

STATE OF MINNESOTA
IN COURT OF APPEALS

In the Matter of the Grocery and Tobacco
Dealer License Held by Uncle Bill's
Market, Inc., d/b/a Uncle Bill's Market.

ORDER

A06-1916

Considered and decided by Toussaint, Chief Judge; Hudson, Judge; and Minge,
Judge.

BASED ON THE FILE, RECORD, AND PROCEEDINGS, AND BECAUSE:

1. This is a certiorari appeal from a decision by the Minneapolis City Council to revoke licenses held by relator, Uncle Bill's Market, Inc. The council's decision was based on the recommendation of the city's public safety and regulatory services committee.
2. Relator seeks a stay pending appeal. The motion was made, in the first instance, to the committee, which denied the request based on "sound reasons of public policy," the license enforcement and police resources that may be required if the business continues to operate, and the "potential ongoing or reoccurring deleterious community impact" that may occur if the business continues to operate.
3. A governmental body whose decision is the subject of a certiorari appeal "may stay enforcement of the decision in accordance with Rule 108." Minn. R. Civ. App. P. 115.03, subd. 2(b). In turn, rule 108 requires a balancing of "the right of a

prevailing party to be secure in victory” and to enforce the decision, if it is affirmed, against “the right of a party who has lost to preserve the status quo pending appeal,” so the party will obtain effective relief, if the appeal is successful. 3 Eric J. Magnuson & David F. Herr, *Minnesota Practice* § 108.01, at 346 (4th ed. 2003).

4. In the written decisions before us, there is no evidence that the committee or the city council considered the impact of denying a stay on the relator or considered whether requiring security or imposing conditions for continued operation of the business would adequately protect the public interest, while preserving the status quo during the pendency of this appeal. The record provided to this court contains findings indicating that the conditions on which revocation is based have existed for a period of months, at least. There was no finding of an imminent threat to public safety requiring immediate enforcement. Accordingly, we will grant a temporary stay and remand for the city council (or, in its judgment, its delegee) to balance the public interest in enforcement with the relator’s rights to effective appellate review, and to impose appropriate conditions for operation of the business, if it concludes that a stay pending appeal is appropriate.

IT IS HEREBY ORDERED:

1. Relator’s motion for a stay pending appeal is granted, in part. The revocation decision is stayed, pending additional proceedings on remand.

2. The matter is remanded to respondent Minneapolis City Council (or its delegee) for findings on the balance of harms and for consideration of conditions to protect the public interest, in the event that enforcement of the license revocation decision is stayed, pending appeal.

3. The decision on remand shall be filed with the clerk of the appellate courts by November 1, 2006. In the event that respondent determines that the balance of harms precludes the granting of a stay pending appeal, no revocation shall take effect for at least 10 days following issuance of respondent's written decision on remand.

4. This order shall not limit respondent's authority to respond to new violations, community reports and complaints, or emergencies.

Dated: October 13, 2006

BY THE COURT



Chief Judge

CLL/dr