

**BEFORE THE BOARD OF THE POLICE COMMISSIONERS  
CITY OF LOS ANGELES**

Re the Matter of the Denial  
of the Application for Police Permit of

James Fortune  
Respondent

PC No. 109806  
**Proposed Decision**

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Hearing Examiner Isabelle R. Gunning, Esq., Office of the Los Angeles Police Commission, commenced the hearing in this matter in Los Angeles, California on May 22, 2013.

Booker H. Ridgeway, hereinafter the Department Advocate, represented the Complainant.

Jonathan K. Golden, Esq. represented the Respondent James Fortune, hereinafter the Respondent.

**STATEMENT OF THE CASE**

Chris Waters, Lieutenant, Commanding Officer, Commission Investigation Division (CID), Los Angeles Police Department (“Department”), on May 8, 2013 filed an Accusation For Denial of the Massage Business police permit application of the Respondent’s massage business known as Highland Thai Massage and located at 5001 Wilshire Boulevard Suite 111A, Los Angeles, California 90036. The denial is based on the fact that sufficient evidence exists to show that the Respondent was in violation of Penal Code (PC) Section 315, Keeping a House of Ill Fame in his neighboring massage business known as Let’s Relax Thai Massage located at 5001 Wilshire Boulevard Suite 204, Los Angeles, California 90036.

## ACCUSATION

The Respondent applied for a Massage Business police permit on October 25, 2012, for his massage business known as Highland Thai Massage and located at 5001 Wilshire Boulevard Suite 111A, Los Angeles, California 90036. While the Highland Thai Massage permit application was pending, an investigation into the Respondent's other massage parlor business, Let's Relax Thai Massage located at 5001 Wilshire Boulevard Suite 204, Los Angeles, California 90036, was initiated. Lieutenant Waters, as the Complainant, alleges that on November 27, 2012 officers in the Detective Support Vice Division and CID investigated the Respondent's other massage business known as Let's Relax Thai Massage located at 5001 Wilshire Boulevard Suite 204, Los Angeles, California 90036. An officer posed as a customer and requested a massage. During the massage, a female employee functioning as a massage therapist grasped the penis of the undercover officer during the massage and offered to masturbate him for an additional fee in the form of a "tip." The massage therapist was arrested for violation of Penal Code 647(b), Soliciting for Prostitution.

This action transpired on the business premises of the Respondent and therefore cause him, as the business owner, to be in violation of PC Section 315, Keeping a House of Ill Fame and Los Angeles Municipal Code (LAMC) Section 103.18 which states that "permittee is responsible for the actions of their employees in the conduct of the permittee's business." In addition, the Board of Police Commissioners ("Board") may deny a permit under LAMC Section 103.31(a)(3), when "the applicant has committed or aided and abetted in the commission of any act or omission, which if committed by a permittee would be a ground for suspension, revocation or other disciplinary action under this article."

## EVIDENCE PRESENTED

**The Department offered the following exhibit which was marked and accepted into evidence:**

Exhibit 1: Folder which included the following documents:

Pages A1-2 - Accusation notifying Respondent of the Board's Intention to Deny the Permit Application - dated May 9, 2013

Pages B1- 4 - Police Report by Officer King on Arrest for Solicitation of Prostitution on November 27, 2012 at 5001 W. Wilshire Boulevard-one of Respondent's massage parlors

Pages C1- C5 Los Angeles Municipal Code (LAMC)

Section 103.18 - Permittee Responsibility

Section 103.31 - Denial of Application

Section 103.10 - Definition of Employee

Penal Code Section 316 - Keeping a House of Ill Fame

Penal Code Section 647 - Misdemeanor Disorderly Conduct Defined as Soliciting of Lewd or Dissolute Acts in Public or Prostitution

**Respondent offered the following exhibits at the time of the hearing which were marked and accepted into evidence:**

Exhibit A: Letter from Lt. Chris Waters, Commanding Officer of CID and Mr. Richard M. Tefank, Executive Director of the Board of Police Commissioners to Respondent James Fortune regarding Notice of Intent to Deny Application for Permit - dated March 7, 2013

Exhibit B: Independent Contractor Agreement between Respondent James Fortune and Chantra Petmak - dated May 18, 2009

The Department Advocate presented evidence that the Respondent owned two (2) massage businesses both located at 5001 Wilshire Boulevard, Los Angeles, California 90036. One business, called Let's Relax Thai Massage ("Let's Relax"), is located on the second floor of the building in suite 204. The permit for Let's Relax Thai Massage was not the subject of the hearing. The other business, called Highland Thai Massage ("Highland"), is located on the first floor of the same building in suite 111A. The permit for the Highland business was the subject of the hearing.

The Department Advocate presented three (3) witnesses--Mr. William Hung, Detective Larry Alvarez and Officer Shaun King-- to show that during the pendency of the Highland permit, the CID investigated and determined that solicitation for prostitution was occurring at the Let's Relax business. This unlawful activity at Let's Relax formed the basis for the denial of the permit at the Highland business.

Mr. William Hung testified that he is a civilian employee with the Department in the CID and has been for five (5) years. Mr. Hung's job is to process permit applications. He testified that he processed the permit application for the Respondent's Highland business. He testified that he went to 5001 Wilshire Boulevard to inspect the Highland premises and, in the process, also toured the Let's Relax premises.

Mr. Hung testified that his inspection of Highland revealed a massage business that looked "typical." He also testified that the Highland business was already in operation although it had no permit to do business. He testified that he ordinarily would have processed the permit application for the Highland business, except that his tour of the Let's Relax business revealed evidence of

people living on the premises. He described “beds, blankets, a sewing room and teddy bears,” and stated that he took pictures of the premises. He testified that to him this was evidence of possible human trafficking. Consequently, he transferred the case to the investigation section of CID.

Detective Larry Alvarez testified that he is a detective with the Department and has been for eighteen (18) years. He is in the Enforcement Section of CID. Detective Alvarez testified that he was the investigator who gathered all the relevant evidence about the Respondent’s application and made the final determination that his permit request should be denied. He testified that “we recommend denial for the Highland Thai Massage based on activity at Let’s Relax...I can’t read my handwriting. It seems like illegal activity and since Let’s Relax was on the same premises and owned by the permit holder Fortune.”

Detective Alvarez testified that he visited 5001 Wilshire Boulevard on the day of the undercover operation, November 27, 2012. He viewed only the exterior. Based upon what he observed and what he was told by other officers on the scene, he testified that both Highland and Let’s Relax were open for business.

Detective Alvarez testified that based upon all the information he obtained as part of his investigation, he recommended a denial of the Highland permit based on three reasons: 1) there was an arrest at the upstairs location—Let’s Relax—which was already permitted; 2) actions by the Respondent, Mr. Fortune; and 3) the fact that Highland Thai Massage was being run as a business without a license.

During the cross examination of Detective Alvarez, the Respondent’s attorney showed Respondent’s Exhibit A to the detective and asked him to identify it. Detective Alvarez stated that Exhibit A was a letter from Mr. Tefank, the Executive Director for the Board of Police Commissioners notifying the Respondent of the denial of the Highland permit. Respondent’s attorney underscored that the notice mentioned only soliciting prostitution and having a house of ill repute as the basis for the denial; nothing was mentioned about operating without a license. Detective Alvarez conceded that the letter did include only two (2) bases for the denial, but testified that his recommendation for denial included three (3) bases—including operating without a license.

Officer Shaun King testified that he is a sworn police officer with the Department and has been for fifteen (15) years. He stated he is a vice and human trafficking investigator with the Detective Support section of the Vice Division. He stated that he has done hundreds of investigations into massage parlors.

Officer King testified that his role in the investigation of the Respondent’s Let’s Relax business on November 27, 2012 was to go undercover as a male client. He testified that he entered the lobby and met a woman at the reception area. He told her he wanted a massage; she responded that it would cost him \$40; and he gave her previously marked bills. Officer King

testified that the front desk woman directed him to another woman who took him to a room in the back. He stated that this second woman, the apparent massage therapist, asked him if he wanted her to walk on his back. Officer King stated that he told her "Yes," and was looking forward to it since he, in fact, has a bad back. He stated that what the massage therapist did, instead, was give him a "sloppy style massage" on his legs and that her hands kept going further and further up his legs until "she actually grabbed my genital area."

Officer King testified that, in response to the massage therapist's actions, he turned from his stomach to his back so that he could be clear about the massage therapist's intentions since "there was a small language barrier." He described using hand signals, which he testified were well known in the massage or prostitution business in his experience, to determine what was being offered. He stated that he simulated putting her over his lap and having her go up and down. He indicated that this signified sexual intercourse. In response to this signal, he stated that the massage therapist indicated "No" by motioning her hands across her throat. Officer King then stated that he closed his fist and pumped it in front of his mouth. He testified that this signified oral sex. In response, the massage therapist indicated "No" again. He then testified that he closed his fist and pumped it up and down over his lap. He indicated that this signified manual masturbation. Officer King testified that at this moment his cell phone rang; his child was calling him. He stated that it was his opinion that the phone call "spooked" the massage therapist. She stood over him and watched what he texted in reply to his child. In addition, when he returned to the manual masturbation, she would not quote him a price. However, when Officer King asked the massage therapist if "\$50 would be OK," he testified that the massage therapist nodded Yes.

Officer King stated that there was no doubt that the massage therapist touched him in the genital area and that there was no doubt that he expressed a desire to purchase sex or sexual activity. After the exchange, he testified that the massage therapist was arrested and charged with soliciting prostitution.

During the cross examination of Officer King, the Respondent's attorney asked him a number of questions. He first asked the officer if it was true that he, Officer King, had gone to the Let's Relax business to solicit sex. Officer King was very specific in his response that he was only there to determine what was happening at the business and that he only asked for sex after the massage therapist touched him.

The Respondent's attorney also asked questions about the nature of the sting operation. He elicited from Officer King that about ten (10) additional officers were waiting outside the business as part of the sting operation. He also asked if the Department has the capacity to use "over hear devices" that would allow the other officers to hear and to record what went on between the undercover officer and the massage therapist. Officer King indicated that the Department does have that capacity. Respondent's attorney asserted that while the Department could use such recording devices that it does not use them on massage parlors. Officer King stated that the Department sometimes does use recording devices on massage parlors but it depends, for example on whether it could get reception in the room. In addition, Officer King

noted that the Department investigates thousands of massage parlor investigations and does not have the ability to store that number of recordings.

Respondent's attorney also noted that the City Attorney had refused to prosecute the massage therapist whom Officer King and the other officers arrested that day. Officer King testified that he did not know what happened in the case, and that filing decisions are up to the City Attorney.

The Department rested its case with these three (3) witnesses.

The Respondent's attorney started the Respondent's case by offering into evidence Respondent's Exhibit B. This is an Independent Contractor agreement between the Respondent and Chantra Petmak who is, apparently, the same woman who was the massage therapist arrested by Officer King for solicitation of prostitution at the Let's Relax business on November 27, 2012. [The name is spelled "Chantra Petmark" on the police arrest report.]

The Respondent also testified for himself. The Respondent started by addressing Respondent's Exhibit B and noting that on November 27, 2012 Ms. Chantra Petmak was not an employee of Let's Relax but an independent contractor. He also stated that after November 27, 2012, Ms. Petmak never returned to work, "she just took off."

The Respondent also testified that he has been in the massage parlor business for "ten (10) years, since 2004." He testified that he owned the businesses at 5001 Wilshire Boulevard and that he had owned another massage business in Sherman Oaks, also called Let's Relax Thai massage, which was now closed. He stated that he has never had any arrests at his businesses during that time. He also stated that his other businesses were permitted. He indicated that his businesses have been periodically inspected—sometimes once or twice a year; some years no inspections at all. He also indicated that the police have never told him to make any changes in how he conducted his business.

During the cross examination of the Respondent, the Department Advocate asked the Respondent several questions. The Department Advocate started by asking the Respondent if he had read the accusation and if he, the Respondent, understood that under LAMC Section 103.01 an independent contractor was equivalent to an employee. Over the Respondent's attorney's objection, the Respondent was allowed to answer, but his answer was inaudible.

The Department Advocate asked the Respondent how he instructed his massage therapists and if he set limits on them. The Respondent responded that "Yes, I keep telling them all the time." Additionally the Respondent stated "I tell them and I have the police rules on the wall." When asked how he assures that the massage therapists follow the rules or if he watches them, the Respondent stated "Yes receptionist. She can walk in back. We do not have door but curtain so she can peek in. I tell receptionist to look in. I'm a guy so I should not do this so I keep telling

them and I try to keep things in order. I have surveillance camera but I can't put camera in room. You change the rules, I would do that." The Respondent also testified that "the walls do not go up to the ceiling. We have two (2) feet openings at the top so can hear."

The Department Advocate stated that if there are no doors, only curtains, then it must be that the solicitation activity is acceptable to the business. The Respondent answered "No." The Department Advocate also asked if the Respondent intended to keep both businesses –Let's Relax on the second floor and Highland on the first floor --open. Although his attorney objected, the Respondent insisted on answering and stated that he did want to keep both businesses. He stated that Officer Wong had told him that he needed a separate business permit for the first floor, downstairs business–Highland massage–and that he wanted an additional business on the first floor for "older people [who] can't go upstairs."

Both the Department Advocate and the Respondent's Attorney gave closing arguments. The Department Advocate noted that no evidence had been presented to change the denial of the permit application for the Respondent's Highland massage business. He argued that the testimony about the illegal activity at the Respondent's Let's Relax business indicated that the Respondent was unwilling or unable to control the activities of his employees.

The Respondent's Attorney made an oral closing argument and provided this Hearing Examiner with a "Response to Accusation Re Denial of Police Permit" dated May 9, 2013 which was never offered into evidence. Respondent's argument was, essentially, three fold. First, he argued that the CID cites LAMC Section 103.35 as well as LAMC Section 103.31 as the basis for its recommendation for denial of the Respondent's permit when, in fact, LAMC Section 103.205 is the more specific and applicable ordinance. He argued that the more specific LAMC Section 103.205(f)(1)(c) which allows for the denial of a permit when "Any person including, but not limited to, employees who will be directly engaged or employed in the massage establishment...who has committed an act, which if done by a licensee or permittee... would be grounds for suspension or revocation of a license or permit," has not been met by the Department because the massage therapist who was arrested at Let's Relax was not an employee and would not be employed at any of the Respondent's businesses since she has not shown up for work since her arrest.

Respondent's second argument challenges the credibility of Officer King's testimony. Respondent's attorney argued that Officer King was "massaging the facts" and that when an undercover operation involves 6-10 officers waiting outside for the undercover officer, there is "a positive incentive to create a violation...." In contrast, he argued that his own client's testimony was credible and underscored the fact that the Respondent had been in the massage parlor business for ten (10) years with multiple businesses and had never had an arrest. Respondent's attorney argued that for an employer with this record to have one (1) employee step out of line and then have that constitute "the death penalty" was not fair; denial should only happen if the permittee repeatedly has such actions occur on his premises.

Respondent's third argument responded to the Department's reliance on LAMC 103.31 (a)(3) (See Department Exhibit A) which states "The Board may also deny a permit on any of the following grounds....The applicant has committed or aided and abetted in the commission of any act or omission which, if committed by a permittee, would be a ground for suspension, revocation or other disciplinary action under this article." Respondent cites the California Criminal Jury Instructions (See the unmarked "Response to Accusation Re Denial of Police Permit" dated May 9, 2013) to define "aiding and abetting" as requiring proof that 1) the perpetrator committed the crime; 2) the defendant knew that the perpetrator intended to commit the crime; 3) before or during the commission of the crime, the defendant intended to aid or abet the perpetrator in committing the crime; and 4) the defendant's words or conduct did in fact aid and abet the perpetrator's commission of the crime." Respondent argued that there was no evidence to support the Respondent's aiding and abetting in a violation of the law by someone else.

### **DISCUSSION**

The evidence presented at the hearing did establish that the Respondent owned two massage businesses both located at 5001 Wilshire Boulevard—Let's Relax Thai Massage in Suite 204 and Highland Thai Massage in Suite 111A. The evidence also established that on November 27, 2012 both the Let's Relax and Highland businesses were open for business although the Highland business had no permit to do so. These facts were uncontested. The Respondent did contest whether the fact that the Highland business was unlicensed while it was doing business could legitimately provide a basis for denial of its permit only because the Notice of Denial of Police Permit did not specify this as a basis. But the Respondent did not contest the fact that the Highland business was being operated without a valid permit.

The evidence presented at the hearing also established that on November 27, 2012, Respondent's employee at the Let's Relax business solicited an act of prostitution from Officer Shaun King. Officer King testified in a credible manner. The Respondent provided no evidence or argument to undermine his credibility in this case. The fact that the City Attorney chose to not prosecute the massage therapist in question, Ms. Petmak, does not undermine the officer's description of what occurred which would constitute solicitation. In addition, LAMC Section 103.10 makes clear that the fact that Ms. Petmak was an "independent contractor" is of no consequence under the law; she still constitutes an "employee" for the purposes of LAMC Section 103.31.

Respondent's argument that LAMC Section 103.205 is the more applicable section is without merit. Moreover, it does not help him since LAMC Section 103.205(f)(1)(c) which allows for the denial of a permit when "Any person including, but not limited to, employees who will be directly engaged or employed in the massage establishment...who has committed an act, which if done by a licensee or permittee... would be grounds for suspension or revocation of a license or permit," would be satisfied by the Department's evidence. Again, Ms. Petmak, the massage



therapist arrested by Officer King on November 27, 2012 does constitute an “employee” under the meaning of the statutes. Additionally, while the Respondent’s attorney emphasizes that fact that Ms. Petmak is not an “employee who will be directly engaged or employed by the massage establishment,” to argue that her illegal actions do not count under this section of the Code, LAMC 103.205 specifically states that it includes “*any person including, but not limited to* employees directly engage or employed in the massage establishment.” This language clearly encompasses Ms. Petmak as a former employee.

Respondent’s argument that no evidence was presented to support LAMC Section 103.31(a)(3) i.e. that the Respondent “...aided and abetted in the commission of any act or omission which, if committed by a permittee, would be a ground for suspension, revocation or other disciplinary action under this article” is also without merit. The evidence presented at the hearing showed that the Respondent’s employee engaged in an act of solicitation at the Respondent’s Let’s Relax business. The evidence presented also established that the Let’s Relax business had no doors that could be locked while a massage therapist was working with a customer. Indeed, instead of doors, the massage rooms were blocked off only by curtains. In addition, the walls of the business did not reach the ceiling; none of the massage rooms could provide auditory privacy.

While the Respondent testified that he “kept telling [his employees] what to do,” it defies logic and common sense for an employee who had heard sincere warnings and worked under such open conditions to still think it appropriate to solicit a customer. The results of her illegal actions would, inevitably, be heard by other customers and employees given the physical construction of the business. Consequently, the employee in question had to know that the Respondent would approve of such activities. Consequently, the Respondent did know that his employees would commit crimes like solicitation of prostitution and his conduct was intended to and did aid and abet those employees in committing these crimes. Consequently, the Department’s evidence supports a finding that the Respondent violated LAMC Section 103.31(a)(3) and the Respondent’s application for a police permit should be denied.

### **FINDINGS OF FACT**

1. Respondent is the owner of two massage businesses both located at 5001 Wilshire Boulevard Los Angeles, California 90036 – Let’s Relax Thai Massage in Suite 204 and Highland Thai Massage in Suite 111A.
2. Respondent applied for a permit for Highland Thai Massage in Suite 111A on October 25, 2012.
3. During the inspection of the Highland Thai Massage premises, evidence of possible human trafficking was found at the Let’s Relax Massage premises in Suite 204.

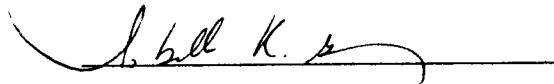
4. As a part of the investigation into the Let's Relax Thai Massage, an undercover officer visited the premises in the guise of a customer and was solicited by the Respondent's employee.
5. The Let's Relax Thai Massage business uses only curtains to cover the doorways to its massage rooms; the walls of the massage rooms do not reach the ceiling.
6. Given the physical construction of the Let's Relax Thai Massage, the Respondent knew or should have known of the illegal activity occurring on his premises.

### RECOMMENDATION

Based on the facts found above, there is sufficient cause to deny the Respondent's Massage Business police permit application for his Highland Thai Massage business. It is proposed that the Board of Police Commissioners pursuant to the authority granted by section 103.31(a)(3) of the Los Angeles Municipal Code, deny the permit application of the Respondent.

I hereby submit the foregoing which constitutes my proposed decision in the above-entitled matter and recommend its adoption as the decision of the Board of Police Commissioners.

Date: June 14, 2013



Isabelle R. Gunning, Esq.  
Hearing Examiner

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June 28, 2013

*Via Facsimile* (213) 236-1410 and U.S. MailPolice Permit Review Panel  
Los Angeles Police Commission  
100 West First Street  
Los Angeles, CA 90012**Re: James Fortune**  
**PPRP No. 13-0016**  
**Hearing Date: July 17, 2013****RESPONSE TO NOTICE OF INTENT TO DENY POLICE PERMIT**

Dear Members of the Permit Review Panel:

The Applicant, James Fortune, contends that he is entitled to issuance of the massage business permit as a matter of fact and law, and that Hearing Examiner's recommendation for denial is predicated upon a profound misapplication of both procedural and substantive law. Simply stated, thus far, the Board has "not proceeded in the manner required by law" and the Hearing Examiner's decision is not supported by the findings, nor are her findings supported by the evidence. *California Code of Civil Procedure* §1094.5 (b).

**I****THE HEARING OFFICER HAS NOT MADE FINDINGS  
OR CONCLUSIONS WHICH WOULD WARRANT DENIAL  
UNDER THE APPLICABLE ORDINANCE, §103.205 (f).**

We begin with a straightforward analysis of L.A.M.C. §103.205 (f), the specific ordinance which governs issuance or denial of massage business permits. It provides, among other things, that:

"The Board *shall issue* such permit as requested *unless* the Board makes any of the following findings." (Emphasis supplied)

The Code then lists 8 potential grounds for denial, in subsections (f) (1) (a) through (h)

*None* of the statutory grounds have been found by the Hearing Examiner as cause for denial, and indeed no statutory grounds exist.

The "closest" ground might be that set forth in §103.205 (f) (1) (c) which provides, as a ground for denial, that: "Any person including, but not limited to, employees *who will be*

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*Law Officers*

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*directly engaged or employed in the massage establishment... has committed an act, which, if done by a licensee or permittee... would be grounds for suspension or revocation of a license or permit.” (Emphasis supplied)*

However: (1) no evidence was presented that would support such a finding, (2) the Hearing Examiner did not find or conclude that the permit should be denied on the foregoing ground, nor that the person previously cited, but not prosecuted, for alleged violation of Penal Code §647 subd. (b), is a person *who will be directly employed* in the massage establishment.

The Hearing Examiner did, however, in the “Discussion” portion of her decision, make reference to the controlling ordinance [§103.205 (f) (1) (c)] and then misconstrue it by misquoting its plain language. (Proposed Decision, p. 9)

The ordinance states that an application for massage permit may be denied if a person, *who will be directly engaged or employed* at the proposed business, has committed an act which, if done by a permittee, would be grounds for suspension or revocation of a permit. The Hearing Examiner ignored the language italicized above. It does not apply to a *former* employee at a previously permitted business.

But the patent analytical error does not matter, because neither CID nor the Hearing Examiner have ever contended, and they do not now contend, that the application should be denied upon any ground set forth in §103.205 (f). Yet §103.205 (f), upon its face, *limits* the grounds for denial of a massage permit to those specified in that section.

§103.205 (f) is a special statute which controls in this case. A general provision, e.g. §103.31 (a), is controlled by one that is special. “It is well settled. . . that a general provision is controlled by one that is special, the latter being treated as an exception to the former. A specific provision relating to a particular subject will govern in respect to that subject, as against a general provision, although the latter, standing alone, would be broad enough to include the subject to which the more particular provision relates.” *San Francisco Taxpayers Assn v Board of Supervisors* (1992) 2 Cal. 4<sup>th</sup> 571, 577

Translation: §103.205 (f) “preempts” §103.31 (a), the general statute governing granting and denial of police permits.

It is clear from the evidence that no ground for denial exists under the *special* ordinance governing massage business permits. Nor did the Hearing Examiner find any such ground. Therefore, under the plain reading of the law, the Board is directed by law to issue the permit.

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*Law Offices*

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## II

### **THE EVIDENCE DOES NOT ESTABLISH "AIDING OR ABETTING" BY THE APPLICANT AND THE HEARING EXAMINER DID NOT FIND THAT THE APPLICANT HAD AIDED OR ABETTED A CRIME.**

In recommending denial, the Hearing Examiner relies upon the *general* ordinance governing denial of police permits, L.A.M.C. §103.31 (a), which sets forth grounds for denying police permits for businesses *other than* massage establishments

The Hearing Examiner cites, as a basis for denial, §103.31 (a) (3) *i.e.*: "The applicant has...aided or abetted in the commission of any act or omission, which, if committed by a permittee, would be a ground for suspension, revocation, or other disciplinary action under this article." As stated, §103.31 *does not apply* to the granting or denial of massage establishment permits, because it conflicts with §103.205 (f), which declares that the Board *shall issue* the permit unless it makes one or more of the limited findings specified in that statute.

But even if the general statute [§103.31 (a) (3)] applied, the evidence did not show, and the Hearing Examiner *did not find* that Mr. Fortune aided or abetted anyone in an unlawful act. Instead, she found, as a "fact" that "Respondent knew or should have known of the illegal activity occurring on his premises."

First, this is a conclusion, not an administrative finding of fact, and it is not supported by the evidence or any finding of fact delineated in the decision. Second, there is no evidence or finding that Mr. Fortune knew of or intended to aid or abet a specific person in committing a specific criminal act, and took affirmative action to assist the perpetrator at the time.

But more importantly, a finding that someone knew or should have known of another person's plan to commit a criminal act, without more, does not constitute "aiding or abetting". Put simply, negligence [knew or should have known] does not amount to "aiding or abetting".

Aiding and abetting are legal terms of art. They have a precise definition in the law. The statutory phrase, found in *Penal Code* §31, is in the conjunctive "aid and abet" and it is error to instruct in the disjunctive "aid or abet" *People v. Ponce* (1950) 96 C. A. 2<sup>nd</sup> 327, 331.

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The act of "aiding and abetting" requires proof that: (1) the perpetrator committed the crime; (2) The defendant *knew* that the perpetrator intended to commit the crime; (3) before or during the commission of the crime, the defendant *intended to aid* or abet the perpetrator in committing the crime; and (4) the defendant's words or conduct *did in fact aid and abet* the perpetrator's commission of the crime. CALCRIM Jury Instruction No. 401. (Emphasis supplied) Here, elements (2), (3) and (4) are lacking.

In cases where a person was merely present at the scene of an alleged crime, the court must also instruct that "the fact that a person is present at the scene of a crime or fails to prevent the crime does not, by itself, make him or her an aider and abettor." CALCRIM No. 401. *People v. Boyd* (1990) 222 Cal. App. 3<sup>rd</sup> 541, 557 fn. 14.

"The mere knowledge or belief that a crime is .... likely to be committed, and the failure on the part of one having such knowledge or belief to take some steps to prevent it, in no sense amounts to aiding and abetting." *People v. Weber* (1948) 84 Cal. 2<sup>d</sup> 126, 130

The Hearing Examiner did not and could not find, based on the evidence, that Mr. Fortune aided and abetted another person in soliciting an act of prostitution from an undercover police officer. Instead, she illogically faulted him for allowing open massage rooms where any unlawful activity could be *more easily detected* by everyone, and thus *discouraged*.

In conclusion, the Hearing Examiner's recommendation to deny Mr. Fortune a police permit is unsupported by the facts or the PPRP's governing laws. On the contrary, adherence to the letter of the law requires that the permit be granted.

Very truly yours,

  
Jonathan K. Golden

JKG:lom

cc: Heather Aubry, Deputy City Attorney

# LOS ANGELES POLICE COMMISSION

BOARD OF  
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June 19, 2013

Mr. James Fortune  
DBA: Highland Thai Massage  
5001 Wilshire Boulevard, Suite 111A  
Los Angeles, California 90036

PC No. 109806

Re: NOTICE OF INTENT TO DENY APPLICATION FOR POLICE PERMIT (LAMC §§103.32-103.33)

Dear Mr. Fortune:

You are hereby notified that the Police Permit Review Panel will consider the Hearing Examiner's report and proposed recommendation to DENY your Massage Business Permit (See Hearing Examiner's Report) on:

Wednesday, July 17, 2013, at 2:30 p.m.  
Board of Police Commissioners Hearing Room  
100 West 1<sup>ST</sup> Street, Los Angeles, CA 90012

You may file a written response no later than six (6) days prior to: July 17, 2013.

You may, but need not, be represented by counsel for the Panel to render a decision; your presence is not required. However, it is highly recommended that you appear. A request for continuance must be submitted in writing to the Panel Secretary at least seven (6) days prior to the hearing date. A request for continuance must include proof of hardship and rarely will be honored on the day of the hearing due to scheduling conflicts. Once a continuance request has been granted, subsequent requests may not be accepted.

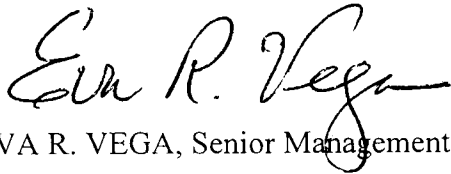
When the Panel considers the permit at its public meeting, it may at its discretion, entertain discussion, oral argument or taking of evidence.

Mr. James Fortune

Page 2

A Thai interpreter will be provided for this meeting. If you have any questions regarding this notice please contact our office at (213) 236-1400.

Very truly yours,  
POLICE PERMIT REVIEW PANEL

A handwritten signature in black ink, reading "Eva R. Vega". The signature is written in a cursive style with a large, looping "V" at the end.

EVA R. VEGA, Senior Management Analyst II

Attachments

c: Commanding Officer, Commission Investigation Division  
Mr. Jonathan K. Golden, Attorney at Law



# LOS ANGELES POLICE COMMISSION

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LOS ANGELES, CA 90012-4112

(213) 236-1400 PHONE  
(213) 236-1410 FAX  
(213) 236-1440 TDD

July 17, 2013

Mr. James Fortune  
DBA: Highland Thai Massage  
5001 Wilshire Boulevard, Suite 111A  
Los Angeles, California 90036

PPRP No. 13-0016  
PC No. 109806

Re: NOTICE OF INTENT TO DENY APPLICATION FOR POLICE PERMIT (LAMC §§103.32-103.33)

Dear Mr. Fortune:

You are hereby notified that the Police Permit Review Panel will consider the Hearing Examiner's report and proposed recommendation to DENY your Massage Business Permit (See Hearing Examiner's Report) on:

Wednesday, July 31, 2013, at 2:30 p.m.  
Board of Police Commissioners Hearing Room  
100 West 1<sup>ST</sup> Street, Los Angeles, CA 90012

You may file a written response no later than six (6) days prior to: July 31, 2013.

You may, but need not, be represented by counsel for the Panel to render a decision; your presence is not required. However, it is highly recommended that you appear. A request for continuance must be submitted in writing to the Panel Secretary at least seven (6) days prior to the hearing date. A request for continuance must include proof of hardship and rarely will be honored on the day of the hearing due to scheduling conflicts. Once a continuance request has been granted, subsequent requests may not be accepted.

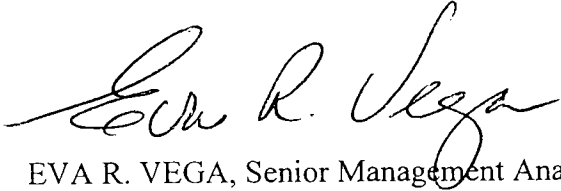
When the Panel considers the permit at its public meeting, it may at its discretion, entertain discussion, oral argument or taking of evidence.

Mr. James Fortune

Page 2

A Thai interpreter will be provided for this meeting. If you have any questions regarding this notice please contact our office at (213) 236-1400.

Very truly yours,  
POLICE PERMIT REVIEW PANEL

A handwritten signature in black ink, appearing to read "Eva R. Vega". The signature is fluid and cursive, with a large initial "E" and "V".

EVA R. VEGA, Senior Management Analyst II

Attachments

c: Commanding Officer, Commission Investigation Division  
Mr. Jonathan K. Golden, Attorney at Law