

1985

# Midvale Sity Corporation v. David A. Rivas Carol's Lounge : Unknown

Utah Supreme Court

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Marc Nick Mascaro; Attorney for Respondent.

Mark A. Besendorfer; Attorney for Appellant.

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## Recommended Citation

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**FILED**  
DEC 26 1985

Clerk, Supreme Court

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DEPUTY

BEFORE THE CITY COUNCIL IN AND FOR MIDVALE CITY  
SALT LAKE COUNTY, STATE OF UTAH

MIDVALE CITY CORPORATION,

Plaintiff,

VS.

DAVID A. RIVAS,  
d/b/a CAROL'S LOUNGE,

Defendant.

ORDER TO SHOW CAUSE

Civil No.

Upon reading the Petition and Notice of Charges hereto attached in the above-entitled matter and for other good and sufficient information, and it appearing to the Midvale City Council that this is a proper case for considering the suspension and/or revocation of the business, regulatory and beer licenses pursuant to Section 9-120(A), CODE OF REVISED ORDINANCES OF MIDVALE CITY and such other inherent powers as are vested in the City Council of Midvale City,

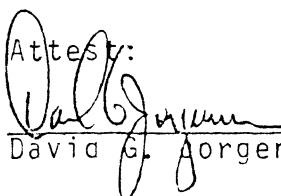
IT IS HEREBY ORDERED that the Defendant in the above-entitled action be, and appear before the City Council in and for Midvale City, Salt Lake County, State of Utah, at the Midvale City office at 80 East Center Street, Midvale, Utah on the 19th day of June, 1984, at the hour of 7:00 P. M., to then and there show cause, if any he has, why the licenses heretofore issued by Midvale City Corporation for the premises commonly known

as CAROL'S LOUNGE and its owner, DAVID RIVAS, should not be suspended or revoked.

The Defendant shall have the right to appear, to be represented by counsel, to hear the evidence against him, to cross-examine witnesses and to present evidence as to why the license should not be revoked or suspended.

DATED this 1 day of June, 1984.

  
TRENT G. JEPSON, Mayor

Attest:  
  
David G. Jorgensen, City Recorder

Serve Defendant at:  
8420 South State, Midvale, Utah (Bar)  
9110 South 1300 East)  
1279 East Quail Creek Road (Home)

2. That Midvale City has heretofore filed a Petition and Notice of Charges dated April 6, 1982, a copy of which is attached hereto and by reference incorporated herein, wherein members of the Midvale City Police Department found two (2) minors in said bar, and as a result thereof, said Defendant, DAVID RIVAS, was cited and plead guilty for allowing minors in a licensed premise in violation of Section 9-435, CODE OF REVISED ORDINANCES OF MIDVALE CITY.

3. That as a result of said Petition and Notice of Charges, the Midvale City Council entered its Findings of Fact and Order suspending the Class "C" Beer license for CAROL'S LOUNGE for 30 days on April 20, 1982, a copy of which Order is attached hereto and by reference incorporated herein.

4. That on or about December 29, 1983, at 11:30 P.M., members of the Midvale City Police Department made a bar check on CAROL'S LOUNGE.

5. That as a result of the investigation by members of the Midvale City Police Department, a minor was found in the bar, namely: LAURIE J. DUNTON. Said minor was identified by the Midvale City Police officers by a picture driver's license, showing a date of birth of July 19, 1963. The employee and bartender on duty on that date, JUNNE H. CHARON, was cited for allowing minors in a licensed premise. Both suspects were cited and released.

6. The said minor, LAURIE J. DUNTON, under Case No. 97-24275, plead guilty to the charge of "minor in tavern" on February 13, 1984, and was sentenced at that time.

7. That on or about January 3, 1984, at 11:40 P.M., members of the Midvale City Police Department made a bar check on CAROL'S LOUNGE.

8. That as a result of the investigation by members of the Midvale City Police Department, two (2) minors were found in the bar, namely: SCOTT A. BARKER, who was identified by

a picture Utah Driver's license on his person with a date of birth, March 2, 1965, and GEORGE W. WOLTKAMP, also identified by a picture Utah Driver's license on his person with a date of birth of December 26, 1963. The employee and bartender on duty on that date, JUNNE H. CHARON, was cited for allowing minors in a licensed premise. All three suspects were cited and released.

9. SCOTT A. BARKER plead guilty to charge of "minor in tavern" under Case No. 98-24814 on March 5, 1984 and GEORGE W. WOLTKAMP plead guilty to the charge of "minor in tavern" on Case No. 98-24956 dated March 5, 1984.

10. That on April 26, 1984, the employee of the Defendant appeared at a Pre-Trial Conference on two (2) counts of "Permitting minors on premises" in violation of Section 9-435, CODE OF REVISED ORDINANCES OF MIDVALE CITY and pursuant to a plea bargain agreement, plead guilty to the charge dated January 3, 1984, with the charge of December 29, 1983 being held for six (6) month's probation, with attendant fines and probation.

11. That the above violations by the employee/bartender of Defendant contained in the above paragraphs constitutes a separate violation on each count of Section 9-120(A) of the CODE OF REVISED ORDINANCES OF MIDVALE CITY by DAVID RIVAS, d/b/a CAROL'S LOUNGE.

WHEREFORE, it is respectfully requested that the City Council in and for Midvale City, issue an Order to Show Cause ordering the Defendant, DAVID RIVAS, d/b/a CAROL'S LOUNGE, to

appear before the said City Council, then and there to show cause, if any he may have, why the business license and Class C beer license issued for the CAROL'S LOUNGE at 8420 South State Street, and the above-named Defendant, DAVID RIVAS, should not be suspended or revoked.

DATED this 14 day of <sup>May</sup>~~June~~, 1984.

  
MARC NICK MASCARO,  
Midvale City Attorney



MIDVALE CITY CORPORATION,

FINDINGS OF FACT AND ORDER

VS.

Defendant.

## FINDINGS OF FACT

-7-

2. That Defendant, David Rivas, d/b/a CAROL'S LOUNGE, accepted service of said Petition and Notice of Charges and Order to Show Cause on June 14, 1984, which documents are on file in this matter setting a hearing date for June 19, 1984 at 7:00 P.M.

3. That thereafter, on June 19, 1984 at the hour of 7:00 P.M., Defendant, through his counsel, Mark Besendorfer, made motion to the City Council for continuance of the hearing for one (1) week, which continuance was granted and the hearing reset for June 26, 1984 at 6:00 P.M.

4. That David A. Rivas, d/b/a CAROL'S LOUNGE, is the owner of the following licenses used in connection with the operation of CAROL'S LOUNGE located at approximately 8420 South State Street, Midvale, Utah.

- a) A business license,
- b) A Class "C" beer license.

5. That Midvale City has heretofore filed a Petition and Notice of Charges dated April 6, 1982, wherein members of the Midvale City Police Department found two (2) minors in said CAROL'S LOUNGE, and as a result thereof, said Defendant, David Rivas, was cited and plead guilty to allowing minors in a licensed premise in violation of Section 9-435, CODE OF REVISED ORDINANCES OF MIDVALE CITY.

6. That as a result of said Petition and Notice of Charges, the Midvale City Council entered its Findings of Fact and Order suspending the Class "C" Beer license of CAROL'S LOUNGE

for 30 days on April 20, 1982.

COUNT I

7. That on or about December 29, 1983, at 11:30 P.M., members of the Midvale City Police Department made a bar check on CAROL'S LOUNGE.

8. That as a result of the investigation by the members of the Midvale City Police Department, a minor was found in the bar, namely: LAURIE J. DUNTON. Said minor was identified by Midvale City Police officers by a picture driver's license, showing a date of birth of July 19, 1963. Said driver's license was found on the person of LAURIE J. DUNTON at the time of the arrest.

9. That said minor, LAURIE J. DUNTON, under Case No. 97-24275, plead guilty to the charge of "minor prohibited where beer is sold" on February 13, 1984 and was sentenced at said time, as shown by a certified copy of docket entries which was admitted as evidence.

10. That at all times pertinent hereto, JUNNE H. CHARON was an employee and barmaid of the Defendant, David Rivas, d/b/a CAROL'S LOUNGE.

11. That with respect to the above violation on December 29, 1983, said JUNNE H. CHARON, required no identification from the minor, LAURIE J. DUNTON.

12. That as a result thereof, said JUNNE H. CHARON,

was cited under Citation No. 6742, for "serving minors in a tavern".

13. That the above violation by the employee/barmaid of Defendant contained in Paragraphs 7 through 12 above, constitutes a violation of Section 9-120(A), CODE OF REVISED ORDINANCES OF MIDVALE CITY by David A. Rivas, d/b/a CAROL'S LOUNGE and is grounds for revocation of Defendant's Class "C" Beer License.

COUNT II

14. That on or about January 3, 1984 at 11:40 P.M., members of Midvale City Police Department, while investigating a possible shooting, found two (2) minors in Defendant's bar, namely: SCOTT BARKER, who was identified by a picture Utah driver's license on his person with a date of birth of March 2, 1965, and GEORGE W. WOLTKAMP, also identified by a picture Utah driver's license on his person with a date of birth of December 26, 1963.

15. That both parties were observed drinking beer in the Defendant's premises.

16. That SCOTT A. BARKER plead guilty to the charge of "minor in tavern" under Case No. 98-24814 on March 5, 1984 as shown by the certified copy of docket entries which was admitted as evidence.

17. That at all times pertinent hereto, JUNNE H.

CHARON was an employee and barmaid of Defendant and requested no identification from said minor, SCOTT A. BARKER. That JUNNE H. CHARON was cited for "allowing minor in licensed premises".

18. That the above violation by the employee/barmaid of Defendant contained in the above paragraphs 14-17, constitutes a violation of Section 9-120(A), CODE OF REVISED ORDINANCES OF MIDVALE CITY by David Rivas, d/b/a CAROL'S LOUNGE, and is grounds for revocation of the Class "C" Beer License of Defendant.

COUNT III

19. That GEORGE W. WOLTKAMP plead guilty to the charge of "minor in tavern" under Case No. 98-24956 on March 5, 1984 as shown by the certified copy of docket entries which was admitted as evidence.

20. That the employee/barmaid on duty on the date of January 3, 1984, JUNNE H. CHARON, was cited for "allowing minor on licensed premises".

21. That said JUNNE H. CHARON, required no identification from the said minor, GEORGE W. WOLTKAMP.

22. That the above violation by the employee/barmaid of Defendant contained in the above paragraphs 14-21, constitutes a violation of Section 9-120(A) of the CODE OF REVISED ORDINANCES OF MIDVALE CITY by David Rivas, d/b/a CAROL'S LOUNGE, and is

grounds for revocation of the Class "C" Beer License of Defendant.

23. That on April 26, 1984, JUNNE H. CHARON, the employee of Defendant, under Case No. 96-23570, appeared at a Pre-Trial Conference on Count One of "serving minors in tavern" in violation of Section 9-432, CODE OF REVISED ORDINANCES OF MIDVALE CITY, for the violation dated December 29, 1983, and Count Two of "allowing minors in tavern" in violation of Section 9-435, CODE OF REVISED ORDINANCES OF MIDVALE CITY, for the violation of January 3, 1984; and pursuant to a plea bargain agreement, plead guilty to the charge dated January 3, 1984 for allowing minors in a tavern in violation of Section 9-435, CODE OF REVISED ORDINANCES OF MIDVALE CITY, with a charge of December 29, 1983 for "serving minors in tavern" in violation of Section 9-432, CODE OF REVISED ORDINANCES OF MIDVALE CITY, being held for six (6) month's probation, with attendant fines and probation.

23. That the above violations dated December 29, 1983, and January 3, 1984, by the employee and bartender of Defendant contained in the above paragraphs, constitute a separate violation on each count of Section 9-120(A)(1) of the CODE OF REVISED ORDINANCES OF MIDVALE CITY by David Rivas, d/b/a CAROL'S LOUNGE, and is grounds for revocation of the Defendant's Class "C" Beer License.

24. That the above violations by the employee/bartender

of Defendant contained in the above paragraphs, constitute a separate violation on each count, the violations dated December 29, 1983 and January 3, 1984, of Section 9-120(A)(3) of the CODE OF REVISED ORDINANCES OF MIDVALE CITY by David Rivas, d/b/a CAROL'S LOUNGE, in that said conduct is contrary to the public health, peace and morals, and is grounds for revocation of the Defendant's Class "C" Beer License.

O R D E R

The City Council having made the foregoing Findings of Fact,

IT IS NOW HEREBY ORDERED that the Class "C" Beer License of David Rivas, d/b/a CAROL'S LOUNGE, be, and the same is hereby revoked pursuant to Section 9-120(A) of the CODE OF REVISED ORDINANCES OF MIDVALE CITY, and that DAVID A. RIVAS, d/b/a CAROL'S LOUNGE, shall have 24 hours from June 26, 1984 at 8:00 P.M., to cease the dispensing of any alcoholic beverage, beer or liquor.

DATED this 11 day of July, 1984.

CITY COUNCIL OF MIDVALE CITY

By Trent G. Jeppson  
TRENT G. JEPPESON, Mayor

Attest:

David G. Jorgensen  
David G. Jorgensen, City Recorder

CERTIFICATE OF SERVICE

I hereby certify that I served a copy of the foregoing Findings of Fact and Order upon Mark Besendorfer, attorney for Defendant, David A. Rivas, d/b/a CAROL'S LOUNGE, on this 11th day of July, 1984.

  
MARC NICK MASCARO,  
Midvale City Attorney





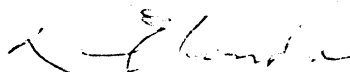
and capricious in finding against the Petitioner. The record is devoid of any evidence to support such a claim. The only argument put forth by the Petitioner is that the Findings fail to set forth any evidence put forth by Petitioner at the hearing. The Utah Supreme Court has repeatedly held that Findings must cover all material issues and this court finds that the Findings are sufficient in this case. The Findings show that the Petitioner has violated the code and this is sufficient to revoke the license.

Petitioner argued that the punishment (permanent revocation of the license) is too severe under the circumstances. A review of the transcript fails to disclose any evidence as to loss that would be sustained by Petitioner upon revocation. This court can only conclude that the Commission found it to be a reasonable decision.

This court finds that the City had the authority to act within the statutory authority and finds that the ordinances do not violate the constitution or statutes.

Respondent to prepare the Findings, Conclusions and Decree to support this Memorandum.

Dated this 14 day of May, 1985.



Dean E. Conder,

District Judge.

Copy to be mailed to each counsel.

MARC NICK MASCARO  
Attorney for Respondent  
80 East Center Street  
Midvale, Utah 84047  
Telephone: (801) 566-0661

---

IN THE THIRD JUDICIAL DISTRICT COURT IN AND FOR  
SALT LAKE COUNTY, STATE OF UTAH

---

DAVID A. RIVAS, d/b/a	)	
CAROL'S LOUNGE,	)	
	)	
Petitioner,	)	<u>O R D E R</u>
	)	<u>AND JUDGMENT</u>
vs.	)	
	)	
MIDVALE CITY CORPORATION,	)	Civil No. C-84-4100
	)	Judge Dean E. Conder
Respondent.	)	

-----

The above-entitled matter came on for judicial review on the 7th day of May, 1985, at the hour of 10:00 A.M., pursuant to Rule 65B(b)2, Utah Rules of Civil Procedure. The Petitioner was present in Court and represented by his attorney, Mark A. Besendorfer. The Respondent was represented by Marc Nick Mascaro. The Court having reviewed the transcript of the City Council's hearing, the Record on Appeal, the Findings of Fact and Conclusion of Law, and having heard oral arguments from counsel,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED:


That the action of the Respondent, Midvale City Corporation, was within the authority of that body to so act and the evidence given at the hearing was sufficient to support said action revoking Petitioner's Class "C" beer license.

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Further, that said action was based upon competent evidence and was not arbitrary nor capricious. Further, that Section 9-120A, CODE OF REVISED ORDINANCES OF MIDVALE CITY, is constitutional and does not violate the Constitution or statutes of this state, nor the United States of America. The action of the Respondent, Midvale City Corporation, is therefore, affirmed.

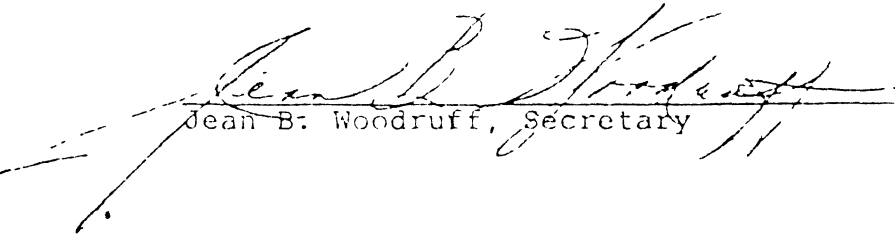
DATED this 28 day of May, 1985.

BY THE COURT:

  
\_\_\_\_\_  
DEAN E. CONDER,  
District Judge

MAILING CERTIFICATE

I hereby certify that I mailed a true and correct copy of the foregoing to MARK A. BESENDORFER, Attorney for Petitioner, 7355 South 900 East, Midvale, Utah 84047, postage prepaid, on this 15th day of May, 1985.

  
\_\_\_\_\_  
Jean B. Woodruff, Secretary

MARC NICK MASCARO  
Attorney for Respondent  
80 East Center Street  
Midvale, Utah 84047  
Telephone: (801) 566-0661

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IN THE THIRD JUDICIAL DISTRICT COURT IN AND FOR  
SALT LAKE COUNTY, STATE OF UTAH

---

DAVID A. RIVAS, d/b/a	)	
CAROL'S LOUNGE,	)	
	)	
Petitioner,	)	FINDINGS OF FACT,
	)	CONCLUSIONS OF LAW
vs.	)	
	)	
MIDVALE CITY CORPORATION,	)	Civil No. C-84-4100
	)	Judge Dean E. Conder
Respondent.	)	
	)	

---

The above-entitled matter came on for judicial review on the 7th day of May, 1985, at the hour of 10:00 A.M., pursuant to Rule 65B(b)2, Utah Rules of Civil Procedure. The Petitioner was present in Court and represented by his attorney, Mark A. Besendorfer. The Respondent was represented by Marc Nick Mascaro. The Court having reviewed the transcript, record and arguments of the parties and being fully advised in the premises now enters its:

FINDINGS OF FACT

1. That David A. Rivas, d/b/a Carol's Lounge, Petitioner herein, is the owner of a Class "C" beer license and business license issued in connection with the operation of Carol's Lounge located at approximately 8420 South State

Street, Midvale, Utah.

2. That Respondent, Midvale City, issued an Order to Show Cause against the Petitioner, David A. Rivas, d/b/a Carol's Lounge, dated June 1, 1984, pursuant to a Petition and Notice of Charges dated May 14, 1984.

3. That a hearing was held pursuant to said Petition and Notice of Charges and Order to Show Cause on June 26, 1984.

4. That Petitioner was present, together with his attorney, Mark Besendorfer, at said hearing.

5. That a hearing was held pursuant to said Petition and Notice of Charges, evidence was introduced by Petitioner and Respondent, Petitioner was allowed an opportunity to examine Respondent's witnesses, to present his own evidence, and to make oral argument.

6. That Petitioner, by and through his employee/agent, Junne H. Charon, on or about December 29, 1983, allowed a minor, Laurie J. Dunton, in the bar, without requiring identification.

7. That Petitioner, by and through his agent/employee, Junne H. Charon, on or about January 3, 1984, allowed two (2) minors in the bar, namely Scott Barker and George W. Woltkamp, without requiring identification.

8. That as a result of the violations of December 29, 1983, and January 3, 1984, Junne H. Charon, the employee/agent of Petitioner on April 26, 1984, plead guilty to the charge

dated January 3, 1984, for "allowing minors in a tavern" in violation of Section 9-435, CODE OF REVISED ORDINANCES OF MIDVALE CITY, with the charge of December 19, 1982 for "serving minors in a tavern", in violation of Section 9-432, CODE OF REVISED ORDINANCES OF MIDVALE CITY, being held for six (6) month's probation, with attendant fines and probation.

9. That Petitioner, David A. Rivas, has heretofore plead guilty to "allowing minors in a licensed premise" in violation of Section 9-435, CODE OF REVISED ORDINANCES OF MIDVALE CITY, for allowing two (2) minors in said Carol's Lounge.

10. That as a result of said violations by the Petitioner, the Petitioner's Class "C" beer license was suspended for 30 days on April 20, 1982.

11. That the Midvale City Council pursuant to the Order to Show Cause hearing held on June 26, 1984, revoked the Class "C" beer license of Petitioner, David A. Rivas, d/b/a Carol's Lounge, for the above violations of Section 9-432 and Section 9-435, CODE OF REVISED ORDINANCES OF MIDVALE CITY.

12. That the facts as found by the Midvale City Council are supported by the record on appeal.

13. That the record is devoid of any evidence to support the opinion by Petitioner that Respondent acted arbitrarily and capriciously.

14. That the findings of the Respondent Midvale City

Corporation are sufficient in this matter.

15. That the transcript fails to disclose any evidence as to the loss that would be sustained by Petitioner upon revocation.

From the foregoing Findings of Fact, the Court now enters its:

CONCLUSIONS OF LAW

1. That the Petitioner violated Section 9-435, CODE OF REVISED ORDINANCES OF MIDVALE CITY, by allowing persons under 21 years of age to enter and remain on the premises.

2. That violation of Section 9-435, CODE OF REVISED ORDINANCES OF MIDVALE CITY, as shown by the transcript and record on appeal is sufficient reasonable basis for the revocation of the Petitioner's Class "C" beer license pursuant to Section 9-120A(1) of the CODE OF REVISED ORDINANCES OF MIDVALE CITY.

3. That violation of Section 9-435, CODE OF REVISED ORDINANCES OF MIDVALE CITY, as shown by the transcript and record on appeal, is a sufficient reasonable basis for the revocation of the Petitioner's Class "C" beer license pursuant to Section 9-120A(3) of the CODE OF REVISED ORDINANCES OF MIDVALE CITY.

4. That the actions of Respondent Midvale City Corporation in revoking Petitioner's Class "C" beer license was neither arbitrary nor capricious, but based upon reasonable and sufficient evidence in the transcript and record on appeal.



5. That the record is devoid of any evidence to support the opinion by Petitioner that Respondent acted arbitrarily and capriciously.

6. That the revocation of Petitioner's Class "C" beer license is not too severe an action based upon the evidence found in the transcript and record on appeal.

7. That the decision of Respondent in revoking Petitioner's Class "C" beer license was reasonable and based upon sufficient evidence.

8. That the Respondent Midvale City Corporation, clearly has the authority to revoke the Class "C" beer license of Petitioner based upon the transcript, record on appeal, the above Findings of Fact, state law and case law.

9. That Respondent did not exceed its jurisdiction revoking the Class "C" beer license of Petitioner.

10. That Section 9-120A, CODE OF REVISED ORDINANCES OF MIDVALE CITY, is constitutional and does not violate the Constitution or statutes of this state, nor of the United States of America.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 1985.

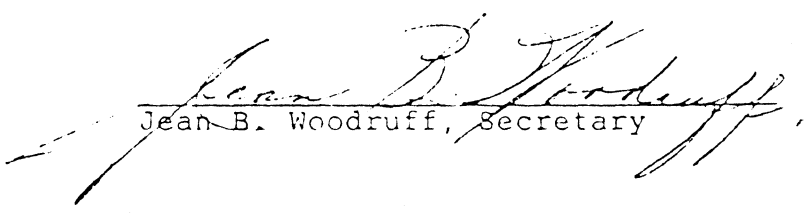
BY THE COURT:

\_\_\_\_\_  
DEAN E. CONDER,  
District Judge

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MAILING CERTIFICATE

I hereby certify that I mailed a true and correct copy of the foregoing to MARK A. BESENDORFER, Attorney for Petitioner, 7355 South 900 East, Midvale, Utah 84047, postage prepaid, on this 15<sup>th</sup> day of May, 1985.

  
Jean B. Woodruff, Secretary

MARK A. BESENDORFER A0312  
Attorney for Petitioner  
7355 South 9th East  
Midvale, Utah 84047  
Phone: 255-3576

IN THE THIRD JUDICIAL DISTRICT COURT OF SALT LAKE COUNTY  
STATE OF UTAH

---

DAVID A. RIVAS, dba	:	
CAROL'S LOUNGE,	:	
	:	
Petitioner,	:	OBJECTIONS TO FINDINGS OF
	:	FACT, CONCLUSIONS OF LAW
vs.	:	
	:	
MIDVALE CITY CORPORATION,	:	Civil No. C-84-4100
	:	
Respondent.	:	Judge Dean E. Conder
	:	

---

WHEREAS, this matter was heard before the Honorable Dean E. Conder, on the 7th day of May, 1985, at the hour of 10:00 A.M., pursuant to Rule 65B(b) 2, Utah Rules of Civil Procedure; and

WHEREAS, the Court has ruled in its memorandum decision of the 8th day of May, 1985, ordered the Respondent to prepare appropriate Findings, Conclusions and Order, in this matter, the petitioner, by and through his attorney, Mark A. Besendorfer, hereby files the following objections to the Findings of Fact and Conclusions of Law and proposed Order.

1. Petitioner agrees that the Findings of Fact which are proposed by Respondent, numbered 1 through 14 are consistent with the memorandum decision of the 8th day of May, 1985. However, the

petitioner objects to the finding number 15, in that, the record does disclose the fact that the petitioner would lose his business and whatever property interest he had, in that business, whether or not it was specifically set out in a dollar amount, or otherwise. This is based on the fact that the transcript of the prior hearing discloses testimony by the petitioner with respect to his business interest.

2. Petitioner agrees that the Conclusions of Law number 1 through 10 are consistent with the Court's memorandum decision of the 8th day of May, 1985.

3. Petitioner requests that the Order include additional Conclusions of Law, based upon the Court's oral statements at the time of the hearing. Additional Conclusions of Law would be as follows:

(a) That the failure of Respondent to include in its own Findings of Fact and Conclusions of Law, with respect to the hearing before the Midvale City Council, items which were testified to by the petitioner or his former employee, June Charon, which were undisputed in the record, was not arbitrary and capricious.

(b) That the failure of Respondent to include in its Findings of Fact and Conclusions of Law any findings or conclusions with respect to the property interest which the petitioner had in the operation of the business known as Carol's Lounge was not arbitrary and capricious.

(c) That the failure of Respondent to take into consideration

the nature of the violations and the attempts by petitioner to comply with the law, as indicated by an absence in the Findings of Facts and Conclusions of Law with respect to these undisputed factual issues was not arbitrary and capricious.

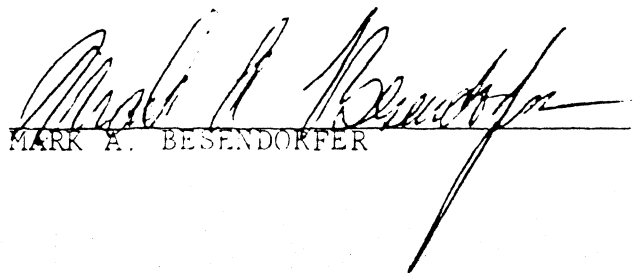
4. Petitioner respectfully asks the Court to include these additions and changes in the proposed Order.

DATED this 21<sup>st</sup> day of May, 1985.

  
MARK A. BESENDORFER

CERTIFICATE OF MAILING

I hereby certify that I mailed a true and correct copy of the foregoing Objections to Findings of Fact, Conclusions of Law, to Marc N. Mascaro, Attorney for Respondent, 80 East Center Street, Midvale, Utah 84047, postage prepaid, this 21<sup>st</sup> day of May, 1985.

  
MARK A. BESENDORFER



May 20, 1985

Mark Besendorfer, Esq.  
7355 South 900 East  
Midvale, Utah 84047

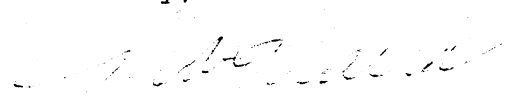
RE: DAVID A. RIVAS, d/b/a CAROL'S LOUNGE  
VS. MIDVALE CITY CORPORATION

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Dear Mr. Besendorfer:

Pursuant to the Order and Judgment of the Court which affirmed the revocation of your client's Class "C" beer license, you are hereby directed to cease the sale and consumption of beer on the premises of CAROL'S LOUNGE on May 21, 1985 at 5:00 P.M. Any further sale or consumption of an alcoholic beverage on the premises after that time will constitute violations of the criminal law and appropriate action will be taken.


Sincerely,

  
Marc Nick Mascaro,  
Midvale City Attorney

MNM/jbw

cc: David A. Rivas  
c/o Carol's Lounge

I hereby certify that I delivered a copy of the foregoing letter and Order of the Court to Mark Besendorfer, Attorney for Petitioner, and David A. Rivas, d/b/a Carol's Lounge, Petitioner, on this 21st day of May, 1985.

  
Marc Nick Mascaro,  
Midvale City Attorney

MAY 16 1985

MARC NICK MASCARO  
Attorney for Respondent  
80 East Center Street  
Midvale, Utah 84047  
Telephone: (801) 566-0661

H. Dixon Lindsey, Clerk 3rd Dist. Court  
By C. Porter  
Deputy Clerk

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IN THE THIRD JUDICIAL DISTRICT COURT IN AND FOR  
SALT LAKE COUNTY, STATE OF UTAH

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DAVID A. RIVAS, d/b/a	)	
CAROL'S LOUNGE,	)	
	)	
Petitioner,	)	<u>O R D E R</u>
	)	
vs.	)	<u>AND JUDGMENT</u>
	)	
MIDVALE CITY CORPORATION,	)	Civil No. C-84-4100
	)	Judge Dean E. Conder
Respondent.	)	

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The above-entitled matter came on for judicial review on the 7th day of May, 1985, at the hour of 10:00 A.M., pursuant to Rule 65B(b)2, Utah Rules of Civil Procedure. The Petitioner was present in Court and represented by his attorney, Mark A. Besendorfer. The Respondent was represented by Marc Nick Mascaro. The Court having reviewed the transcript of the City Council's hearing, the Record on Appeal, the Findings of Fact and Conclusions of Law, and having heard oral arguments from counsel,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

That the action of the Respondent, Midvale City Corporation, was within the authority of that body to so act and the evidence given at the hearing was sufficient to support said action revoking Petitioner's Class "C" beer license.

Further, that said action was based upon competent evidence and was not arbitrary nor capricious. Further, that Section 9-120A, CODE OF REVISED ORDINANCES OF MIDVALE CITY, is constitutional and does not violate the Constitution or statutes of this state, nor the United States of America. The action of the Respondent, Midvale City Corporation, is therefore, affirmed.

DATED this 16 day of May, 1985.

BY THE COURT:

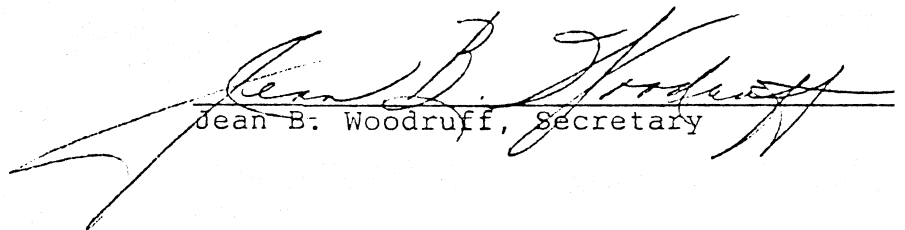


DEAN E. CONDER,  
District Judge

*C. Porter*

MAILING CERTIFICATE

I hereby certify that I mailed a true and correct copy of the foregoing to MARK A. BESENDORFER, Attorney for Petitioner, 7355 South 900 East, Midvale, Utah 84047, postage prepaid, on this 15th day of May, 1985.



Jean B. Woodruff, Secretary



MARK A. BESENDORFER

ATTORNEY AT LAW  
7355 SOUTH 9TH EAST  
MIDVALE UTAH 84047  
—  
255.3576

Marc Mascaro  
7437 S. State Street  
Midvale, Utah 84047

Dear Marc,

This letter is to advise you that the order which you have threatened to enforce by your letter of May 20, 1985 is not a final order because of the objections which I served on you earlier today. As I informed you at that time I did call Judge Conder to confirm this interpretation of the rules. I also attempted to call both you and Mayor Jeppson of this fact earlier today. If any enforcement of this invalid order is made I will consider it a violation of Mr. Rivas' civil rights and further harassment of him.

Sincerely,



Mark A. Besendorfer

I certify that I hand delivered a copy of this letter to the above named individual on the 21st of May, 1985.

Mark A. Besendorfer