fall. There were just three police calls in June 2006 and just one call in July 2006.

The statements submitted all talked about Wafana's – the previous licensee. The current Licensee was not just subject to intense scrutiny because Wafana's had a bad record, but also found that Wafana's reputation was transferred onto the new ownership even before the store began operations.

Conclusions

7. The ALJ states the ordinance correctly, but misinterprets it. The criminal activity alleged occurred almost exclusively on public property. The Licensee has stopped this activity, but was under no legal obligation to do so. The ordinance requires that the activity be on private property and that it occur multiple times.

11a. The ALJ found that the Licensee sold single cigars to an individual. This was the testimony of an officer who talked to someone who said he talked to the individual, and the police did not see the sale despite having a stake out in progress. No citation was issued to the Licensee.

11b. See paragraph 18 in the "Findings" section.

11c. See paragraph 19 in the "Findings" section.

11d. Here is another example of the ALJ applying the misinterpretation of M.C.O. §259.250. The three individuals were on public property. The Licensee had no legal obligation to ask them to move.

11e. The store has eight cameras, six of which were operational and recording at the time of the incident. This is far more than the ordinance requires, and specifically the ordinance does not require that there be any external cameras. The stated purpose of the camera ordinance is to protect the stores, not to create a general surveillance network to solve crimes outside the stores.

11f. See paragraph 28 in the "Findings" section.

13. Officer Schoenberger specifically testified that, in fact, the store did not require more than the number of employees to solve the crime problem and that it did not require a separate security person. The fact that the Licensee did not hire a security person is only a technical violation of a voluntary condition; the store was able to solve the thorny crime problem effectively.

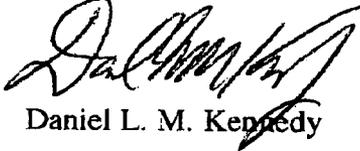
14. Again, the ALJ considered the sidewalk to be the store's premises and attributed the external "nuisance" to the store. This is an erroneous conclusion.

17. Given what has been stated above, the City did not demonstrate that it has good cause to take adverse action against Amina's license.

Memorandum

The Licensee objects to the form and substance of the Memorandum, which should more properly be put in the form of findings or conclusions of law. The Licensee also objects to the ALJ drawing an analogy between this case and *CUP Foods, Inc. v. City of Minneapolis*, 633 N.W.2d 557 (Minn. App. 2001). *CUP Foods* involved chronic loitering inside, drug dealing inside the store, controlled drug buys inside the store, stolen goods recovered inside the store, and other facts not present in this case.

Sincerely,



Daniel L. M. Kennedy

Cc: Joel M. Fussy, Assistant City Attorney