

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE MINNEAPOLIS CITY COUNCIL

In the Matter of the Contractor
Licenses Held by the Roberts
Appliance Services, Inc. and David
Louis Roberts, d/b/a Dave's Heating,
Air Conditioning & Electric

**FINDINGS OF FACT,
CONCLUSIONS AND
RECOMMENDATION**

This matter was heard by Administrative Law Judge (ALJ) Richard C. Luis on May 7, 2010, at the Office of Administrative Hearings in St. Paul. The hearing record closed at the conclusion of the proceedings on May 7, 2010.

Joel M. Fussy, Assistant Minneapolis City Attorney, appeared on behalf of the Licenses & Consumer Services Division of the City of Minneapolis (City). David Shamlal, Esq. appeared on behalf of Roberts Appliance Services, Inc., and David Louis Roberts, d/b/a Dave's Heating, Air Conditioning & Electric (Dave's, Respondents, Licensee).

STATEMENT OF ISSUE

Whether disciplinary action should be taken against the Respondents' Licenses for non-compliance with applicable City ordinances and codes, and the November 2008 Settlement Agreement between the parties? If grounds exist for such discipline, is it appropriate to impose Revocation and and/or Nonrenewal of the Respondent's contractor licenses or is it appropriate to impose a lesser sanction?

Based on the proceedings herein, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. David Louis Roberts, age 63, is the sole owner of Roberts Appliance Service, Inc., d/b/a Dave's Heating, Air Conditioning & Electric. Mr. Roberts's entities hold three contractor licenses issued by the City of Minneapolis – Heating, Ventilation & Air Conditioning (HVAC), Gas Fitting, and Refrigeration Installation.¹

2. On November 4, 2008, Mr. Roberts and the City entered into a written Settlement Agreement, styled as "Findings of Fact, Conclusions, and

¹ Notice and Order for Hearing (Notice).

Recommendations.” The Agreement was the result of a license settlement conference conducted earlier that fall.²

3. The “Findings of Fact” in the Agreement contain summaries of three specific instances of Mechanical Code Violations, failure to obtain a heating permit, failures to complete work, and failures to comply with written orders.

4. The “Findings of Fact” in the Settlement Agreement, in addition to the code violations summarized above at three specific Minneapolis addresses, noted that Dave’s at one time had not completed inspections at 63 different addresses in the City, but that as of September 24, 2008, the number of uninspected locations had been reduced to 20 addresses, all but four of which were vacant or unreachable.³

5. The “Conclusions” section of the Settlement Agreement noted that Dave’s failure to call for required inspections violated Minn. R. 1300.0210, Subp. 4 and Minneapolis Code of Ordinances 85.20, and that its failure to comply with written orders, as required to remedy unsafe conditions, violated Minneapolis Code of Ordinances 87.320.⁴

6. In the “Recommendations” portion of the Agreement, the City imposed a \$1,000.00 sanction against Dave’s, \$500.00 to be paid after approval of the Agreement by the City Council and the signature of the Mayor, and \$500.00 stayed on the condition that there be no further permit violations or failures to comply with written orders or failures to notify inspectors of required inspections.⁵

7. Dave’s was also required by the Agreement to obtain work permits before any work was started, or within 24 hours of emergency repair, and to call the Construction Code Services Division in a timely manner for any rough in and final inspections. Dave’s agreed also to comply with all written orders by the due date given by the inspector unless an extension was granted.⁶

8. Dave’s agreed that it was understood that any failure of the business to adhere to the Agreement would be possible cause for further suspension, revocation or denial of its licenses. The Agreement specified further that it was understood and agreed that any violation of the “Recommendations” would constitute just and proper cause for immediate imposition of any of the agreed penalties, and that compliance with the Agreement was required in order to continue to hold its licenses and avoid any additional license actions.⁷

² Exhibit 1, pp. 6-9.

³ *Id.*, p. 7.

⁴ *Id.*

⁵ *Id.*, pp. 7-8.

⁶ *Id.*

⁷ *Id.*

9. Subsequent to the execution and approval of the above-summarized Settlement Agreement, which was approved by the City Council on November 21, 2008, Dave's violated the Agreement's Conditions, as follows:

- a. Dave's violated Condition #4 of the Agreement when it failed to comply in a timely manner with an order issued by Inspector Frank Richie regarding proper ventilation of a newly-installed furnace at 2004 Olson Memorial Highway.
- b. Condition #3 of the Agreement, requiring Dave's to call and request required inspections in a timely manner, was violated with respect to job sites at 1611 Polk Street Northeast, 607 36th Avenue Northeast, 1536 Monroe Street Northeast, 436 Buchanan Street Northeast, 3500 McKinley Street Northeast and 2004 Olson Memorial Highway.
- c. Dave's violated Condition #5 of the Agreement, which required it to refrain from further violations of codes resulting in unsafe conditions, at job sites located at 2004 Olson Memorial Highway, 2642 Seventh Street Northeast, 3500 McKinley Street Northeast and 3331 40th Avenue South. The violations were of various provisions of the Minnesota Fuel Gas Code and the Minnesota Mechanical Code.
- d. Dave's violated Condition #5 of the Agreement, which required it to obtain all permits prior to starting work, at job sites located 3044 Elliot Avenue South, 3500 McKinley Street Northeast and 3331 40th Avenue South.⁸

10. Based on the Licensee's "extensive and continuing history of non-compliance with applicable ordinances, codes and duly-imposed and agreed-upon license conditions" the City's licensing staff determined that it would recommend Revocation and/or Nonrenewal of the contractor licenses held by Dave's. After notice of the staff's recommendation, Dave's communicated to the staff that it wished to contest the factual and legal bases for the adverse license recommendation, and this hearing process followed.⁹

11. Dave Roberts is the person responsible for the conduct of inspections at installation sites, attending to repair orders, and obtaining permits for the Licensee. Since 2006, Mr. Roberts has not been fully attentive to such duties. A physically active, athletic man who, in 2003, won a Seniors World Championship in Tae Kwon Do, Mr. Roberts's activities were curtailed when he injured his back severely by accidentally stepping into a three-foot-deep hole while inspecting a job site. This injury got him out of his regular exercise routine, and was followed by a lengthy period of (undiagnosed) sleep apnea. The prolonged period of sleep apnea was followed by development of atrial fibrillation in Mr. Roberts's heart, a condition for which he had to be hospitalized late in 2008. At about the time Dave Roberts was hospitalized, Dave's offices were

⁸ Notice; Testimonies of Dave Roberts and Amy Madvig.

⁹ Notice, p. 2.

burglarized. Three computers were stolen, and have not been recovered. Many files and records were lost and had to be reconstructed from scratch.¹⁰

12. Prior to April 2007, the Licensee's office had been managed by Mr. Roberts's sister-in-law. She resigned at that time in order to become the primary caregiver for her ailing mother, and Mr. Roberts's daughter, Amy Madvig, stepped in to work full time as the Licensee's office manager. Ms. Madvig also was a full-time college student then.

13. At all times relevant to this proceeding, approximately one-third of Dave's installations were performed in the City of Minneapolis. Ms. Madvig was not equipped, by education or training, to manage all the duties required in the Licensee's office, most especially with respect to keeping up with permitting, inspections and timely responses to requests or orders from the City. No system had been worked out in the Licensee's office to assure continual reminding of various inspection and permitting deadlines, or even for responding to proposed disciplinary action such as Notices of Ordinance/Code Violations issued by the Minneapolis City Staff.¹¹

14. For much of the time from mid-2007 through 2008, Ms. Madvig had a co-worker in Dave's office, and many of the Notices of Violations, reminders of tardiness and need for completion of inspections or obtaining permits, and other administrative matters were never seen by Ms. Madvig. David Roberts, son of owner Dave Roberts and brother of Amy Madvig, is responsible for installation of the equipment handled through the Licensee's facilities. While his father was ill, any citations regarding repairs were routed to David Roberts, who failed to attend to many of them.¹²

15. It was not until mid-2009 that Amy Madvig began to gain a measure of organized management control over Dave's operations, and the backlog of permits, inspections and other administrative responsibilities became manageable. As of the date of the hearing, Dave's had completed all inspections, repairs, and installations, and had obtained all applicable permits, on every property cited in the Notice of and Order for Hearing, with the exception of 3044 Elliot Avenue South.¹³ Despite many ongoing attempts, the Licensee has never been able to gain access to the property. The problem Dave's has been ordered to fix at that address is condensation and dripping of water from dryer vents, which drips the water on the sidewalk and causes an ice hazard. Dave Roberts did not install the dryer vents that are causing trouble at 3044 Elliot Avenue South.¹⁴

¹⁰ Testimony of Dave Roberts.

¹¹ Testimony of Amy Madvig.

¹² *Id.*; For purposes of this Report, and in the record, the Licensee's owner, David Louis Roberts, is identified as "Dave" Roberts. "Dave" Roberts is the father of David Lawrence Roberts (identified as "David" Roberts) and Amy Madvig.

¹³ Testimony of Amy Madvig; Exhibit 6.

¹⁴ Testimonies of Amy Madvig and Dave Roberts.

16. A large number of the properties at which Dave's fell behind in permitting, inspection and repair responsibilities are locations where owners or occupants changed or people were hard to find, resulting in extreme difficulties to gain access.¹⁴

17. Much of Amy Madvig's progress toward mastering the running of Dave's office was set back by the burglary/ransacking of the office late in 2008. She now has learned where to navigate on the City's website to keep up with deadlines and important dates relating to accounts at locations where Dave's has installed appliances. Ms. Madvig's ability to "track" the Licensee's responsibilities at locations in Minneapolis has enabled Dave's to clear its backlog of inspections, permitting and repairs. The Licensee hopes the newly-implemented administrative efficiencies will help to avoid the problems that led to the discipline proposed in this matter.¹⁵

18. Unpaid Administrative Citations against the Licensee, which have not been appealed, were issued on December 17, 2009 and February 23, 2010, in the total amount of \$660.00 in penalties and late fees, regarding the property at 3511 Colfax Avenue North. The appeal period expired for all purposes on these Citations on March 23, 2010.¹⁶

Based on the Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS

1. The Administrative Law Judge and the Minneapolis City Council have jurisdiction in this matter under Minn. Stat. §§ 14.50, 14.55, 340A.402(3) and 340A.412(2)(b) and the Minneapolis City Charter, Chapters 4 and 5.

2. The City has complied with all procedural requirements, including providing the Licensee adequate and timely notice of the evidentiary hearing.

3. Minneapolis Charter, Chapter 4, Section 16 provides for the revocation of any license issued by the City upon proper notice and hearing for good cause.

4. Minneapolis City Ordinance 278.280 authorizes revocation or suspension of any contractor license if the contractor has failed to conform with any provisions of state law or city ordinance relating to the construction, installation, alteration, repair or servicing of systems regulated by the City.

5. The City has proven by a preponderance of the evidence that the Licensee violated Conditions 3, 4 and 5 of the Settlement Agreement between the City and Dave's, as specified in the allegations of the Notice and Order for Hearing.

¹⁴ Testimony of Dave Roberts.

¹⁵ Testimonies of Amy Madvig and Dave Roberts.

¹⁶ Exhibit 1, pp. 85-97.

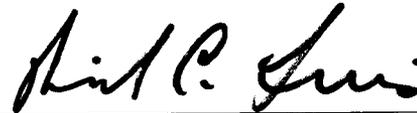
6. While it is appropriate to impose a sanction against the licenses held by the Licensee for violation of the November, 2008 Settlement Agreement, the dramatic improvement in the Licensee's business operations, and improvement in attending to permits, inspections and repairs at all but one of the properties noted in the Notice of and Order for Hearing, constitute mitigation to the extent that is appropriate also to impose a sanction short of Revocation or Nonrenewal of the licenses held by Dave's Heating, Air Conditioning & Electric, David Louis Roberts and the Roberts Appliance Service.

Based on the Conclusions, the Administrative Law Judge makes the following:

RECOMMENDATION

IT IS RECOMMENDED that the Minneapolis City Council issue a **CONDITIONAL LICENSE** to the Licensee, which conditions include the imposition of a \$3,000.00 fine and a requirement that the Licensee remain in compliance with all applicable laws, ordinances and regulations respecting its licenses.

Dated this 4th day of June, 2010.



RICHARD C. LUIS
Administrative Law Judge

Reported: Digitally Recorded

NOTICE

This report is a recommendation, not a final decision. The Minneapolis City Council will make the final decision after a review of the record and may adopt, reject or modify these Findings of Fact, Conclusions, and Recommendation. Pursuant to Minn. Stat. § 13.61, the City Council will not make its final decision until after it has provided each party adversely affected an opportunity to file exceptions and present argument to the Minneapolis City Council. The parties should contact Tina Sanz, Acting City Clerk, Council Information Division, 350 South Fifth Street, Room 304, Minneapolis, MN 55415-1382, telephone 612-673-3136 to find out the process for filing exceptions or presenting argument.

The Minneapolis City Council is requested to serve notice of its final decision on each party and the Administrative Law Judge by first class mail.

MEMORANDUM

The testimony of Ricardo Ceruantes, the City's Deputy Director of Licensing, explained persuasively that his staff has incurred a heavy, extra administrative burden in administering numerous complaints against Dave's, and that it is time to hold the Licensee accountable. For its part, the Licensee does not contest the accuracy of the alleged violations of conditions of the Settlement Agreement specified at page 5 of the Notice and Order for Hearing.

The ALJ recommends a \$3,000.00 penalty, reasoning that the City established that Dave's already owes \$660.00 in penalties and late fees for code violations that arose at the location specified at the hearing, and that the violations at a number of other properties listed in the Notice have not been contested in this record. Dave Roberts's contention that he never saw the specific \$200.00 assessments on which Dave's current arrears of \$660.00 were based does not overcome the fact that the assessments were received by the Licensee, whose agent(s) apparently passed them on to David Roberts. Dave Roberts's vow that he will appeal the citations as soon as he sees them is of no effect – the appeal periods on the properly-served assessments have expired.

Dave's presented documentary evidence of high ratings from manufacturers of equipment it installs, such as Lennox and Bryant, and many testimonials from homeowners in the City of Minneapolis, all of which support the notion that the Licensee's reputation for service quality is a good one.¹⁷ However, that evidence is largely immaterial to whether or not Dave's, in fact, violated its Settlement Agreement. The record shows the Licensee did violate the Agreement, at times to a point of threatening the safety of some of Minneapolis's residents. A financial sanction heavy enough to punish the Licensee accordingly is appropriate.

The ALJ stops short of recommending a loss of licensure, however, based on the uncontroverted evidence that Dave's has "turned around" its operations to the point of showing now an ability to keep up with the administrative responsibilities that attach to licensees who install appliances and like equipment – specifically, to attend to timely obtaining of necessary permits, performance of inspections on time (and documenting that performance), and prompt resolution of complaints or necessary repairs.

R. C. L.

¹⁷ Exhibits 3 and 5.