

Disposition of the Independent Review Panel



Complainant: Hilda Vargas

IRP Case: A 2005.230

Date: December 14, 2006

MDPD Case: PC 2006-0015

The Independent Review Panel met on December 14, 2006 for the purpose of publicly reviewing the complaint made by Hilda Vargas against the Miami-Dade Police Department and the department's response to that complaint. The following represents the findings of the Panel:

A. Recommendation

That the Panel continue to facilitate dialogue between MDPD and citizens who feel victimized by officers who continue to act based on policy in need of revision.

B. Incident

The complainant is a licensed peddler. When Corporal Brian Fung Fen Chung asked the complainant to provide her ID and her occupational license she presented her occupational license. The complainant stated Corporal Fung threw it back at her and said it was not valid. The complainant stated that Corporal Fung was rude and discourteous. The complainant was then given a Promise to Appear for "Doing Business Without a License."

C. Allegations

The complainant alleged that she was falsely arrested for "Doing Business Without a License" even though she had a valid Occupational License.

D. Disposition of the Independent Review Panel

The complainant was inappropriately arrested. – **NOT SUSTAINED**

Corporal Fung's arrest was based on legal advice and directives issued from the Miami-Dade Police Department. Even though the ordinance is in need of revision, the individual officers are not at fault for acting on orders received from their superiors.

The Independent Review Panel concluded the complaint on December 14, 2006.

Independent Review Panel Staff Recommendation to the Panel

December 14, 2006

Complaint: A 2005.230

MDPD Case: PC 2006-0015

Complainant: Hilda Vargas

Accused Parties: Miami-Dade Police Department (MDPD)

Date Complaint Received: December 19, 2005

Materials Reviewed: Correspondence, staff notes, MDPD IA Case # PC 2006-0015

Complaint: The complainant is a licensed peddler. She stated that on December 1, 2005 she was assaulted by a former “apprentice.” When she called the police a female officer responded, conducted a brief investigation, and provided her with a contact card. The officer advised the complainant that if she spotted assailant again to call the police. The complainant stated that on December 12, 2005, she spotted the suspect and had a friend call the police, as she was instructed to do so by the female officer. The complaint’s friend was told to call a different number and that is when Corporal Brian Fung Fen Chung responded to the scene. When Corporal Fung arrived to the scene, he asked the complainant to provide her ID and her occupational license. The complainant stated that when she presented her occupational license, Corporal Fung threw it back at her and stated that it was not valid. The complainant stated that the officer did not ask the suspect to produce any ID or license and let the suspect leave the scene. The complainant stated that Corporal Fung was rude and discourteous. The complainant stated that Corporal Fung never asked why she had called the police, which was to interview the suspect of the alleged assault on December 1, 2005. The complainant was then given a Promise To Appear for not having the proper license. The complainant stated that she did have a license at the time and that Corporal Fung improperly arrested her.

Department Response: MDPD Case PC 2006-0015

Investigator: Sgt. Chris Carothers

Reviewer: Lt. Pablo Lima, Intracoastal District

Approved by: Major Mark Jeter, Intacoastal District

*The following is excerpted from MDPD Case PC 2006-0015 dated May 22, 2006**

Allegation #1 – Corporal Fung failed to provide her with assistance in regard to her pending battery investigation. – NOT SUSTAINED

Corporal Fung did provide assistance by ascertaining the subject information, prepared a Supplemental Report and referred the victim to the State Attorney's Office.

Allegation #2 – Corporal Fung told the complainant her valid peddler license was “no good” and issued her a PTA. – NOT SUSTAINED

The complainant does possess a valid peddler's license however it does not permit her to remain static in one specific area and conduct business. Corporal Fung documented that he first made contact with the complainant at 3:27 p.m. and then later at 5:31 p.m. in the same area. The peddlers' pamphlet [attached] states it is illegal to “position yourself in one place and wait for customers to come to you.”

Allegation # 3 – Corporal Fung tossed the complainant's peddler license out the driver's window of his vehicle and told her “to leave the area” in a loud angry voice. – NOT SUSTAINED

Corporal Fund denies tossing the license out the window and denies telling the complainant to “leave the area” in a loud and angry voice. He did advise he may have raised his voice only to be heard over the traffic in the area.

Summary of Statement from Corporal Brian Fung Fen Chung

Corporal Fung stated he was dispatched to Ives Dairy Road and I-95 at approximately 3:17 p.m. Corporal Fund stated he observed two female vendors in the roadway, one of which was the complainant. Corporal Fund stated he speaks fluent Spanish and that he briefly spoke with the complainant who explained to him that she had been the victim of a battery several days prior and that the unidentified female subject in the case was the other vendor standing nearby. Corporal Fung stated that he spoke with the female subject and obtained her identification and documented it with a Supplemental Report. Corporal Fung advised that he referred the complainant to the State Attorney's Office for prosecution of her battery case. Corporal Fung stated he advised both the complainant and female subject to leave the area since they were both in violation of peddling laws by vending while stationary. Corporal Fung stated he drove away and when he returned to the area approximately two hours later, the complainant was still engaged in stationary vending so he issued her a PTA. Corporal Fung stated he did not toss the complainant's peddler license out of his window or make any of the alleged statements to the complainant.

Staff Remarks:

1. Staff contacted the complainant on December 5, 2006. The Complainant stated she did not want to pursue her complaint further that she only wanted to have someone hear her out. The complainant also wished to thank then IRP Staff member Linda Pierre for helping her with her complaint.

2. The charge against the complainant for Operating a Business without a License was “nolle pros” on January 24, 2006.

Staff Findings:

A. **Regarding the allegations:**

The complainant was inappropriately arrested. – **SUSTAINED**

The complainant was charged with “Doing Business without a License” when, in fact, she had a valid occupational license. The MDPD disposition acknowledges she had a valid license but justifies the arrest because “the peddlers’ pamphlet states it is illegal to ‘position yourself in one place and wait for customers to come to you.’”

B. **Other Findings:**

The Panel, in its disposition for the complaint of Rafael Gonzalez-Cortes, found no legal basis for the statement for the statement in MDPD Legal Bulletin 95-4, Roadside Vendors, that: “Vendors and peddlers must remain mobile and may only legally stop to serve a customer at the customer’s request.”

Staff Recommendations:

1. That the Panel accept the Staff Findings.
2. That the Panel continue to facilitate dialogue between MDPD and citizens who feel victimized by officers who continue to act based on policy in need of revision.

**NOTICE TO STREET VENDORS
IN UNINCORPORATED
MIAMI-DADE COUNTY**

Vendors in Unincorporated Miami-Dade County must keep on the move and may stop ONLY long enough to serve a customer.

IT IS ILLEGAL TO:

- π Position yourself in one place and wait for customers to come to you. SEC.33-243
- π Sell merchandise from parked vehicles, open stands or any other display of merchandise along a sidewalk or next to a road. SEC. 33-243
- π Sell within 500 feet of any school, public park, beach, or marina. This includes lunch and / or ice cream trucks and carts. SEC. 21-27.1

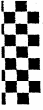
You can be fined for stationary vending and violations can lead to your arrest.

A Valid Miami-Dade County Occupational is required to work as a mobile vendor. (CATEGORY 220 PEDDLER OR 220 LUNCH WAGON / TRUCK). If you plan to sell within one of the municipalities (ie., Miami, Hialeah, or Miami Beach), you MUST first contact the Occupational Licensing office in that city.

Vendors who handle unpackaged food, such as hot dogs, MUST obtain an inspection permit for their vehicles from the State of Florida Division of Hotels and Restaurants.

Soliciting business at private homes without prior appointment requires a Solicitors permit from the Clerk of the County Courts office.

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**AVISO A LOS VENEDORES AMBULANTES
EN EL AREA NO INCORPORADA
DEL CONDADO DE MIAMI-DADE**

Vendedores ambulantes en el area NO INCORPORADA del Condado de Miami-Dade deben mantenerse en movimiento constante, solo pueden pararse cuando estan realizando una venta.

ES ILLEGAL:

- π Estacionarse en un lugar para esperar la llegada de los clientes. SEC.33-243
- π Vender mercancía desde vehículos estacionados or cualquier otro estante desde la acera o adyacente a la calle. SEC. 33-243
- π Vender a menos de 500 pies de distancia de las escuelas, parques, playas, y marinas. Esto incluye carros o camions de comidas y helados. SEC. 21-27.1

Usted puede ser multado por vender desde un estacionamiento fijo y estas violaciones podran conducir a su arresto.

Una licencia Ocupacional valida del condado Miami-Dade (CATEGORY 220 PEDDLER O 220 LUNCH WAGON / TRUCK) es requerida para la venta ambulante. Si usted piensa vender en alguna municipalidad (como Miami, Hialeah, o Miami Beach), usted tiene que hacer contacto previo con la oficina de licencias ocupacionales de la ciudad donde usted planea vender.

Vendedores de comidas no empaquetadas tal como perros calientes, deben someter el vehiculo a inspeccion y pagar por un permiso del Departamento de Regulaciones de la Division de Hotels y Restaurantes del Estado de la Florida.

Solicitar negocio en casas privadas sin previa invitacion requiere un permiso de "Solicitor" del escribano de la corte.

**AVI POU MACHANN KAP VANN NAN LARI
NAN ZÒN KI PA INKÒPORÈ
NAN SITE MIAMI-DADE**

Machann ki nan zòn ki pa inkòpore nan Site Miami-Dade dwe konitnye mache machann yo e yo kapab te yon ti kampe pou yon ti bout tan si SELMAN yap sevi yon kliyan.

LI PA LEGAL POU:

- π Kampe nan yon pozisyon e rele ap lan kliyan pou vini kole-w. SEC. 33-243
- π Vann machadiz nan machin ki pake, oubyen kampe oubyen nenpòt machandiz ki ouvri sou yon twotwa ou pwè yon wout. SEC. 33.243
- π Vann 500 pye de distans de nenpòt ki lekòl, park piblik, plaj ou devan lanmè. Nou vle pale de manje maten e/oubyen machine krèm e kabwèl. SEC. 21.27.1

Yo kapab chaje-w amann si ou kampe pou vann e vyolasyon sa-a ka mta-n fè yo arete-w.

Yon Pèmi Pwofesyonèl valid nesese pou travay kòm yon machann lari. (CATEGORY 220 MACHANN OU 220 LUNCH KABWÈTMACHIN). Si ou gin plan pou vann nan yon nan site sa yo (ki se, Miami, Hialeah, oubyen Miami-Beach), ou dwe premyèyman kontakte biwò Pèmi Pwofesyonèl nan site sa-a.

Machann ki ginyin manje ki pa plye, kòm sosis (hot dog), dwe pran yon pèmi inspeksyon pou machin yo nan Divisyon Otèl e Restoran de Eta Florid.

Biznis prive ki otorize la kay yo san yon randevou avan dwe ginyin yon Pèmi ki sòti nan biwò Grefye Site Tribinal lan.