STATE OF MINNESOTA
IN COURT OF APPEALS
A11-892

In the Matter of the Rental Dwelling License
held by Spiros Zorbalas, Mary Brandt,
SZ112, Inc., S1322, Inc., & R110, Inc. for the
Premises at 905 Franklin Avenue,
3725 Cedar Avenue and
1830 Stevens Avenue,
Minneapolis, Minnesota

Filed March 5, 2012
Affirmed
Cleary, Judge

Minneapolis Department of Regulatory Services
RFS Nos. 08-0660804 & 09-0690370

Nicholas J. Eugster, Malcolm P. Terry, Messerli & Kramer, P.A., Minneapolis, Minnesota (for relators)

Lee C. Wolf, Assistant Minneapolis City Attorney, Minneapolis, Minnesota (for respondent)

Considered and decided by Peterson, Presiding Judge; Larkin, Judge; and Cleary, Judge.

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

CLEARY, Judge

Relators challenge respondent City of Minneapolis's revocation of their rental dwelling licenses for apartment buildings located at 905 Franklin Avenue, 3725 Cedar Avenue, and 1830 Stevens Avenue. Because (1) substantial evidence supports the city's

findings of good cause for the revocations, (2) the good-cause standard does not violate relators' due-process rights, and (3) any error by the administrative-hearing officer in initially admitting testimony regarding a stale plea agreement was harmless, we affirm.

FACTS

Each of the properties at issue in this appeal has a separate corporate owner,[1] but relator Spiros Zorbalas is the corporate representative for each of those corporations and for a fourth corporation that manages the properties, and all of the entities are represented by the same legal counsel. The proceedings in this case began with the city's issuance of notices of revocation for the rental-dwelling licenses for each of the properties. The relator-owners appealed the revocations, and an administrative hearing was held over five days. During the hearing, the city offered evidence regarding multiple ordinance violations at each property.

905 Franklin Avenue

The property at 905 Franklin Avenue is a 47-unit building with approximately 107 tenants that has been issued numerous notices of building- and/or fire-code violations in recent years. The city submitted an exhibit containing approximately 30 violation letters issued in relation to the property between June 19, 2006, and January 12, 2010. Many of the letters cite multiple violations.

[1] 905 Franklin is owned by relator SZ112, Inc., 3725 Cedar by relator S1322, Inc., and 1830 Stevens by relator R110, Inc.

In 2008, the city observed and issued administrative citations for the unpermitted and improper installation of boilers and water heaters at 905 Franklin Avenue.[2] The mechanical inspector who issued the citation for the illegally installed boilers observed conditions, including exposed asbestos, that rendered operation of the boilers unsafe and "red tagged" them. About a month later, permits were issued for installation of the boiler, but it took several more months before the asbestos was removed and the contractor was able to correctly install the boilers. The illegally installed water heaters were discovered by the same mechanical inspector when he returned to oversee the startup of the new boilers.

Also in 2008, the city issued multiple letters regarding the fire inspector's concerns about the extent of cracks in exterior bricks. The letters ordered the immediate removal of bricks posing an immediate hazard and the submission of a report from a qualified person evaluating the condition and providing a course of action. The letters reflect four inspections in relation to this issue and that the orders remained outstanding for at least four months.

Other notices issued in relation to 905 Franklin Avenue include orders to clear steps of ice and snow; to remove refuse and debris from the property; to provide required hand and guardrails; to provide heat and hot water; to repair or provide closing fire doors;

[2] Relators objected to the introduction of evidence regarding the unpermitted-work violations at 905 Franklin Avenue because the administrative citations arising out of those violations had been settled. But revocation proceedings are independent from administrative citation, and we conclude that the city properly considered the unpermitted-work violations as part of the history of a property's ordinance violations in determining whether to revoke the rental license for 905 Franklin Avenue.

to repair deadbolt locks on individual unit doors; to mitigate moisture and sanitation problems; and to address various plumbing and electrical issues in individual units.

3725 Cedar Avenue

The property at 3725 Cedar Avenue is a 41-unit building with approximately 126 tenants that, like 905 Franklin Avenue, has been issued numerous notices of fire- and/or building-code violations in recent years. The city submitted an exhibit containing approximately 33 letters issued in relation to the property between July 22, 2004, and February 10, 2010. Almost all of the letters recite multiple violations. Joe Larson, fire coordinator for the city, became familiar with the property because of "[s]everal complaints throughout the years from tenants." The city's fire marshal, Bryan Tyner, similarly testified that he had become familiar with the property because of complaint calls to the fire department. Tyner summarized the issues at 3725 Cedar Avenue:

> [I]n reviewing the records, one of the main issues is the sheer number of complaints that we get on this property and the number of violations that we've written. Looking over the records since . . . 2004, I think I count about 79 complaints which is an inordinate number for one building this size, and somewhere upwards of 200 violations I think. Aside from that would be there were a number of no or low heat complaints that we consider as serious issue[s] in the wintertime that we end up responding to, or during heating season I should say.

Tyner further testified that the property had "a lot of nuisance issues with garbage overflowing and things like that" and that the department had to "write extermination orders on this property a number of times, which also goes to the health and safety of residents." He also cited as a concern "the times that it often took in order to gain

compliance with some of the orders." Tyner opined that the management of 3725 Cedar Avenue was "substandard based upon the fact that again, we are receiving many complaints on the property and finding many violations when we go out there, and it seems to be a constant happenstance."

In February 2009, Larson received a call from a resident of 3725 Cedar who suspected that unpermitted work was being performed in a unit that had been damaged by a fire in December 2008. Larson visited the unit and discovered that drywall had been installed, mudded, and sanded, that electrical outlets were exposed, and that a temporary electrical supply had been installed. Because this was work that would require a permit, Larson took pictures of the unit and forwarded them to Vicki Carey, one of the city's unpermitted-work inspectors. Carey reviewed the photos, checked the computer system, and determined that no permits had been pulled, and, on February 18, 2009, issued a Notice of Ordinance/Code Violations for the unpermitted drywall and electrical work, ordering that permits be obtained by March 4, 2009. The city issued a permit for the drywall work at 3725 Cedar on March 23, 2009, and Carey abated the order.

Other notices issued in relation to 3725 Cedar include orders to exterminate for roaches and rodents; to locate the sources of and repair water damage; to remove refuse and debris from the property; to provide self-closing fire doors; to provide adequate heat to the building; to service fire extinguishers; to address the odor of urine on the second floor; to paint various areas of the building; to address various plumbing issues; and to repair or replace mailboxes, loose hand and guardrails, exit signs, ceilings, window and sliding-door screens, exterior lighting, locks, drain spouts, a gas meter, emergency

lighting, and broken front-entrance glass. Many of the violations were noticed several times; in particular, the city ordered extermination in six separate letters and also repeatedly ordered the servicing and/or repair of fire detectors, fire doors, emergency-exit signs, and emergency lighting.

1830 Stevens Avenue

The property at 1830 Stevens Avenue is a 40-unit apartment building with more than 100 tenants that has been issued notices of numerous ordinance violations in recent years, although substantially fewer than 905 Franklin Avenue and 3725 Cedar Avenue. The city submitted an exhibit containing seven letters that had been issued in relation to 1830 Stevens Avenue between December 29, 2005, and January 29, 2009. The December 29, 2005 notice cited ten code violations. In addition, the city submitted two exhibits regarding notice and unpermitted-work violations at that address in September and November 2009. Larson testified that he was familiar with this property because of several complaint investigations.

In September 2009, Larson received a complaint about a deteriorating retaining wall at the property. Larson visited the property, took photos, and issued a September 11, 2009, Notice of Violation ordering the repair or replacement of the retaining wall. In November 2009, Larson returned to 1830 Stevens Avenue to do a follow-up inspection. At that time, he observed that the retaining wall had been "totally dismantled" and that workers were "replacing and rebuilding a brand new one at the site." Larson testified that this was "beyond the scope of work that I had issued them to do," and that "once you

start replacing a greater than 4-foot retaining wall you need to have a permit." Larson referred the matter to the unpermitted-work inspector.

After receiving Larson's referral regarding unpermitted work at 1830 Stevens Avenue, Carey went to the property, took photographs, determined that a permit was necessary and had not been obtained, and issued a Notice of Ordinance/Code Violations dated November 17, 2009, ordering that a permit be obtained by November 24, 2009. A permit was issued on November 30, 2009, and Carey abated the order.

Other notices issued in relation to 1830 Stevens Avenue include orders to exterminate; to provide adequate heat, gas, and self-closing fire doors; to service fire extinguishers and replace a missing extinguisher; to repair or replace exit signs, emergency lighting, and smoke detectors; and to replace a missing plumbing drain pipe.

Procedural History

Following the hearing, the administrative-hearing officer (AHO) issued detailed findings of fact, conclusions of law and a recommendation that the city council revoke the rental dwelling licenses for the three properties. The city council adopted the AHO's recommendation on April 15, 2011, and its decision was published on April 23, 2011.

This certiorari appeal follows.

D E C I S I O N

"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.* "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).

The Minneapolis Code of Ordinances (MCO) sets certain standards and conditions for the licensing of rental dwellings in Minneapolis and provides that the "[f]ailure to comply with any of these standards and conditions shall be adequate grounds for the denial, refusal to renew, revocation, or suspension of a rental dwelling license or provisional license." Minneapolis, Minn. Code of Ordinances § 244.1910 (2011).

In this case, the city provided two bases for its decision to revoke the relators' rental licenses: second instances of unpermitted work in violation of MCO § 244.1910(17), and good cause under MCO § 244.1910(19). We conclude that the evidence was sufficient to support the findings of good cause that resulted in the revocations. Because we affirm on that basis, we do not reach the issue of whether the city properly pierced the corporate veils between the relator-owners and Zorbalas to find that the permit violations at each of the properties were second instances of unpermitted work.

Relators challenge the validity of the revocations for good cause under MCO § 244.1910(19) on two grounds, arguing that (1) there was not substantial evidence to support the AHO's findings of good cause for the revocations; and that (2) the good-cause standard of MCO § 244.1910(19) is so vague as to be constitutionally infirm.

Relators also argue that the AHO committed prejudicial error by hearing testimony regarding a 1990 plea agreement involving Zorbalas. We address each argument in turn.

I. There is substantial evidence to support the city's findings of good cause.

Substantial evidence means "(1) such relevant evidence as a reasonable mind might accept as adequate to support a conclusion; (2) more than a scintilla of evidence; (3) more than some evidence; (4) more than any evidence; or (5) the evidence considered in its entirety." *Minn. Ctr. for Envtl. Advocacy v. Minn. Pollution Control Agency*, 644 N.W.2d 457, 466 (Minn. 2002).

MCO § 244.1910(19) provides that "[t]he provisions of this section are not exclusive. Adverse license action may be based upon good cause as authorized by Chapter 4, Section 16 of the Charter. This section shall not preclude the enforcement of any other provisions of this Code or state and federal laws and regulations."[3]

The city's finding that there is good cause to revoke the rental licenses is supported by the evidence of multiple ordinance violations at each property in recent years, including the evidence of unpermitted work at all three properties. The violations evidenced range from unit-specific repairs, for which residents felt compelled to seek recourse through the city, to building-wide safety issues observed by inspectors during visits. The violations were serious and chronic. And, although the nature and extent of the violations varied among the properties, we conclude that there was substantial evidence to support revocation of the licenses for each of the properties.

[3] Chapter 4, section 16 ("Licenses May Be Revoked") of the charter states: "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 . . . ."

Relators argue that the evidence does not support the findings of unpermitted work at any of the properties. We disagree and address each property in turn.

There is substantial evidence, in particular testimony by three city inspectors and the city's building official, to support the findings of multiple violations at 905 Franklin Avenue. Relators argue that there is not substantial evidence to support the unpermitted-work violations at 905 Franklin Avenue based on Zorbalas's testimony that he believed a contractor would obtain a permit for the boiler installation and that the water heaters were not newly installed. But Zorbalas's belief that the contractor would obtain a permit does not excuse the unpermitted-work violation, and the AHO credited testimony by city inspectors that the water heaters were newly installed over Zorbalas's contrary testimony.

The finding of an unpermitted-work violation at 3725 Cedar is supported by the testimony of fire inspector Larson and unpermitted-work inspector Carey. Zorbalas testified that the work completed after the fire was minor and that Larson gave a property manager permission to proceed with work in the unit, but the AHO rejected this testimony as not credible and credited Larson's testimony to the contrary.

The finding of an unpermitted-work violation at 1830 Stevens Avenue is also supported by the testimony of Larson and Carey. Relators assert that the work on the retaining wall was done at Larson's instruction, and that the city should be equitably estopped from seeking revocation based on this work. But we conclude that Larson's failure to specify that a permit would be required in the event that the retaining wall was to be replaced does not rise to the level of wrongful conduct necessary to support the assertion of estoppel against the city. *See City of North Oaks v. Sarpal*, 797 N.W.2d 18,

25–26 (Minn. 2011) (explaining that "a simple mistake by a government official is not wrongful").

Relators more generally challenge the good-cause basis for the revocations by arguing that the letters issued by the city do not prove that violations actually occurred. With the exception of a few advisory letters based on tenant complaints, however, the letters were prepared by city inspectors based on their personal observation of the properties. There is no evidence that relators challenged any of the notices. Accordingly, we reject relators' assertion that the letters are not substantial evidence of violations.

Relators also assert that the AHO erred by finding good cause because there was evidence that the number of violations at each property had diminished. The AHO addressed and rejected this argument, reasoning that

> [a]lthough the number of citations issued went down recently, the pattern shown by Mr. Zorbalas and UPI Property Management, Inc., is not at a level, which would provide quality housing for tenants and reduce the need for constant review by the Department. This and the unpermitted work that occurred at Mr. Zorbalas' properties demonstrates that the owner simply does what he wants at the properties and will only make corrections or obtain proper permits after violations are discovered by Department staff.

The AHO's finding in this regard is supported by the substantial evidence.

From 2005 until the license revocation proceedings began in June 2010, all three properties were noticed for numerous violations of the housing-maintenance code. The violations and the unpermitted work threatened the health, welfare, and safety of the tenants of the buildings. While some of the violations were more egregious than others, and while the number of violations varied between properties, all three properties were

the subject of unpermitted work and repeated disregard for the housing-maintenance code.

In sum, based on the totality of the record, we conclude that substantial evidence supports the city's determination to revoke the rental licenses for the apartment buildings at 905 Franklin Avenue, 3725 Cedar Avenue, and 1830 Stevens Avenue.

II. The "good cause" standard does not violate due-process rights.

This court reviews de novo the constitutionality of an ordinance. *Hard Times Cafe, Inc. v. City of Minneapolis*, 625 N.W.2d 165, 171 (Minn. App. 2001). Vague ordinances are prohibited under the Due Process Clause of the Fourteenth Amendment. *Id.* To determine whether an ordinance is unconstitutionally vague, caselaw uses the same analysis it uses for determining whether a statute is unconstitutionally vague. *See, e.g.*, *City of St. Paul v. Kekedakis*, 293 Minn. 334, 336, 199 N.W.2d 151, 153 (1972); *City of St. Paul v. Franklin*, 286 Minn. 194, 196, 175 N.W.2d 16, 17 (1970); *Hard Times Cafe*, 625 N.W.2d at 171–72. Under that standard, "A[n ordinance] is void due to vagueness if it 'defines an act in a manner that encourages arbitrary and discriminatory enforcement,' or the law is so indefinite that people 'must guess at its meaning.'" *Hard Times Cafe*, 625 N.W.2d at 171 (citing *Humenansky v. Minn. Bd. of Med. Exam'rs*, 525 N.W.2d 559, 564 (Minn. App. 1994), *review denied* (Minn. Feb. 14, 1995)). "The use of general language in a[n ordinance] does not render it vague, and an entity challenging the constitutionality of a[n ordinance] on vagueness grounds must show that the ordinance lacks specificity as to the entity's own behavior rather than some hypothetical situation." *In re On-Sale Liquor License, Class B*, 763 N.W.2d 359, 366 (Minn. App. 2009); *see also*

Hard Times Cafe, 625 N.W.2d at 171 (holding that the burden is on the party challenging an ordinance to show that it is unconstitutional).

This court has twice addressed the "good cause" provision in the city's charter. In *On-Sale Liquor License*, this court held that the charter provision, as incorporated into MCO § 259.250(9) (2008), was unconstitutionally vague as applied to impose conditions on the liquor license of a night club that had not violated any laws based on the conduct of its customers after they left the premises. 763 N.W.2d at 367–68. The court explained that "the 'good cause' standard did not put Gabby's in a position to know that it would be subject to adverse action due to the off-premises actions of its patrons and 'neighborhood livability' issues." *Id.* at 367.

In *Hard Times Cafe*, we held that the provision was not unconstitutionally vague as applied to revoke the license of a business at which multiple drug transactions occurred and where an employee and several customers were arrested for selling drugs. 625 N.W.2d at 172. The court explained: "We cannot say that ordinary people would have to guess that such activity was of the type that constituted good cause for possible adverse action with regard to a license." *Id.* at 172. The court also relied on additional language in the charter providing that licenses could be revoked upon the conviction of a license holder. *Id.* at 172.

Here, we conclude that "good cause," as used in MCO § 244.1910(19) and as applied in this case, is not void for vagueness. Given the number of notices of building and/or fire-code violations issued on all three properties and the seriousness of a number of those violations, and given the language in the Minneapolis City Charter, relators

received adequate notice that their licenses could be revoked. In particular, MCO § 244.1910 provides that "[f]ailure to comply with any of these standards and conditions shall be adequate grounds for the denial, refusal to renew, revocation, or suspension of a rental dwelling license or provisional license." Accordingly, we reject relators' assertion that the "good cause" provision of the charter is constitutionally infirm.

III. Any error in initially admitting evidence regarding the stale plea agreement was harmless.

Relators finally challenge the AHO's conditional admission of testimony related to a 1990 plea agreement by Zorbalas. Following the hearing, the city attorney withdrew his request to admit this evidence and directed that the transcript be redacted to omit the testimony. The AHO does not appear to have considered the testimony in reaching its findings, conclusions and recommendation. Relators argue that the AHO was nevertheless tainted by the testimony and that relators are accordingly entitled to a new hearing. We reject this argument for two reasons. First, because the transcript provided to this court is the redacted version, it is difficult to determine what prejudice might have resulted. And it is relators' burden to provide this court with an adequate record on appeal. *Mesenbourg v. Mesenbourg*, 538 N.W.2d 489, 494 (Minn. App. 1995). Second, the evidence was ultimately withdrawn and not considered by the AHO, and thus any error in its conditional admission should be considered harmless error, which this court is required to disregard. Minn. R. Civ. P. 61; *see Nw. Nat'l Life Ins. Co. v. County of Hennepin*, 572 N.W.2d 51, 55 (Minn. 1997) (applying Minn. R. Civ. P. 61 in a certiorari appeal from a tax court decision).

Affirmed.