STATE OF MINNESOTA
IN COURT OF APPEALS
A10-1172

Azzam Sabri,
Relator,

vs.

City of Minneapolis, et al.,
Respondents.

Filed May 3, 2011
Affirmed
Shumaker, Judge

Minneapolis City Council

Jordan S. Kushner, Minneapolis, Minnesota (for relator)

Susan L. Segal, Minneapolis City Attorney, Lee C. Wolf, Assistant City Attorney, Minneapolis, Minnesota (for respondents)

Considered and decided by Worke, Presiding Judge; Kalitowski, Judge; and Shumaker, Judge.

U N P U B L I S H E D O P I N I O N

SHUMAKER, Judge

Relator challenges the decision of the Minneapolis City Council revoking his rental license, contending that the decision is arbitrary and capricious and lacks substantial evidence to support it. Relator also contends that his due-process rights were

violated when he was not notified of a license-revocation hearing he had a right to attend. We affirm.

FACTS

Relator Azzam Sabri owns a house located at 1903 Girard Avenue South, in Minneapolis. The house is legally zoned as a duplex. Sabri lives on the main floor and in part of the basement and is licensed to rent out a unit on the second floor. The basement and the attic of the house are legally uninhabitable units.

In November 2008, housing inspector Richard Warwick investigated a tenant complaint at Sabri's house. Warwick spoke with a tenant living in the house and observed deadbolt locks on the doors of the second-floor units. Warwick spoke with a tenant in one of these units, who confirmed that there were other tenants living in the house and gave their names. Warwick compared these names to the names listed on the house's mailboxes and concluded there were six separate occupied units in the house.

Warwick issued a notice to Sabri to return the house to its proper use as a duplex and, upon later investigation to ensure compliance, observed that the deadbolt locks had been removed and that tenants apparently no longer occupied the basement or attic units.

In July 2009, Warwick responded to another tenant complaint at Sabri's house. The complaining tenant was living in an illegal basement unit, and Warwick observed that the deadbolt locks originally removed from other units had been replaced. Warwick issued another notice to return the house to its proper use as a duplex. The city then notified Sabri that it was beginning license-revocation proceedings. Sabri appealed, and a license-revocation hearing before an administrative hearing officer (AHO) was

scheduled. Upon Sabri's request, the hearing was rescheduled, but Sabri did not appear. Sabri requested a rehearing, which was granted.

Sabri appeared at this hearing with counsel and presented extensive evidence and testimony. The AHO concluded that there was substantial evidence that Sabri had committed two violations of the city's housing code and recommended the revocation of Sabri's rental license. The city mailed a letter to both Sabri and his attorney, at the addresses they had given, informing them of the AHO's recommendation and that a hearing was to be held before the Minneapolis City Council's Regulatory, Energy, and Environment Committee (REEC). Neither Sabri nor his attorney appeared at the hearing. They contend that they did not receive notice of it.

The committee recommended that the city council adopt the AHO's recommendation and revoke Sabri's rental license, and the city council did so. Sabri appealed, contending that this decision was arbitrary and capricious and lacked substantial evidence to support it. He also contends that his due-process rights were violated when he was not given notice of the hearing before the REEC.

D E C I S I O N

Standard of Review

The city's director of inspections has authority to initiate an action to deny, revoke, suspend, or not to renew a rental license. Minneapolis, Minn. Code of Ordinances (MCO) § 244.1940 (2010). An appeal of the director's recommendation for such an action shall be heard by an AHO. MCO § 244.1960(a) (2010). The AHO refers

the decision to the city council, "which shall have the final authority to issue, deny, renew, revoke, or suspend the license." *Id.* (e) (2010).

A quasi-judicial decision made by a municipality is reviewable by a writ of certiorari. *See City of Minneapolis v. Meldahl*, 607 N.W.2d 168, 171 (Minn. App. 2000). "A city council's decision may be modified or reversed if the city . . . made its decision based on unlawful procedure, acted arbitrarily or capriciously, made an error of law, or lacked substantial evidence in view of the entire record submitted." *Montella v. City of Ottertail*, 633 N.W.2d 86, 88 (Minn. App. 2001). "The party seeking reversal has the burden of demonstrating error." *Id.*

Revocation of Rental License

Under MCO § 244.1910 (2010), "[r]ental dwelling units shall not exceed the maximum number of dwelling units permitted by the zoning code," and "[f]ailure to comply with . . . [this rule] shall be adequate grounds for the denial, refusal to renew, revocation, or suspension of a rental dwelling license." Sabri contends that the city's revocation of his license for this reason lacks substantial evidence. "Substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion or more than a scintilla of evidence." *City of Mankato v. Mahoney*, 542 N.W.2d 689, 692 (Minn. App. 1996).

The city issued to Sabri two orders to abate unlawful occupancy of his house. The first was issued after Warwick's first investigation, when he observed tenants living in the legally uninhabitable basement and attic units, deadbolt locks on the doors of the second-floor units, and when a tenant told him there were tenants residing in all of the

locked units. Warwick corroborated this information by comparing the names the tenant gave him to those listed on the house's mailboxes. He later noticed that the deadbolt locks had been removed and the basement and attic units had been vacated. The second order arose from Warwick's second investigation, when he observed that the deadbolt locks on the doors of the second-floor units had been replaced and that the basement unit was again occupied.

Warwick testified at Sabri's hearing that it is city policy to treat the separation of a unit from communal living areas, as indicated by the presence of deadbolt locks, as evidence of a habitable rooming unit. Warwick stated that deadbolt locks are viewed as evidence of "separation of control, and you have two tenants that have the opportunity of being able to use the space, and that's what our zoning code and closing code talk about, it's about control of that space as a tenant." Warwick testified that

> it's quite obvious to me in my business to note whether or not someone is using that space for habitation . . . trash, garbage, delivery of mail, delivery of newspapers, all that show that it is being occupied as a separate unit, and that's what I wrote those orders based on.

Janine Atchison of the city's Housing Inspection Services testified that she reviewed the evidence Warwick provided and determined that Sabri's property satisfied the criteria for over-occupancy. She testified that it is city policy to initiate license-revocation proceedings upon a second violation of the city code.

Sabri did not dispute the validity of the first order, but challenged the second. But when asked at his hearing: "you've previously testified that the second floor was not being occupied on July 2, 2009," Sabri responded, "[n]ot by people who are, you know,

renting, no." But this response does not address the issue of occupancy, which was the reason for the license revocation.

The AHO apparently found the testimony presented by the city more credible than that of Sabri, because he recommended the revocation of Sabri's license, concluding that:

> The Department followed proper procedure in issuing a Notice of Revocation . . . . It appears that [Sabri] simply does what he wants at the property and will only make corrections or comply with the maintenance code or obtain the proper permits after violations have been detected by Department staff.

"The functions of factfinding, resolving conflicts in the testimony, and determining the weight to be given to it and the inferences to be drawn therefrom rest with the administrative board." *Quinn Distrib. Co., Inc. v. Quast Transfer, Inc.*, 288 Minn. 442, 448, 181 N.W.2d 696, 700 (1970).

Absent manifest injustice, inferences drawn from the evidence by an agency must be accepted by a reviewing court, even if "it may appear that contrary inferences would be better supported or that the reviewing court would be inclined to reach a different result were it the trier of fact." *Ellis v. Minneapolis Comm'n on Civil Rights*, 295 N.W.2d 523, 525 (Minn. 1980). There is substantial evidence to support Warwick's conclusions, the AHO's recommendation, and the city council's decision.

Arbitrary and Capricious

Sabri also contends that the city council's decision was arbitrary and capricious. A determination is arbitrary and capricious if "it is so implausible that it could not be explained as a difference in view or the result of the agency's expertise." *White v. Minn.*

Dep't of Natural Res., 567 N.W.2d 724, 730 (Minn. App. 1997). By contrast, a determination is not arbitrary and capricious if "a rational connection between the facts found and the choice made has been articulated." *In re Excess Surplus Status of Blue Cross & Blue Shield of Minn.*, 624 N.W.2d 264, 277 (Minn. 2001). Substantial evidence in the record supports the city council's adoption of the AHO's recommendation to revoke Sabri's license. There was thus "a rational connection between the facts found and the choice made," so the city council's decision was not arbitrary and capricious. "Routine municipal decisions should be set aside only in those rare instances where the decision lacks any rational basis, and a reviewing court must exercise restraint and defer to the city's decision." *City of Mankato v. Mahoney*, 542 N.W.2d 689, 692 (Minn. App. 1996).

Due-Process Violations

Sabri has moved to supplement the record on appeal to show that his due-process rights were violated. We do not review matters outside the record in certiorari appeals. *Amdahl v. County of Fillmore*, 258 N.W.2d 869, 874 (Minn. 1977) (stating that review by certiorari is solely based on the record before the agency). But we may look beyond the record "where the orderly administration of justice commends it." *Crystal Beach Bay Ass'n v. County of Koochiching*, 309 Minn. 52, 56-57, 243 N.W.2d 40, 43 (1976).

Sabri moved to supplement the record with an affidavit from his former attorney, attesting that he received no notice of the REEC hearing. Sabri did not provide his own affidavit, but he contends that he received no notice of the hearing either. The city responded with a copy of the letter mailed to Sabri and his attorney informing them of the

AHO's decision and the date of the REEC hearing. The city also provided an affidavit of the city attorney swearing that the letter was indeed mailed to Sabri and his attorney. The record shows that this letter was mailed to Sabri and his attorney at their addresses on file in accordance with MCO § 244.1960(d) (2010) (stating that hearing officer must mail a copy of decision to license holder). We hold that notice of the REEC hearing was sent to Sabri and he therefore had an opportunity to appear if he so desired. There was no due-process violation.

Affirmed.