

TAPED

The License Commission held its regular monthly meeting on Wednesday, February 24, 2010, in the G.A.R. Room, City Hall. Present were Commissioners Joseph P. Kelly, Paul D. Sullivan, Bruce G. Dansby, Joshua J. Wood and Alternate Fred Fontaine. Also present were License Agent Lieut. John Crowley, City Solicitor Phil Nessralla and Administrative Assistant Bonnie Tucker.

The meeting was called to order and Commissioner Kelley presided.

Commissioner Kelley welcomed new License Commission Member, Joshua Wood.

1. Approval of the following police officers as license agents for the month of March, 2010: Lieuts. John Crowley, Thomas LaFratta, William Barry and Brian Leary; Sgt. Paul Bonanca; Dets. Michael Schaaf, Erik Hilliard, John Lonergan, James Smith and Ernie Bell; and Officers Scott Uhlman and William Healy.

A motion was made by Commissioner Sullivan to approve the police officers as listed as license agents for the month of March. The motion was seconded by Commissioner Dansby. All members voting in the affirmative, the motion carried.

2. Requests for Special One-day Permits:

- (a) **All Alcoholic Beverages** – Brockton Firefighters Local 144 – Archie Gormley, Jr., Manager, for the Strand Breakfast to be held at 80 Perkins Avenue on Wednesday, March 10, 2010 from 11:00 a.m. to 6:00 p.m.

Present was Archie Gormley, Jr., 53 Rockland Drive who stated this event has been an annual memorial celebration for the past 69 years for the 13 firefighters who died in the Strand Theatre fire. There will be a ceremony at City Hall on March 10th and everyone is invited back to the Union Hall for a get together.

A motion was made by Commissioner Sullivan to approve the request which motion was seconded by Commissioner Dansby. All members voting in the affirmative, the motion carried.

- (b) **All Alcoholic Beverages** – Brockton Library Foundation – Fred Howell, manager for an Awards/Fundraiser to be held at the Brockton Public Library on Saturday, April 17, 2010 from 7:00 p.m. to 1:00 a.m.

Present were Fred Howell, 185 Lincoln Street, Abington and Arnie Danielson, 603 Summer Street.

Mr. Danielson reviewed the request which is to hold a fundraiser at the Brockton Public Library. There will be a cocktail hour, an award ceremony and poetry contest, a full dinner which will be followed by dancing. The money raised will be to benefit the Greater Brockton Society of Poetry and Arts and the Library Foundation.

The Administrative Assistant stated that all paperwork is in order with the exception of the Fire Department Permit.

A motion was made by Commissioner Sullivan to approve the license pending receipt of the Fire Dept. permit which motion was seconded by Commissioner Fontaine. All members voting in the affirmative, the motion carried.

3. Hearing on the request from Pizzeria Uno of Brockton, Inc. - 510 Westgate Drive, to appoint Marc Cardin as the manager.

This matter was postponed at the request of the applicant.

4. Hearing on the following requests from M Club Restaurant & Lounge, Inc.:
 - (a) An All Alcoholic Restaurant license at 237 East Ashland Street;
 - (b) To appoint Amancio Fontes as the Manager;
 - (c) A 2:00 a.m. closing hour on Saturdays;
 - (d) To serve alcoholic beverages at 11:00 a.m. on Sundays;
 - (e) An Entertainment license for Vocalists, Dancing by Patrons, Dancing by Performers, Disc Jockey, Karaoke, Televisions, Radio on Sunday from 11:00 a.m. to 1:00 a.m., on Monday and Tuesday from 12:00 noon to 12:00 midnight, on Wednesday thru Friday from 12:00 noon to 1:00 a.m. and on Saturday from 12:00 p.m. to 2:00 a.m.

Present were Attorney Joel Hershman, from the Law Office of John McCluskey, 932 Main Street and his client, Amancio Fontes, 25 Oak Ridge Drive.

Attorney Hershman reviewed that Mr. Fontes has a successful cleaning business in the City which employs over 100 people. He has lived in Brockton for 17 years and is raising his four children here. He is proposing to put a restaurant and lounge in what was the Polo Club at Cary Hill Plaza. He will employ approximately 16 people and they will all be TIPS trained. A 2:00 a.m. closing is being requested for Saturday nights and Attorney Hershman stated he has explained to Mr. Fontes that the Commission does not give 2 a.m. closings to new licenses but he wanted to request consideration be given due to the high cost of the rent being charged. In addition, Mr. Fontes will be moving his cleaning business next door to the restaurant which will allow him to be onsite most of the time. He is planning to have functions such as weddings and showers aside from the restaurant.

Commissioner Kelley reviewed that it has been the board's practice that all new licenses operate for a period to prove they can operate a good business before considering a 2:00 a.m. closing. He suggested that the applicant might want to amend his application to a 1:00 a.m. closing. Attorney Hershman stated his client would be willing to amend his application to 1:00.

Councillor Dennis DeNapoli, Ward Five questioned the applicant as far as his application for Entertainment. Mr. Fontes stated he will have background music and dancing after dinner. In response to questions, he stated the dancing by performers would be for people dancing after

dinner. It was agreed that this would be included in dancing by patrons and the dancing by performers would be eliminated. Attorney Hershman stated that the dancing by patrons would be mostly for wedding and similar events. Mr. Fontes stated it will not be a club. Hours will be Monday through Thursday from 12:00 noon to 12:00 midnight and on the weekends, the hours will be until 1:00 a.m. A discussion was held with regard to the opening hour and it was reviewed that the hours cannot be restricted between 11 a.m. and 11 p.m. Attorney Hershman stated Mr. Fontes plans to invest quite a bit of money and he does not want to attract a young clientele. The business will be mostly for families and functions.

Councillor DeNapoli asked the applicant what kind of experience he has in operating this type of business and Mr. Fontes indicated he does not have experience in this type of business but has operated a successful cleaning business and knows how to deal with clients.

Councillor DeNapoli then requested he be recorded in opposition to this request. It was then reviewed that usually the live entertainment must end a half hour prior to the closing hour and the television, radio fifteen minutes before closing.

Attorney Hershman stated Mr. Fontes runs a successful business and he should not be precluded from having a license and that there have been prior applicants who have not had a lot of experience who were granted a license. Mr. Fontes stated he will be the day to day manager and that his other business will be located next door so he will be readily available. He is familiar with the Mass. General Laws and the Regulations. He is hoping to hire a professional chef from Portugal. There will only be five seats at the bar and this is restricted by the landlord. Mr. Fontes further stated he does not want to be compared to a Polo Club because the owners will not allow him to do that. He stated he is not going to run a Club or a Sports Bar. During discussion, Attorney Hershman stated that he does want to be able to serve drinks at the bar. Attorney Nessralla indicated he is trying to establish what Mr. Fontes is going to do there.

Commissioner Kelley stated he is more interested in why Mr. Fontes is applying for a 2:00 a.m. closing if it is going to be a family restaurant. Mr Fontes response was that the 2:00 a.m. closing would be more for the wedding functions. He stated he will be TIPS trained. He will bring in management to assist him and he will be there as the owner. He will be hiring more managers for his cleaning business to allow him more time in the restaurant.

Commissioner Sullivan then made a motion to allow a 1:00 a.m. closing.

Commissioner Wood questioned the applicant as to the seating capacity of the restaurant and he indicated he thought it was about 120.

A motion was made by Commissioner Sullivan to approve an All Alcoholic Restaurant license. The motion was seconded by Commissioner Fontaine. All members present voting in the affirmative, the motion carried.

A motion was made by Commissioner Sullivan to approve a 1:00 a.m. closing seven days which motion was seconded by Commissioner Wood. All members voting in the affirmative, the motion carried.

A third motion was made by Commissioner Sullivan to appoint Amancio Fontes as the manager. The motion was seconded by Commissioner Fontaine. All members voting in the affirmative, the motion carried.

With regard to the request to serve alcoholic beverages at 11:00 a.m. on Sundays, the Adm. Asst. reviewed that in the past, approval has been given to similar requests with the stipulation that the alcoholic beverages may only be served in conjunction with food being served. Attorney Hershman stated it would be with a Sunday buffet or a function. Commissioner Kelley suggested it be amended to be allowed only in conjunction with a function.

A motion was made by Commissioner Wood to approve the 11:00 a.m. service of alcoholic beverages on Sundays only in conjunction with a function. The motion was seconded by Commissioner Fontaine. All members voting in the affirmative, the motion carried.

Commissioner Kelley then reviewed the request for Entertainment was amended to delete dancing by performers. The request will read Vocalists, Dancing by Patrons, Disc Jockey, Karaoke, Televisions, Radio on Sunday from noon to 12:30 a.m.; on Monday and Tuesday from 11:00 a.m. to 12:00 midnight; and on Wednesday through Saturday from 11:00 a.m. to 12:30 p.m.

A motion was made by Commissioner Wood to approve the Entertainment as amended which motion was seconded by Commissioner Sullivan. All members voting in the affirmative, the motion carried.

The Adm. Asst. reviewed that the application will be sent in to the ABCC for approval and that prior to the license being issued, all department inspection approvals will be required together with the issuance of a Certificate of Inspection.

5. Hearing (postponed at request of licensee from meeting of December 9, 2009 at which time license turned in by licensee) on the charges against Faramarz Fathi dba Bay State Motors – 787 Main Street, of the following alleged violations:
 - (a) Violating the stipulation on the license which states, “NO MORE THAN 15 CARS FOR SALE ON LOT IN ACCORDANCE WITH AMENDED PLAN (11/19/02);
 - (b) Allegations that the license is being leased to Kency and Bill Dessaps;
 - (c) Failure to properly maintain a Used Car Record Book as required by M.G.L. Chapter 140, Section 62.

Present were Attorney John F. Creedon, 71 Legion Parkway and his client, Faramarz Fathi, 8 Alward Road, West Roxbury.

Also present was Officer Scott Uhlman, Brockton Police.

Attorney Creedon stated he has indicated to Attorney Nessralla that they will be admitting to the charges. Attorney Nessralla stated that prior to proceeding, he would like to swear in anyone planning to testify on this matter.

Officer Uhlman and Mr. Fathi were then sworn in.

On direct examination by Attorney Nessralla, Officer Uhlman stated that he conducted an investigation of 787 Main Street on September 5, 2009 and found 27 vehicles on the lot. He provided a brochure which he had prepared and explained it is a complete breakdown of everything that has transpired on the lot. Attorney Nessralla stated this will be offered into the record.

Officer Uhlman continued and stated that based on his inspection and investigation he has found that Mr. Fathi is leasing his used car license, auto repair license and garage license to Kency and Bill Dessaps. These two brothers have filed under oath a Business Certificate with the Brockton City Clerk's office and have declared that they are in fact the owners of Bay State Motors. The Dessaps brothers have stated to him that they own Bay State Motors. Their business card states they are the owner and they have led the general buying public to believe they are the owners of the business. After further conversation with the Dessaps brothers, Officer Uhlman was able to garner the fact that they lease the used car license from Mr. Fathi.

Officer Uhlman stated that the Used Car Dealer Record Book was not in order as required by Mass General Law. The book had about 12 cars entered into it. A couple of the cars on the lot were picked at random to see if they had been entered into the book and they were not. Mr. Kency Dessaps informed him that those cars were on consignment from customers. A couple of the entries in the book were picked at random and Officer Uhlman was unable to locate the cars. He was told that the person who does the books is no longer employed and the book has not been kept up to date.

Since February 2008, the Brockton Police have been to this location on 38 occasions for various reasons. Some of the calls have been for larceny, fraud and bad checks. Officer Uhlman stated he has never seen Mr. Fathi at the location over the past year. When he has asked about the owner, either Bill or Kency Dessaps has answered. Officer Uhlman stated he has called Mr. Fathi and left a message to call and to come to the police station to discuss some of the problems with the lot. When he finally did call back he indicated he was in Virginia. Officer Uhlman again asked him to come to the police station and Mr. Fathi left a message saying he wanted to speak to his lawyer before talking with the police. He never did go to the police station. Officer Uhlman stated that had occurred in September.

Officer Uhlman continued and reported they are also advertising a car repair business on a sign out in front of the business. Their license stipulates the repairs are limited to vehicles that are for sale. Vehicle parts, motors and tires are being discarded and stored outside the building in direct violation of the license.

Officer Uhlman stated he feels that neither of the Fathi Brothers should have a license for they are in direct violation of both Massachusetts General Laws and City of Brockton ordinances as they relate to the business of used car sales, repair license and garage license.

Officer Uhlman stated that along with his report, he has provided pictures, a copy of the Business Certificate filed by the Dessaps Brothers stating they are the owners of Bay State Motors. In addition, he stated he has furnished a copy of a subpoena issued to him to appear at Superior Court in Woburn to testify in a court case involving Bill Dessaps vs. Steven Cain. Mr. Bill Dessaps testified, under oath, that five people let the license from Mr. Fathi.

Since this license was suspended, there have been no calls to the premises. Officer Uhlman stated that it is not a business that the City of Brockton wants or needs. He indicated that there are reports from police officers in other towns regarding unlawfully attaching plates, misuse of dealer plates, etc. Officer Uhlman asked that the license be revoked.

Officer Uhlman stated that the license has been previously revoked in 1998.

Attorney Creedon stated it is not Officer Uhlman's duty to request a revocation. He then reviewed that there are three licenses at this location. In addition to the used car license, there is a repair license and garage license issued by the City Council. He has paid the fines he owed for violations of his licenses. Since July 2008, Mr. Fathi mistakenly thought that he could sublease the used car license to the Dessaps brothers. He is owed \$48,000 under that lease which might be illegal. Attorney Creedon stated Mr. Fathi had an attorney from Salem Massachusetts who was involved in the leasing of the business. While the license was being leased, Mr. Fathi was in Iran and Virginia and he had no control over the situation. Attorney Creedon acknowledged that this is a violation of the City Ordinance. Mr. Fathi has held a used car license at this location since 1995. The other licenses have been there since 1999. Attorney Creedon stated when Mr. Fathi was there he had no violations. He stated his client has been out of business for five months and he has no other business. Mr. Fathi is willing to sign an agreement with the License Commission that he will run the used car business himself and if he is caught in violation, the license can be revoked. Attorney Creedon stated he feels the first time for this violation is no reason to revoke the license and he didn't know it was against the law to lease the license.

Mr. Fathi made a lengthy statement concerning the leasing of his license. Attorney Creedon stated that Mr. Fathi is trying to say that the Dessaps brothers appeared to be responsible people.

Attorney Nessralla stated that on behalf of the City, part of what the licensee did say is true in that he did pay the citation, however, his check bounced. In addition, it has been represented that Mr. Fathi has not been before the board on any violations. The records show that in 1998, he was brought before the Commission on charges by Officers Gurman and Vaughn and found Guilty and the license was revoked. He indicated that the charges before the Commission this evening are quite serious. He reviewed the charges and the fact that the police were required to go there on 38 occasions taking them away from other matters. Attorney Nessralla stated he finds it offensive to the board that the licensee does not know the law. He indicated that the violations are not mere clerical oversights and they are well orchestrated attempts to circumvent

and violate the ordinances and statutes and he should be held accountable. He knows of no more progressive discipline for a person who takes a license and runs a side business out of it. He asked that the license be revoked.

Attorney Creedon indicated there should be a suggested punishment and not a revocation because he was not there to stop any of the violations.

The Adm. Asst. stated that Mr. Fathi was in to ask about transferring the license and was well aware of the requirements involved to transfer the license. Mr. Fathi stated that was in September and he had asked about adding names to the license.

In response to questions from Commissioner Wood, Mr. Fathi stated his license was revoked in 1998. With regard to the length of time it was revoke for, Attorney Nessralla reviewed the record and stated it was from April, 1998 and re-issued after appeal in July, 1999.

Commissioner Wood then questioned whether there have been any complaints or police visits since the license was re-issued. Officer Uhlman stated in addition to the information he has supplied and the fact that there were 38 calls between 2008 and 2009, there are additional matters in the file.

Both Attorneys Nessralla and Creedon indicated they had no further information to present.

Commissioner Kelley then stated that although the licensee has stipulated to a violation, he feels the Commission should go through each of the charges.

A motion was made by Commissioner Wood to find the licensee violated the stipulation on the license. The motion was seconded by Commissioner Dansby. All members voting in the affirmative, the motion carried.

A second motion was made by Commissioner Wood to find a violation on the charge that the license is being leased to Kency and Bill Dessaps. The motion was seconded by Commissioner Dansby. All members voting in the affirmative, the motion carried.

A third motion was made by Commissioner Sullivan to find the licensee in violation of M.G.L. Chapter 140, Section 62 by failing to properly maintain a used car record book. The motion was seconded by Commissioner Wood. All members voting in the affirmative, the motion carried.

Commissioner Wood then stated he feels the correct remedy on the findings is for a revocation of the license. This was seconded by Commissioner Dansby. The vote being 5-0 in favor, the license was revoked.

6. Hearing on the possible revocation of the Class II license in the name of Arcangela Lima dba M & T Auto Body, Sales & Rental – 691-701 Montello Street as a result of the hearing held on December 9, 2009 which resulted in the suspension of the Class II license for thirty (30) days – January 1, 2010 thru January 30, 2010. Charges included the following:

- (a) Violating the stipulation on the license which states, “NO MORE THAN 34 VEHICLES ON THE LOT IN ACCORDANCE WITH THE PLAN SUBMITTED.” On October 23, 2009, Officer Uhlman reported a total of 37 vehicles on the property.
- (b) Failure to properly maintain a Used Car Record Book as required by M.G.L. Chapter 140, Section 62;
- (c) M.G.L. Chapter 140, Section 67 – Obstruction of entrance or examination by officers; refusal to exhibit items demanded.

Present were Attorney John F. Creedon, 71 Legion Parkway and his client, Arcangela Lima, 701 Montello Street.

Also present were Officer Scott Uhlman, Brockton Police Department and Lieut. Edward Williams, Brockton Fire Department.

The following persons were then sworn in by Attorney Nessralla:

Officer Uhlman
Lieut. Williams
Arcangela Lima

On direct examination by Attorney Nessralla, Officer Scott Uhlman stated that he did conduct an investigation and an agreement was reached with Attorney Creedon on behalf of his client.

Attorney Creedon agreed that there has been an admission and stipulation of admission as to the charges.

Lieut. Williams was then called to review the agreement reached. He stated there are two licenses involved with this location, one being the used car sales and the other an auto body/repair license. He reviewed that the Auto Body/Repair license is issued by the City Council and at times there is a conflict with the stipulations placed on the licenses. He then reviewed that they have amended “Condition 2” on the license to read, “The maximum number of vehicles associated with this business to be outside on the premises during the day will be 30, including employee and customers’ vehicles as well as vehicles in need of repair and any vehicle related to accessory business associated with the license and residents and visitors of the licensee’s home located in the rear of the business.”

Lieut. Williams then read the agreed upon change to “Condition 3” to read, “The maximum number of vehicles to be stored outside overnight on the property is 12 plus the number of vehicles allowed for sale by the License Commission including employees’ and customers’ vehicles as well as vehicles in need of repair and any vehicle related to accessory business associated with the license and residents and visitors of the licensee’s home in the rear of the business. The vehicles associated with the Motor Vehicle Repair license shall be no more than 10 and be stored overnight outside in the fenced in lot at the corner of Montello and Hancock Streets and will be placed only along the west border of the fenced lot. No vehicles outside of the fenced lot overnight other than 2 which would be residents and visitors of the home in the rear of the business.

Lieut. Williams stated it is the intent of the licensee to request a reduction of the number of vehicles on the used car license from 32 to 10 and to stipulate that these vehicles would be stored along the east border of the fenced lot. Further, the vehicles would be ready for sale with the ability to be registered and the ability to pass a Massachusetts State Inspection within the required number of days.

Lieut. Williams stated that prior to this, the licensee was buying cars that needed to be repaired before they could be sold and the lot appeared to be a junk yard. The Used Car Record Book was inspected and there were many violations found. Lieut. Williams stated that if the Commission is agreeable to reducing the number of vehicles for the used car license from 32 to 10, he believes this will be a resolution to the problem without putting the licensee out of business and giving them a chance to correct the issues. Since meeting with them in January, they have been working with he and Officer Uhlman and keeping with this policy.

Officer Uhlman stated that he drove by today and there were only four cars there. Lieut. Williams stated he has driven by a couple of times weekly and the licensee has been working within the restrictions. He indicated the reduction of vehicles to 10 for sale should not impede her business since the books showed only one vehicle was sold in 2009, 3 vehicles in 2008, 5 vehicles in 2007 and 4 in 2006.

Commissioner Dansby complimented both sides in working together to resolve the issues. Commissioner Kelley agreed but suggested that in the future the information be provided in advance in order to give the Commission enough time to review it prior to the meeting. He indicated he would almost like to postpone this in order to be able to review their recommendations properly.

Lieut. Williams stated that Mrs. Lima is still in business under the old license so if the matter is postponed for a month she will be able to operate.

With no further information, a motion was made by Commissioner Dansby to approve the stipulations as presented. The motion was seconded by Commissioner Fontaine. All members voting in the affirmative, the motion carried.

7. Hearing (postponed at request of licensee from meeting of January 20, 2010) on the charge against B.A.M.N., LLC dba NFUSZION – Jeffrey Summers, Manager, of an alleged violation of ABCC Rule 2.05(2), To wit: “No licensee for the sale of alcoholic beverages shall permit any disorder, disturbance or illegality of any kind to take place in or on the licensed premises. The licensee shall be responsible therefore whether present or not.”, reported on Sunday, December 27, 2009 at approximately 2:02 a.m.

The following persons were sworn by Attorney Nessralla:

Jeffrey Summers
Sgt. Mark Celia, Brockton Police Department
Officer Jennifer Polynice, Brockton Police Department

The first witness called by Attorney Nessralla was Officer Polynice who stated on December 27, 2009 at 2:02 a.m. as a result of a 911 call to the Police Department, she and Officer O'Malley were dispatched to 23 Montello Street for an Assault and Battery Dangerous Weapon. It is her understanding that the 911 call came in reporting that a party had been stabbed. Upon their arrival she and Officer O'Malley drove around the perimeter to see if they could find a victim. They were unable to find a victim and by that time, there were several officers at the scene. Officer Polynice stated that when she arrived at the scene she observed blood on both the north and east doors. She went inside with Dets. Almeida, Carde and Delahoy to view the surveillance video with the manager. While viewing the video tape, Officer Polynice stated she witnessed a fight that had taken place inside the club. Once they were done viewing the video she did a report on what she had observed.

In response to questions from Attorney Nessralla, Officer Polynice stated Det. George Almeida and Sgt. Celia had spoken with employees of the establishment.

Mr. Summers then stated that when he received the letter it referred to the public need to decrease the hours. He stated working in inner city Brockton is pretty much the most dangerous City in the State with shootings at the high school and shootings at the Mall.

Attorney Nessralla informed Mr. Summers that at this time they want to conclude with the testimony and then he can say whatever he wishes. He asked Mr. Summers if he had any questions for Officer Polynice.

Mr. Summers stated he does have questions for the officer. In response to questions from Mr. Summers, Officer Polynice stated she has been on the police force for three years. She did not make an arrest that night. She had just put into the report the observations she had. She had seen the video. When it came to the video they were cooperative. She had not gone back for a copy of the video.

Mr. Summers stated he had no further questions for Officer Polynice.

The next witness called by Attorney Nessralla was Sgt. Celia who stated that on December 27th, he had responded as an assistant supervising unit. He stated he was one of the first responding officers and had arrived on Franklin Street heading in a westerly direction parallel to the north most door. He stated he could see a large amount of blood outside the door on the walkway and the sidewalk. There was also trickling blood traces in an easterly direction towards Montello Street. He had conversation with one of the managers who stated very clearly that nothing had taken place at the establishment. She believed, if anything, it might have taken place west of the location in the parking lot at the rear. There was a large white male door man who indicated he knew nothing of any altercation that had taken place inside. Sgt. Celia stated he then asked Dets. Delahoy and Almeida to investigate further. They went inside and they located the video tape which they viewed.

Mr. Summers stated there was no blood inside and the police report states there was no blood inside. He asked Sgt. Celia if he had something different and Sgt. Celia responded it was the

officers' statements at the scene. He asked if anyone had a copy of the police report and Commissioner Kelley read from Det. Almeida's report which stated he walked to the side entrance and noticed there was blood smeared on the inside of the door. Mr. Summers then asked Commissioner Kelley to read the police report for the record which he did.

Det. Almeida's report stated that on December 27, 2009, at approximately 0202 hours, a call for service at Progressions/NFusion Lounge was received. Brockton Dispatch advised cruisers that a person had been stabbed at the location. Det. Carde, Delehoy and Almeida responded as an assist unit. Upon their arrival they made their way up Franklin Street looking for a victim. Uniformed patrol officers who were already on the scene had advised them that the lounge bouncers had informed them that there were no problems or fights at the bar. Sgt. Celia then called Officer Almeida over the air and informed him of blood in the side entrance to the lounge. Det. Almeida walked back down Franklin Street and observed bright red blood on the ground in front of the side entrance to the NFusion Lounge. The blood had a splatter pattern sprayed on the walls around the doorway and appeared to be arterial bleeding based on the bright color and spray pattern.

The report further stated that a bouncer, Jason Weinick, opened the side door and stepped out of the bar. Det. Almeida asked him if anyone in the bar was injured and Weinick informed him that nothing had taken place in the bar. Det. Almeida pointed out that the blood was all over the side entrance and he asked Weinick if there had been a fight. Weinick once again stated there were no problems or fights in the bar this night. Det. Almeida walked into the side entrance and noticed blood smeared on the inside of the door. No blood was found on the inside floor. A patron who did not want to provide him with his name told Det. Almeida that he had seen a black male with some type of argyle sweater walking up Franklin Street from the bar and he was bleeding profusely. Other patrons who did not want to be named also stated there was a fight inside the bar.

Officer Skinner then called Det. Almeida over to the front door and pointed out more bright red blood at the front entrance. Officer Johnson then showed him a 4 way tire iron that was found by the front entrance which was a possible mechanism of injury. Plymouth County B.C.I. was on the scene and photographed the blood. Sgt. Celia detailed a marked cruiser to the Brockton Hospital Emergency Room in the event that a victim showed up seeking treatment for stab wounds or serious laceration. No victim was found.

Det. Almeida's report further stated that Det. Delehoy who is familiar with the lounge's video surveillance system, went into the manager's office with the manager, a Ms. Raines, to replay the video. Dets. Carde and Almeida and Officer Polynice were then called up to the office by Det. Delehoy to also view the video. They could clearly see that there was a fight inside the NFusion Lounge between several people and that all three bouncers were involved in trying to break up the fight. (Det. Almeida had noted that the time on the surveillance system is an hour fast. The video has the fight recorded at approximately 0240 hours, however, the real time of the fight was 0140 hours.)

Mr. Summers acknowledged there were a few gentlemen arguing. He, Jason Weinick and another bouncer separated them. He stated there was never any fight but there was arguing and

posturing. He stated it is always their job to get rid of the problem and export the people outside. He stated once again there was never any fight inside and he didn't see anything. He also stated he doesn't know what takes place after the individuals are outside. There were no arrests, no victims and no perpetrators. Mr. Summers stated the police did not come back with any names or ask for the video. He stated that he has been called in because of his own niceness by showing the police the video tape. He stated they did not have to show it.

In response to Commissioner Kelley's questions, Mr. Summers stated there was no fight and he stated he is not contradicting the officers. He indicated their video surveillance system has 16 cameras. Each image is 2 x 2 and the officers did not blow up the images. He stated the officers definitely saw posturing but did not see any fight. Commissioner Kelley pointed out that the bouncer told the officer there was no problem inside and Mr. Summers stated there was a problem. He further stated he did not see any blood on the inside of the door.

Attorney Nessralla stated there was blood on the inside of the door as testified by the police officers. He further stated he would give the credibility to the police officers that there was a fight as opposed to Mr. Summer's term of posturing. He reviewed that Sgt. Celia also testified there was complete denial by the bouncers that there had been any problem. He indicated that type of a denial is not only a violation of the regulations but can often times lead to a police officer or patron walking into a problem by not being aware of what has happened. Someone had used a tire iron or some instrument that resulted in injury to someone. Mr. Summers stated he agrees with that and that here was an argument, they separated them and brought them outside.

In response to questions from Commissioner Wood, Officer Polynice stated when she arrived at the scene there were already officers there. This had been an open call on 911 to dispatch. She stated an unknown caller had made the call. The individual had not identified themselves as a manager or anyone from the club. She had observed a large amount of blood on Franklin Street right in front of the door. She also saw blood on the front entrance. She stated she had not seen the tire iron. She stated she is unsure of whether the video was minimized but did her report on the fight and what the victim was wearing. Officer Polynice stated she remembers from what she saw on the video, it looked like the victim was talking to someone who then assaulted him. Someone pulled the other person off of the victim and then someone kept going after him and hitting him. They were then separated. Officer Polynice stated it was definitely a physical altercation.

Mr. Summers stated his video surveillance camera was one hour fast. At 1:40 a.m., they had called last call and stopped the music but the lights were not yet on.

At this time Commissioner Wood questioned Sgt. Celia who stated all of his observations were parallel to the north door which is the side door. They did not observe any blood on the tire iron. The tire iron was on the outside. Det. Almeida entered that door. Sgt. Celia stated he was talking to employees who stated nothing took place inside. He saw the blood on the inside of the door and called the detectives

In response to questions from Commissioner Wood, Mr. Summers stated he was present when the altercation took place and he had not called 911 because there was no reason to call 911. Immediately after the altercation, they got the individuals out of the bar. Commissioner Wood asked Mr. Summers if he feels he has any responsibility to see that there is no fight once the individuals are outside and Mr. Summers stated he does have some responsibility but there is not much they can do. They try to move the individuals along. He stated they can try but they really don't have a lot of responsibility. People are checked for weapons when they come in to the establishment. During the evening, there is no one patrolling outside the Club. He stated at the end of the night they do go outside to move the people along. The police had arrived at approximately 2 a.m. that evening and there had been no opportunity for himself or his employees to go outside and see any of the blood. Mr. Summers stated he had no idea there was blood and that had come as a complete surprise to him.

In response to questions from Commissioner Kelley, Sgt. Celia stated there were between 30 to 40 patrons milling around outside when he arrived. Mr. Summers stated he was there as well as Ms. Raines. He stated he was inside doing the register and outside cleaning up the blood. He had thrown a couple of buckets of hot water to get the blood off the wall. At that time the police were inside. He had spoken with Det. Delahoy at some point.

Commissioner Dansby asked how he would explain the blood and Mr. Summers stated there was obviously a fight. Mr. Summers stated his responsibility goes as far as the licensed premise and outside is not the licensed premise. He stated his first concern was getting them out of the licensed premise. He stated he can make the assumption that the people they escorted out were the ones who were fighting.

Attorney Nessralla reviewed that it is not the function of the commission to investigate and try to come to a conclusion but to determine whether the regulation was violated and, more specifically, to determine whether anything was called in by the establishment. He reviewed that Mr. Summers admitted they had not called the police because there was no fight.

Attorney Nessralla stated that the second issue which he feels is most egregious is the failure of the employees and bouncers to truthfully disclose to the police what transpired and to deny that anything had happened. They either knew or should have known by the circumstances.

Mr. Summers stated that if he or any other bar owner in the City called the police whenever there was an argument, they would never have a moment's peace. He stated to Attorney Nessralla that he was jumping to a conclusion by implying that he had lied. In response to questions, Officer Polynice indicated it was definitely a fight she saw taking place on the video. Sgt. Celia stated that Det. Almeida told him very clearly that the fight took place inside and that is why he was filing the report.

Commissioner Fontaine asked if he could see the video and Commissioner Kelley stated he does not feel that is an issue. Attorney Nessralla stated he feels there is enough testimony between the police reports and the police officers present. Commissioner Wood then reviewed that the testimony that there was blood at two different doorways implies that two separate people went out two separate exits, both bleeding. Mr. Summers disagreed with this. Commissioner Wood

then stated it could imply that there were two separate stabbings that happened to occur almost simultaneously right outside the two exits.

Mr. Summers then made a welcoming comment to Commissioner Woods and stated the Commission's laws state inside the licensed premise. Commissioner Woods informed Mr. Summers that the Commission is allowed to make fair inferences based on the evidence. Mr. Summers then stated that if the police hadn't viewed the video tape, they would have nothing. Commissioner Wood stated that they do have the testimony of two officers. Attorney Nessralla stated the reports are being offered as evidence as well.

With no further evidence presented, Commissioner Kelley reviewed the charge.

A motion was made by Commissioner Wood to find the licensee in violation. The motion was seconded by Commissioner Sullivan. The vote being 5 in favor and no one opposed, the motion carried.

Attorney Nessralla then reviewed for the Commission the history of violations of this licensee which include the following:

A charge by the ABCC of violating M.G.L. Chapter 138, Sect. 23, which included a guilty finding and the entire license was suspended indefinitely. This was appealed by the licensee and it was found that a change of the description of the licensed premise was issued without approval and the license for the second floor was suspended indefinitely.

After a hearing on July 9, 2008, the licensee was found guilty of violating ABCC Rule 2.05(2) and B.L.C. Rule 8 and the hours of operation were rolled back to 1:00 a.m.

Commissioner Kelley then stated there is a history and the licensee's hours were rolled back. He reviewed that the Commission had given the licensee another opportunity after the roll back by allowing him to extend the hours to 2:00 a.m. in March, 2009.

A motion was made by Commissioner Sullivan to roll the hours back to 12:00 a.m. The motion was seconded by Commissioner Wood.

During discussion, Commissioner Sullivan indicated the licensee can reapply after six months provided there are no further violations.

At this time, Mr. Summers commented that the new Commissioner who has no history was seconding the motion. Commissioner Kelley indicated to Mr. Summers that they were in the middle of a vote. He informed Mr. Summers that the new commissioner has been duly sworn in.

A vote was then taken and with Commissioners Wood, Sullivan and Kelley voting in the affirmative and Commissioners Fontaine and Dansby voting in the negative, the motion carried.

Mr. Summers then stated that there is not a comeback from 12:00 just like the Tiger's Den which has closed down. He indicated that as he was going to state at the beginning of the hearing, "we

all know and understand we work and live in the most violent city in Massachusetts with shooting at the High School and shootings at the Mall, with a murder inside The Lit, shootings on Nielson and Hancock and we are here because of an alleged fight with no victims, with no perpetrator, with no weapon, with nothing and this is what we've come to."

Mr. Summers thanked the Commission and stated, "This will be helpful for my lawsuit against the City."

8. Communications

A communication from Attorney Cassis regarding the license renewal of Terra Terra Bar and Grill was reviewed. The Adm. Asst. stated that the ABCC has concurred that there is no right to renewal of the license and no action needs to be taken.

9. Any other business to properly come before the Commission.

The Commission will meet again on March 18, 2010.

With no further business to come before the Commission, a motion was made by Commissioner Sullivan to adjourn the meeting. The motion was seconded by Commissioner Fontaine. All members voting in the affirmative, the meeting was adjourned.

APPROVED:

Joseph P. Kelley, Commissioner

Paul D. Sullivan, Commissioner

Bruce G. Dansby, Commissioner

Joshua J. Wood
Commissioner

Fred Fontaine
Alternate Commissioner