

In Re: Musaab, Inc.
Tobacco Dealer – L-022-050261
Food Confectionary – L-153-50261

POSITION OF MUSAAB, INC.

Musaab Fares Wazwaz, the owner of Musaab, Inc. (Corporation), asserts that the legal standard for the revocation of the Corporation's tobacco dealer and food confectionary licenses for the 2740 Minnehaha Avenue store (Store) has not been met. Additionally, he asserts that revocation is an extreme remedy and respectfully requests the City Council to impose sanctions short of revocation.

I.

Legal Argument

According to the Notice of Hearing, the authority for the license revocations is set forth in Minneapolis Charter, Chapter 4, Section 16 (Chapter 4), which states the following:

Any license issued by authority of the City Council may be revoked by the City Council at any time upon proper notice and hearing for good cause; and upon conviction before any court of any person holding such a license for a violation of the provisions of any law, ordinance or regulation relating to the exercise of any right granted by such license, the city council may revoke such license in addition to the penalties provided by the law or by ordinance for any such violation.

Arguably, there are two bases in Chapter 4 for revocation, the first, "good cause," and the second, a criminal conviction relating to his licensure. Mr. Wazwaz suggests that neither has been satisfied.

First, the record is bereft of any factual allegations, other than Mr. Wazwaz's conviction, establishing good cause. There are no allegations that any of the business license management responsibilities set forth in §259.250, e.g., sales of drugs, disorderly

conduct, or permitting a public nuisance, have been violated. There are no allegations that any of the tobacco-specific violations in §281.60, e.g., tobacco sales to minors, have been violated. There are also no allegations that any food-specific violations have been violated. In short, since Chapter 4 specifically delineates that a criminal conviction may support a revocation, Mr. Wazwaz asserts that “good cause” necessarily requires facts other than a conviction. Since there are none, he submits that a “good cause” basis for revocation does not exist. Further, he is unaware of any authority that a criminal conviction, without more, establishes “good cause.”

Second, concerning the conviction itself, he asserts that the making of a material false statement relating to his nominee interest in a tobacco store in Maplewood, Minnesota does not relate to the “exercise of any right” granted by the Minneapolis licenses. There is no evidence suggesting that he is not the sole owner of Musaab, Inc. or that he is operating the Store as a nominee for someone else.¹ There is no evidence that Mr. Wazwaz misrepresented any fact or lied to the City of Minneapolis in connection with the Corporation’s licenses. Indeed, there is no evidence remotely suggesting that Mr. Wazwaz has acted illegally at all in Minneapolis.

In summary, for the reasons above, Mr. Wazwaz asserts that Chapter 4 does not provide a basis for either the non-renewal of the Corporation’s licenses or their revocation.

¹ The United States Attorney has also made no allegations of a nominee interest or any other criminal violations relating to the Store.

II.

Mitigation Argument

Mr. Wazwaz bases his mitigation argument on the following three reasons. First, the crime of making a materially false statement to an FBI agent concerning the ownership of a Maplewood, Minnesota tobacco store occurred on January 20, 2006, almost 2 ½ years ago, when Mr. Wazwaz was 19 years old. Unquestionably, United States District Court Judge Montgomery could have sentenced Mr. Wazwaz to jail and imposed a significant fine; however, the judgment clearly reflects the Court's wish to rehabilitate the recently married Mr. Wazwaz, notably by the imposition of two (2) years' probation with no jail time and by the requirement that Mr. Wazwaz complete a GED as a condition of probation. See the Judgment in a Criminal Case in the Evidence Packet. The Court's sentence supports the Minnesota Legislature's clear policy directive "to encourage and contribute to the rehabilitation of criminal offenders and to assist them in the resumption of the responsibilities of citizenship." See Minn. Stat. §364.01 et. seq., which the Council is required to consider in Mr. Wazwaz's case.

Second, while the crime of making a materially false statement is a serious offense, a brief discussion of the context of his crime is in order. The Federal investigation in large measure focused on the significant underreporting of State sales taxes by a number of tobacco stores in the Twin Cities' metropolitan area, resulting in a 13-person, 40-count indictment (Indictment).² The underreporting of sales taxes had a

² Mr. Wazwaz was not named as a defendant in the Indictment, which was returned by the Federal grand jury in February 2007. During the ensuing months, all of the defendants in the Indictment pleaded guilty with the exception of Kamil Al-Esawi. In September 2007, the Federal grand jury returned the Superseding Indictment, naming Messrs. Al-Esawi and Wazwaz as co-defendants for making false statements to the FBI (there were no tax conspiracy allegations), a copy of which is included in the Evidence Packet. They were convicted in a court trial in December 2007 and sentenced in March 2008.

number of consequences. First, the State was deprived of tax revenues. Second, to the extent that income that should have gone to pay sales taxes was used for other purposes by the store owner, he was underreporting that income on his Federal taxes. Finally, if this possible underreporting occurred while a nominee owner was ostensibly in charge of the store, the ability of the Internal Revenue Service to investigate the potential tax liability was compromised. This scenario formed the basis for a tax-conspiracy account, the so-called Klein conspiracy, in which all of the defendants were named.

Mr. Wazwaz has no intention of re-litigating his case; however, one crucial point is in order. During his trial, it was proven and ultimately conceded by the Government that there was no underreporting of state sales taxes during the time frame that Mr. Wazwaz had a relationship with the Maplewood store, which ran from January 2005 until the sale of his interest in October 2006. As a result, at the sentencing of Mr. Wazwaz and at the sentencing of the store's owner, his uncle Tawfiq Wazwaz, the Government could not and did not present any evidence of any underreporting of sales taxes after December 2004. In short, Mr. Wazwaz may have been a nominee, but the Government did not prove that he acted illegally for the benefit of another in that capacity.

Third, Mr. Wazwaz's dealings with the City of Minneapolis have been completely above board. He applied for the City licenses in 2007 about six (6) months before he was indicted by the Federal grand jury. He also signed a 5-year lease at the Hiawatha Commons at about the same time. Since he has held his Minneapolis licenses, there is no evidence that he has had any issues of any kind with the any enforcement personnel of the City. There are no allegations at all that he has engaged in any illegal activity at his

Store. Additionally, in connection with his renewal applications, he has been completely truthful about his felony conviction.

In conclusion, Mr. Wazwaz asserts that the facts warrant a penalty short of the revocation of the Corporation's licenses. He was 19 at the time of the offense, which occurred almost two and a half years ago. His Federal sentence is strong evidence that the Federal Court believes he can be rehabilitated. Other than the conviction, there is no evidence of any disagreements with, or sanctions imposed by, City personnel. He has been completely law abiding. Finally, Mr. Wazwaz did not hide the fact of his conviction in his renewal applications.

Under these circumstances, therefore, Mr. Wazwaz suggests that an appropriate sanction would be a 2-month suspension of his licenses, a fine, and any other measures, short of license revocations, that the Council deems appropriate.

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s/Douglas B. Altman
Attorney for Musaab, Inc.
901 North 3rd Street
Suite 140
Minneapolis, MN 55401
(612) 335-3700