

CITY OF MINNEAPOLIS
RENTAL DWELLING LICENSE BOARD OF APPEALS

**In the matter of the Rental
Dwelling License held by
Phillip R. Owens for the
Premises at 2908 16th Avenue South,
Minneapolis, Minnesota**

**FINDINGS OF FACT,
CONCLUSIONS, AND
RECOMMENDATION**

This matter came on for hearing before the Rental Dwelling License Board of Appeals at 1:30 p.m. on July 11, 2006 in Room 220 of the Minneapolis City Hall located at 350 South 5th Street. Board Chair Brian Bushay presided. Other board members present included Paul Thomas Kjornes, Daisy Barton, Steve Schachtman and Wayne Jensen. Assistant City Attorney Erik E. Nilsson was present as *ex officio* counsel to the board. Lee Wolf, Assistant City Attorney, represented the Department of Inspections. The rental dwelling license holder, Phillip R. Owens, was present at the hearing and was not represented by counsel.

FINDINGS OF FACT

1. Phillip R. Owens holds a current rental dwelling license for the building at 2908 16th Avenue South, in the City of Minneapolis. The rental license application personally filed by Mr. Owens lists himself as the owner of the building as well as the property manager responsible for the maintenance and management of the rental property. The executed rental dwelling license application filed by Mr. Owens lists his address as 2908 16th Avenue South, Minneapolis, Minnesota, 55407. Applicable property records admitted at the hearing in this matter list Phillip R. Owens as the taxpayer of record for the property with a mailing address of P.O. Box 8823, Minneapolis, MN 55408.

2. This matter was commenced by the SAFE unit of the Minneapolis Police Department and the Department of Inspections to revoke the rental dwelling license held by Mr. Owens for the property at 2908 16th Avenue South, under Minneapolis Code of Ordinances (M.C.O.) § 244.2020. Section 244.2020, "Conduct on Licensed Premises", requires a rental licensee to take appropriate action following conduct on the premises defined as disorderly under Section 244.2020(a). Specifically included within the ambit of disorderly use is "conduct by tenants and/or their guests on the licensed premises which is determined to be disorderly, in violation of [provisions] which prohibit the unlawful sale or possession of controlled substances."

3. Notice of the recommendation to revoke the rental dwelling license was mailed to Phillip Owens on May 18, 2006. This notice was mailed to the contact address that Mr. Owens personally supplied on his rental license application – 2908 16th Avenue South, Minneapolis, MN 55407.

4. On June 9, 2005, Minneapolis Police officers from the Third Precinct Community Response Team executed a narcotics search warrant in apartment #4 at 2908 16th Avenue South. The search warrant was obtained based on surveillance of the property as well as information supplied by a Confidential Reliable Informant (CRI) which indicated that the tenant of apartment #4, Dorutha Foster a/k/a Richardson, was engaged in regular crack cocaine distribution and storage from within the apartment. Upon execution of the search warrant, four persons were discovered inside the apartment. Upon a search of Foster/Richardson two grams of a substance that tested positive as marijuana was recovered along with two rocks (weighing 0.9 grams) of a substance that tested positive as crack cocaine. Foster/Richardson admitted that all of the narcotics belonged to him. A loaded

handgun was also discovered inside a bedroom closet. Foster/Richardson was arrested for possession of the narcotics. Cocaine is a schedule II controlled substance as defined by Minn. Stat. § 152.02, Subd. 3(d)). Possession of cocaine violates Minn. Stat. § 152.025, Subd. 2(1).

5. On June 17, 2005, Crime Prevention Specialist Don Greeley of the Minneapolis Police Department's SAFE unit mailed a First Notice of Conduct on Licensed Premises to Mr. Owens, pursuant to M.C.O. § 244.2020. This notice informed Mr. Owens that there had been an instance of disorderly use at the premises of 2908 16th Avenue South on June 9th, involving possession of narcotics. The notice was recorded as a first notice of disorderly use of the premises, informed Mr. Owens that steps should be taken to prevent further violations, and noted that further disorderly use could result in the denial, revocation, non-renewal or suspension of the rental dwelling license. The notice cited M.C.O. § 244.2020, informing the license holder that it is a licensee's affirmative responsibility to take appropriate action following disorderly use by persons occupying the premises.

6. The first notice was mailed via certified mail to the address listed in the applicable property records for Mr. Owens at P.O. Box 8823, Minneapolis, Minnesota, 55408. The certified mailing was returned as undeliverable and Mr. Owens never obtained the notice from the post office.

7. On April 7, 2006 Minneapolis Police officers from the Third Precinct Community Response Team executed a narcotics search warrant in apartment #6 at 2908 16th Avenue South. The search warrant was obtained based on surveillance of the property as well as a controlled purchase of a quantity of cocaine from the unit by a Confidential Reliable Informant (CRI). The substance successfully purchased by the CRI from apartment #6 tested positive as cocaine. The CRI completed the controlled purchase of cocaine from the

apartment in the 72 hours prior to a search warrant being authorized by Hennepin County District Court Judge Belois on April 7, 2006. Upon execution of the search warrant, numerous persons were discovered inside the apartment. Upon a search of the unit drug paraphernalia, inclusive of a spoon with residual powder, a razor blade, a broken crack pipe and sandwich baggies, was discovered. The resident of the apartment, Tracy Starr, admitted to the officers that he voluntarily allowed Jabar Abdula-Had to sell cocaine from the apartment in exchange for a quantity of the cocaine for his personal use. Mr. Abdula-Had was arrested on probable cause narcotics charges pending the issuance of a formal complaint and Mr. Starr was cited along with six other occupants of the apartment on misdemeanor disorderly house charges. Cocaine is a schedule II controlled substance as defined by Minn. Stat. § 152.02, Subd. 3(d)). Possession of cocaine violates Minn. Stat. § 152.025, Subd. 2(1).

8. On April 13, 2006, Crime Prevention Specialist Don Greeley of the Minneapolis Police Department's SAFE unit mailed a Second Notice of Conduct on Licensed Premises to Mr. Owens, pursuant to M.C.O. § 244.2020. This notice was sent via certified mail to Mr. Owens at listed addresses for him at 2908 16th Avenue South and 2439 Elliot Avenue South in Minneapolis. Certified mail return receipts were obtained from Mr. Owens confirming delivery of the notices.

9. The second notice advised Mr. Owens that a second incident of disorderly use had occurred at the subject property and that he was **required** to respond to the Minneapolis Police Department within ten (10) days with a written management plan detailing all actions taken to respond to disorderly use and to prevent further disorderly use of the premises. M.C.O. § 244.2020(d) & (e) provides:

If another instance of disorderly use of the licensed premises occurs within eighteen (18) months, if the premises contains between one (1) and six (6) distinct and

separate residential units, or within twelve (12) months, if the premises contains more than six (6) distinct and separate residential units, of an incident for which a notice in subsection (c) was given, the responsible SAFE team shall notify the licensee by mail of the violation. The licensee shall submit a written management plan to the SAFE team within ten (10) days of receipt of the notice of disorderly use of the premises. The written management plan shall detail all actions taken by the licensee in response to all notices of disorderly use of the premises within the preceding twelve (12) months. The written management plan shall also detail all actions taken and proposed to be taken by the licensee to prevent further disorderly use of the premises. The notice provided to the licensee of the violation shall inform the licensee of the requirement of submitting a written management plan. That notice shall further inform the licensee that **failure to submit a written management plan may result in the city council taking action to deny, refuse to renew, revoke, or suspend the license...**

(e) When required by paragraph (d), the rental dwelling license for the premises may be denied, revoked, suspended, or not renewed if the licensee fails to submit a written management plan that satisfies the requirements set forth in paragraph (d).

10. Mr. Owens never submitted a written management plan in response to the Second Notice of Conduct on Licensed Premises. CPS Greeley and colleagues of his made repeated efforts to contact Mr. Owens between April 6, 2006 and April 25, 2006 but Mr. Owens was unable to be reached and never responded to the notices or messages left by CPS Greeley.

11. On May 18, 2006 a Notice of Revocation, Denial, Non-Renewal, or Suspension of Rental License or Provisional License was sent to Mr. Owens as the holder of the rental dwelling license and owner and taxpayer of the property. The notice advised that both the Inspections Division and the Minneapolis Police Department would recommend to the City Council that his rental dwelling license for 2908 16th Avenue South be revoked. The recommendation was made pursuant to M.C.O. § 244.2020(d), based on the conduct on licensed premises incidents and the failure of the licensee to submit a written management plan. The notice was served via certified mail and a receipt was returned confirming the delivery and receipt of the notice by Phillip Owens.

12. On June 2, 2006 Mr. Owens filed a proper appeal of the revocation recommendation. The Licensee, in his appeal and in testimony adduced at the hearing in this matter, conceded that the disorderly uses of the premises had occurred but claimed that he had commenced eviction proceedings against Tracy Starr, the tenant in apartment #6 and the subject of the Second Notice of Disorderly Use. Evidence submitted by Mr. Owens at hearing for the first time indicated that an eviction proceeding may have been commenced against Mr. Starr in March of 2006. M.C.O. § 244.2020(g) provides:

No adverse license action shall be imposed where the instance of disorderly use of the licensed premises occurred during the pendency of eviction proceedings (unlawful detainer) or within thirty (30) days after a notice is given by the licensee to a tenant to vacate the premises, where the disorderly use was related to conduct by that tenant or his/her guests. Eviction proceedings shall not be a bar to adverse license action, however, unless they are diligently pursued by the licensee. **A notice to vacate shall not be a bar to adverse license action unless a copy of the notice is submitted to the SAFE team within ten (10) days of receipt of the violation notice.** Further, an action to deny, revoke, suspend, or not renew a license based upon violations of this section may be postponed or discontinued by the director of inspections at any time if it appears that the licensee has taken appropriate action to prevent further instances of disorderly use.

13. No copy of any eviction notice or proceeding was submitted by Mr. Owens to the SAFE unit at any point prior to the hearing in this matter on July 11, 2006.

14. The incidents of disorderly use that occurred on and about June 9, 2005 and April 7, 2006 are instances of disorderly use within the meaning of M.C.O. § 244.2020(a). Furthermore, the licensee failed to submit a timely written management plan in relation to these incidents, as required by M.C.O. § 244.2020(e) and failed to submit copies of alleged eviction notices or court proceedings as required by M.C.O. § 244.2020(g).

CONCLUSIONS

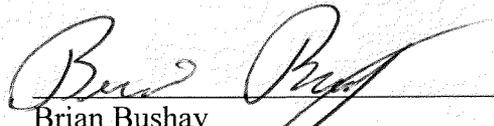
1. Two incidents of conduct determined to constitute a disorderly use and defined as disorderly in M.C.O. § 244.2020(a) by tenants and/or guests occurred on the premises of 2908 16th Avenue South for which proper notices of disorderly use were issued.
2. The licensee failed to take timely, appropriate action in response to notices from the Minneapolis Police Department concerning disorderly incidents on the premises of 2908 16th Avenue South.
3. The Minneapolis Police Department and the Inspections Division followed the appropriate procedural steps and provided the necessary notices as required under the Minneapolis Code of Ordinances.
4. The licensee failed to comply with the requirement of M.C.O. § 244.2020(d) & (e) which requires submission of a written management plan within ten days of issuance of a second notice of disorderly use. This failure provides an independent basis for adverse license action, specifically inclusive of revocation, against the rental dwelling license held by the licensee at 2908 16th Avenue South.
5. The purported pursuit of eviction proceedings by the license holder against the tenant in apartment #6 commencing in March of 2006 does not bar imposition of adverse license action in this matter through operation of M.C.O. § 244.2020(g), which requires that such proceedings “shall not be a bar to adverse license action unless a copy of the notice is submitted to the SAFE team within ten (10) days of receipt of the violation notice.” Such copies were never provided by the licensee, nor did the licensee take any affirmative steps to contact City staff regarding the serious incidents of disorderly use of his licensed rental dwelling property until the commencement of revocation proceedings.

6. The subject property has been the source of repeated criminal, disorderly and nuisance activity. The activities at this property have had a substantial negative impact on the surrounding community, as evidenced by the testimony and documentation admitted from police personnel and community members and the occurrence of numerous police responses to narcotics activity at the premises.

7. The rental dwelling license held by Phillip R. Owens for 2908 16th Avenue South is subject to revocation or suspension under M.C.O. §§ 244.2020(e). Revocation of the referenced rental dwelling license is the appropriate adverse license sanction.

RECOMMENDATION

That the rental dwelling license held by Phillip R. Owens for the premises at 2908 16th Avenue South, in Minneapolis, Minnesota be revoked.



Brian Bushay
Chair,
Rental Dwelling License Board of Appeals