

TAPED

The License Commission held its regular monthly meeting at 6:00 p.m. on Thursday, April 15, 2010, in the G.A.R. Room at City Hall. Present were Commissioners Joseph P. Kelley, Paul D. Sullivan, Joshua J. Wood and Alternate Commissioner Fred Fontaine. Also present were License Agent Lieut. John Crowley; Asst. City Solicitor Kate Feodoroff; and Administrative Assistant Bonnie Tucker. The meeting was called to order by Commissioner Kelley who presided.

1. Approval of the Minutes of the License Commission Meeting of March 18, 2010.

A motion was made by Commissioner Sullivan to approve the minutes of the License Commission meeting of March 18, 2010 which motion was seconded by Commissioner Fontaine. All members voting in the affirmative, the motion carried.

2. Approval of the following police officers as license agents for the month of May, 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.

An amended list of officers sent by Chief Conlon was read by Commissioner Kelley which included Lieuts. Crowley, LaFratta and Bonanca; Sgts. Vardaro and Lofstrom; Dets. Schaaf, Hilliard, Lonergan, Smith and Bell; and Officers Uhlman and Healy.

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

3. Requests for Special One-day Permits:

- (a) **Wine and Malt Beverages** – First Lutheran Church – James Benson, Manager, for a Church Social Event to be held at the Fruth Center – 891 Montello Street on Saturday, May 1, 2010 from 6:00 p.m. to 12:00 midnight.

Present was James Benson, 35 South Street, West Bridgewater, who stated the Church is planning a small congregational event and would like to serve beer and wine. The event will not be open to the community.

Commissioner Kelley reviewed that Lieut. Barry had made the recommendation that no police details be required. The Adm. Asst. reviewed that the Fire Department Permit will need to be issued prior to the function.

A motion was made by Commissioner Sullivan to approve the one-day permit pending receipt of the Fire Permit. The motion was seconded by Commissioner Fontaine. All members voting in the affirmative, the motion carried.

- (b) **Wine and Malt Beverages** – St. Joseph Manor Health Care, Inc. – Anne M. DeMinico, Manager, for a Labor Day Picnic with Las Vegas Night Permit to be

held at 261 Thatcher Street, on Monday, September 6, 2010, from 11:00 a.m. to 6:00 p.m.

Present were Greg Belcher, 360 North Main Street, Anne DeMinico, 2 New Water Street, Middleboro and John Drusinkas, Thatcher Street.

Ms. DeMinico stated that St. Joseph Manor Health Care is planning to hold a Labor Day Picnic. They are requesting to serve beer and wine and there will be bingo and a money wheel. This is a resurrection of the old picnic event that the Sisters used to hold..

It was reviewed that prior to issuing of the license, the list of volunteers will be required together with the raffle and bazaar permit. Ms. DeMinico stated she had spoken with Lieut. Barry and there will be at least two police detail officers.

A motion was made by Commissioner Sullivan to approve the request pending receipt of the Fire Department Permit which motion was seconded by Commissioner Wood. All members voting in the affirmative, the motion carried.

- (c) **Wine and Malt Beverages** – Temple Beth Emunah, for a Comedy Night to be held at 479 Torrey Street on Saturday, April 17, 2010, from 8:00 p.m. to 12:00 midnight.

Present was Stuart Kirsch, 99 Fuller Street, Middleboro and Marcie Hunt Liberty, 11 Breer Circle.

Mr. Kirsch reviewed that a Comedy Night is planned for this coming Saturday and they would like to sell wine and beer at the event. Approximately 120 people are expected to attend and Lieut. Barry has recommended one police detail. Lieut. Williams who was present on another matter indicated the Fire Permit is in order.

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

ADD:

- (d) **Wine and Malt Beverages** – Brockton Firefighters Local 144 – James W. DuBeau, Jr., Manager, for a Fundraiser (Road Race) to be held at 80 Perkins Avenue on Sunday, June 27, 2010, from 12:00 noon to 4:00 p.m.

Present was James DuBeau, Jr., 181 Falconer Avenue and Archie Gormley, 53 Rockland Drive. Mr. DuBeau stated the fourth annual Brockton Firefighters road race is being planned. Proceeds will be for the benefit of the Brockton Firefighters Pipes and Drums.

Commissioner Kelley stated Lieut. Barry has recommended no police details be required.

A motion was made by Commissioner Sullivan to approve the one-day permit which motion was seconded by Commissioner Wood. All members voting in the affirmative, the motion carried.

- (e) **All Alcoholic Beverages** – Brockton Firefighters Local 144 – Michael McKenna, Manager, for a Fundraiser to be held at 80 Perkins Avenue on Friday, May 7, 2010, from 6:00 p.m. to 12:00 midnight.

Archie Gormley stated he would represent Michael McKenna who is working this evening. Mr. Gormley stated this event is their annual scholarship dance.

Commissioner Kelley stated that Sgt. Barry has recommended no police detail be required.

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

- (f) **All Alcoholic Beverages** – Brockton Firefighters Local 144 – Archie Gormley, Manager, for a Fundraiser (Democrat City Committee) to be held at 80 Perkins Avenue on Thursday, May 20, 2010, from 4:00 p.m. to 11:00 p.m.

Present was Archie Gormley who stated this will be the second year they have held this event, however, this will be the first time requesting a one-day liquor license. A candidates' night is planned to be held at their meeting hall and they hope to raise money for their scholarship fund.

Commissioner Sullivan stated he would abstain from voting on this matter due to a potential conflict.

A motion was made by Commissioner Wood to approve the one-day permit which motion was seconded by Commissioner Fontaine and made unanimous by vote of Commissioner Kelley.

- 4. **WITHDRAWN:** Hearing on the request from Brockton Fair Caterers, Inc. – Maura Carney, Manager, 433 Forest Avenue, to amend the Entertainment license to include a Bull Riding event with Rodeo Entertainment and Brazilian music on Saturday, May 29, 2010 from 12:00 noon to 12:00 midnight; on Sunday, May 30, 2010 from 12:00 noon to 11:00 p.m.; and on Monday, May 31, 2010 from 12:00 noon to 9:00 p.m.

Several area residents were present and were informed that this matter was withdrawn, however, they indicated they would like to be heard. Commissioner Kelley indicated he does not know if this can be done where it has been withdrawn from the agenda. Attorney Feodoroff stated since it was withdrawn, it is not a matter before the Commission and they cannot act on it. The Adm. Asst. stated that if they re-applied for the event it would have to be on an agenda in order for it to be considered. One of the residents indicated that Chairman Holmgren had told them last year that there would be no more of these events allowed. Attorney Feodoroff indicated she is not aware of what had been said, however, the Commission must act on an application before it whether it be approved or denied.

5. **WITHDRAWN:** Hearing on the request from Max's Hideout, Inc. – Michael Asack, Manager, 68 Field Street, to amend the Entertainment license to include a "Choreographed Wrestling Exhibition" on Saturday, April 24, 2010 from 6:30 p.m. to 12:00 midnight.
6. Hearing on the request from Kasmel Corporation dba Honey Dew Donuts to transfer the Common Victualer license at 541 Pleasant Street to Sam's Coffee Shop Corp. dba Honey Dew Donuts.

Present were John Rapo, 12 Stonegate Lane, Dover and Robert Pimental, 780 Highstone Street, E. Taunton.

It was reviewed that this is a transfer of the Common Victualer license. Mr. Pimental submitted the inspection approvals from the Wiring and Building Inspectors and stated the Fire Department has been to the location. Lieut. Williams stated the approval was faxed over. The only approval missing is from the Board of Health.

Commissioner Kelley also reviewed that there was a tax issue and the approval will be subject to clearance of the check.

A motion was made by Commissioner Sullivan to approve the transfer pending clearance of the check and pending the Board of Health approval. The motion was seconded by Commissioner Wood. All members voting in the affirmative, the motion carried.

7. Hearing on the charges against Antonio Fonseca dba CJ Beer and Wine (holder of a Wine and Malt Package Store license), 721 Warren Avenue, of the following alleged violations:
 - (a) **M.G.L. Chapter 138, Section 34**, to wit: ". . . whoever makes a sale or delivery of any such beverages to any person under twenty-one years of age, either for his or her own use", on March 20, 2010 at approximately 9:00 p.m.
 - (b) **M.G.L. Chapter 138, Section 63A**, to wit: "Any person who hinders or delays any authorized investigator of the commission or any investigator, inspector or any other authorized agent of local licensing authorities in the performance of his duties...."

Representing the licensee was Attorney Wayne Mathews, 529 Pleasant Street and his client, Antonio Fonseca, 17 Anania Terrace.

The following persons were sworn:

Det. Chris McDermott, Brockton Police
Mr. Fonseca

On direct examination by Attorney Feodoroff, Det. McDermott stated that on Saturday, March 20, 2010, at approximately 2045 hours, he was in an unmarked police cruiser with his partner, Det. Nazaire Paul. They were assisting the Narcotics Unit in an investigation in the area of 721 Warren Avenue. He indicated that CJ's Package Store is located directly across the street from where they were parked. While waiting for the Narcotics Unit, Det. McDermott stated he and his partner observed two white males who appeared to be under the age of 21 enter the front door of the store. A short time later the two males exited the store carrying brown bags. It was unknown what was in the paper bags.

Det. McDermott stated that once they were done with the Narcotics Unit at approximately 2100 hours, they observed a Chevrolet Cavalier, MA Reg. 112AW4 pull into the parking lot. There were four occupants inside who all appeared to be under the age of 21. The driver exited the motor vehicle and went inside the store. Several minutes later the same male exited the store carrying two brown paper bags. The vehicle was driven away.

Det. McDermott stated he had received information from Lieut. Crowley's office that complaints had been received indicating this establishment was selling to under aged individuals. With this information in mind, Det. McDermott stated he followed the vehicle which left the parking lot heading in a northerly direction and had them pulled over into the Warren Avenue Market located at the intersection of Warren Avenue and Forest Avenue. The driver was identified as Brian Gillis, whose date of birth is April 2, 1990, making him nineteen years of age. He showed Det. McDermott his identification and stated he had purchased alcohol at the establishment and had not been carded. When asked what was in the brown bags, he stated there was beer inside and handed the bags to the detectives. There were 6 40 oz bottles of malt liquor (2 bottles of King Cobra Premium Malt Liquor, 2 bottles of Colt 45 Malt Liquor and 2 bottles of Steel Reserve High Gravity Lager) Exhibit #2. The beer was seized and turned in to the station. The officers obtained the identification of the three other occupants. None of the individuals was 21 years of age.

In response to questions from Attorney Feodoroff, Det. McDermott stated that Mr. Gillis had given his wallet to him and he found no form of false identification. He also searched the vehicle and indicated he believed Mr. Gillis who stated he had not been asked for any I.D. Det. McDermott stated that he, Det. Paul and Det. Jimmy Smith went to the store and had conversation with Mr. Fonseca's son who was working the cash register at the time. He denied making the sale. Det. McDermott stated he asked to see the video since there were surveillance cameras set up. Mr. Fonseca arrived and wanted to know what was going on and Det. McDermott stated they showed him a picture of Brian Gillis which was marked as Exhibit #1. He asked Mr. Fonseca several times if he could see the video and Mr. Fonseca indicated something to the effect that he was too busy and could not show it at the time. Det. McDermott stated he explained to him that it would be helpful in determining whether Jeffrey Fonseca had asked Mr. Gillis for identification. Mr. Fonseca made several excuses and would not show them the video. The picture of the bottles of beer was then identified and marked as Exhibit #2.

On cross examination by Attorney Mathews, Det. McDermott stated they were parked in the parking lot approximately 150 feet from the entrance to the store. He did not cite the underaged individual for being a minor in possession of alcohol. If a fake form of identification had been

found, he would have charged Gillis. Det. Smith was at the store prior to Det. McDermott arriving. He had conversation with Mr. Fonseca's son who had contacted his father. Attorney Mathews asked Det. McDermott how long it took him once he returned to the store to decide to charge him with serving a minor. He indicated they were at the store for approximately 20 minutes. Prior to leaving the area, Det. Smith informed him that the police department had received an anonymous tip about minors purchasing alcohol at this location. He had not included this information in his report because he could not confirm it.

In response to further questions from Attorney Feodoroff, Det. McDermott stated his initial impression was that Mr. Gillis was under 21 years old and when he was pulled over and observed at close proximity, he appeared to be under 21 years old. After returning to the store and speaking with Mr. Fonseca, Det. McDermott stated he asked several questions and Mr. Fonseca seemed to understand his questions and was responsive.

In response to questions from Attorney Mathews, Det. McDermott indicated Mr. Fonseca did not say the video camera wasn't working but there was some confusion as to why he couldn't show it to him. It was his recollection that Mr. Fonseca said something like he couldn't show it to him now but he didn't tell him it was broken.

In response to questions from Commissioner Wood, Det. McDermott stated that Mr. Gillis and the other individuals were inside the car when he first approached them. He asked him to step out of the vehicle. He had not pat frisked him. If Mr. Gillis had been using a fake I.D., Det. McDermott stated he believes that would have been a defense for Mr. Fonseca. While he was talking to Mr. Gillis, Det. Paul was speaking with the other three individuals. He does not specifically remember the reason give by Mr. Fonseca for not showing the video but at the time, it did not make sense to him.

Commissioner Kelley stated he would like to ask Lieut. Crowley some questions.

Lieut. John Crowley was then sworn in by Attorney Feodoroff.

In response to questions from Commissioner Kelley, Lieut. Crowley stated he has received three complaints that this location is making underage sales. They have been watching the location for approximately two months.

In response to questions, Mr. Fonseca stated no one working in his establishment has received formal training for alcohol sales. He is aware of the regulations and it is their policy to ask for identification. He explained that he was assaulted and had bought the video camera a week before the incident. The camera was not yet working but in order to protect himself, he did not want anyone to overhear him say that it was not working. There were four or five people in the store at the time. He explained that there is a chip in the camera which hasn't been installed. He told the detective to wait and asked him to go into a more private area so no one could hear him. Det. McDermott did go with him but there was some confusion at the time.

Attorney Feodoroff then called on Det. McDermott who stated they did not go into the back room where he assumed the DVD would have been set up but they did go to an area of the store

where there was more privacy and he did have some conversation where Mr. Fonseca talked about the camera system and told him to wait. Det. McDermott indicated that he explained to Mr. Fonseca that seeing the video could benefit him if Mr. Gillis had used a fake ID. He, again, said to wait and was shown the picture of Mr. Gillis. Mr. Fonseca acknowledged that he looked like he was 21 and that his son had made a mistake. Upon returning to the front of the store, Jeffrey Fonseca agreed that he might have made a mistake. They were not invited into the back room and went outside and continued their conversation. Det. McDermott stated it was his understanding at the time that it was Mr. Fonseca's decision not to let them see the tape.

In response to questions from Attorney Mathews, Det. McDermott stated it wasn't Mr. Fonseca's conduct that interfered with their investigation but the confusion about the video. When he said wait, he didn't know whether he wanted him to come back the next day or whether he didn't know how to use the system but he wasn't able to clearly explain that it was not working. He indicated he can now understand what had occurred.

At this time, Commissioner Sullivan indicated he would like to hear from Mr. Fonseca's son who was present.

Jeffrey Fonseca, 17 Anemia Terrace, came forward and was sworn in.

In response to questions, Jeffrey stated he was working the register and was not aware of what had happened until the police came in and told him he had sold beer to a minor. He has never attended a TIPS class. He stated he asks for identification. Commissioner Kelley showed Jeffrey the picture of Brian Gillis but he said he didn't remember serving him. The picture was also shown to his father at the time. Jeffrey stated he was working while the officers had conversation with his father. He did hear some of the conversation regarding the video camera. Jeffrey stated his father didn't want everyone to know that the camera was not working. Jeffrey explained that several weeks prior, the store was robbed.

Prior to closing the hearing, Attorney Mathews asked to be heard and indicated he would not be commenting on the charge of serving a minor, however, with regard to the hindering charge, he stated there was clearly some confusion which was partially due to the language barrier. He feels there is not enough evidence to find his client guilty and that Mr. Fonseca was trying to tell the detective to go to the back so he could explain that the camera was not working without the customers overhearing this. He was not intentionally trying to hinder the investigation.

With no further testimony presented, a motion was made by Commissioner Sullivan to find the licensee guilty of violating M.G.L. Chapter 138, Section 34. The motion was seconded by Commissioner Fontaine. With Commissioners Kelley, Sullivan and Fontaine voting in the affirmative and Commissioner Wood opposed, the motion carried.

A motion was then made by Commissioner Fontaine to find the licensee Not Guilty of violating M.G.L. Chapter 138, Section 63A. The motion was seconded by Commissioner Wood. All members voting in the affirmative, the motion carried.

Attorney Mathews then asked to be heard on the penalty phase and stated this is a family run business. Mr. Fonseca and his two sons all work other jobs but between the three of them they are there 100 percent of the time. They have been in business for a couple of years. Attorney Mathews stated he feels this was an honest error in judgment and that a letter placed in the file would be reasonable for a first violation.

A motion was made by Commissioner Sullivan to suspend the license for one day. The motion was seconded by Commissioner Fontaine.

After a brief discussion, Commissioner Wood made an amended motion that as far as the penalty, anyone working at the establishment be required to complete an alcohol servers training program.

Attorney Feodoroff reviewed for the members that unless the motion is withdrawn they will have to go forward with the vote.

A vote was then taken on the motion to suspend the license for one day. With Commissioners Kelley, Sullivan and Fontaine voting in the affirmative and Commissioner Wood opposed, the motion carried.

Commissioner Kelley then indicated that he feels the recommendation for TIPS training is essential for the staff and a motion was made by Commissioner Wood to recommend training for the staff. The motion was seconded by Commissioner Fontaine. With all members voting in the affirmative, the motion carried.

The licensee was informed that they would have to complete the training within six months.

8. **POSTPONED:** Hearing on the charges against Consanguinity, Inc. dba The Tekoah (holder of an All Alcoholic Restaurant license)– Shear Yashub I. Shear Yashub, Manager, 34 Petronelli Way, of the following alleged violations observed on March 21, 2010 at 1:45 a.m. and on March 27, 2010 at 1:41 a.m.:

Brockton License Commission Rule #8 (2 counts), to wit: “The last drink must be served before the closing hour. All glasses and bottles must be cleared from the tables or bar by 15 minutes after the closing hour. All customers must have left the premises by 30 minutes after the closing hour. Any licensee and his employees shall not be prohibited from being upon such premises at any time for the purpose of cleaning, making emergency repairs to, or providing security for, such premises or preparing food for the day’s business or opening or closing the business in an orderly manner. They may not drink after the closing hour.”

9. Hearing on the charges against Teddy Popa dba North Main Auto Sales (holder of a Class II Used Car Dealer license) at 1245 Main Street, of the following alleged violations:
 - (a) Allegations that the license is being subcontracted to Antonio Pereira;

- (b) Failure to properly maintain a Used Car Record Book as required by M.G.L. Chapter 140, Section 62.

Representing the licensee was Attorney Daniel M. Hutton, Six Cabot Place, Unit 8, Stoughton. Also present was Teddy Popa, 78 Arbor Way, Jamaica Plain.

The following persons were sworn by Attorney Feodoroff:

Lieut. Edward Williams, Brockton Fire Department
Officer Scott Uhlman, Brockton Police Department
Teddy Popa.

Attorney Hutton stated he had not seen any evidence and requested a copy of the report which he was provided with.

On direct examination by Attorney Feodoroff, Officer Uhlman stated he is employed as a police officer and assigned as a License Agent. On February 10, 2010, at approximately 12:45 p.m., he and Lieut. Williams performed an inspection of the North Main Auto Sales at 1245 Main Street. The inspection was prompted by a complaint of reported body work and repair work being performed on the premises without the required license. The complainants were also concerned about the junk, dismantled cars on the property and the cars that are always covered by blue tarps. As part of the investigation, they found there was auto body work and auto repair work taking place on the premises. Officer Uhlman stated during this inspection, they observed mechanics working on two cars in the bays. The owner had hired a new manager, Antonio Pereira, who informed him that he is a "subcontractor" with Teddy Popa. A large banner was observed being displayed across the front of the building which stated, "Open under new management." Mr. Pereira was asked to contact Mr. Popa and he informed them that Mr. Popa had not been around in a while and that he (Pereira) was running the place now and if they had any concerns he could handle them "because I run the place."

Officer Uhlman continued and stated that as they were inspecting the building they discovered an illegal apartment on the second floor above the auto sales establishment. There was a sleeping area and a large amount of clothing and shoes in storage racks. Mr. Pereira informed them that he stays there on occasion. Lieut. Williams asked Mr. Pereira if Mr. Popa, the owner of the building, is aware of the apartment and he stated that Teddy knows he stays there sometimes. Electric space heaters were being used to heat the apartment because the gas had been shut off by Bay State Gas Company. Kerosene space heaters were running in the illegal body shop which is a direct violation of Massachusetts State law and a deadly way to heat a building. There were no carbon monoxide detectors anyplace on the property, especially not in the 2nd floor illegal sleeping area.

Officer Uhlman reported further that there was substandard electrical work performed throughout the building and Mr. Popa informed him that he had done it and that he is a mechanical engineer. He then asked Mr. Popa if he is a licensed electrician and he stated no. Mr. Popa then questioned him concerning his knowledge and Officer Uhlman informed Mr.

Popa that he is a licensed electrician. The City Wiring Inspector Chris Sheehan concurred that the wiring was substandard and ordered National Grid to terminate the power to the building.

Lieut. Williams did a thorough inspection of the used Vehicle Record book and found it was not up to par in direct violation of M.G.L. Chapter 140, Section 62. He indicated that Lieut. Williams would be reporting his findings at the meeting. Officer Uhlman stated that during their inspection, they found vehicles on the property which were not in the book and vehicles in the book which were not on the lot. According to Mr. Pereira, some of the vehicles on the lot were there for car repairs and he stated they don't need to be in the book.

Officer Uhlman continued and stated that two City of Brockton Ordinance violations were issued to Mr. Pereira. Officer Uhlman stated that these two violations were changed in Court to reflect that Mr. Popa is responsible. One was issued to Mr. Popa. The citations have since been appealed and paid. Mr. Popa was found responsible for violating City Ordinance by having an illegal apartment on the property, engaging in body work without a license and engaging in repair work without a license.

Officer Uhlman concluded his report by stating he feels Mr. Popa should not have a license due to his violations of both the General Laws and the City of Brockton ordinances as they relate to the business of used car sales, repair license, garage license and illegal sleeping quarters and endangering the lives and safety of the neighborhood and his employees. He indicated Mr. Popa does not deserve the privilege of continuing to hold a used car license. He requested the Commission take the necessary action against the license holder.

The next witness called by Attorney Feodoroff was Lieut. Williams who stated he is a Fire Department Inspector and Investigator. He stated he had responded to North Main Auto Sales with Officer Uhlman. As a result of the inspection, he found body work and mechanical repairs being done without a license; there were kerosene heaters being used in violation of State Code; and there was a sleeping area upstairs on the second floor which is not permitted in a commercial building. Lieut. Williams explained that if the fire department had to respond they wouldn't know there was anyone inside the building.

Lieut. Williams stated there was a lot of dangerous wiring and power was cut to the building. He and Officer Uhlman spoke with Mr. Pereira for approximately two hours in the parking lot. They went from vehicle to vehicle looking at titles which Mr. Pereira furnished to them. They tried to identify each and every vehicle in the parking lot. There were eight vehicles on the lot that were not recorded in the book. One vehicle was sitting on a trailer and the vehicle had been bought without a title and they were in the process of attempting to get a title for it. They made a cutoff date of the last time the state police had inspected the book. He stated he inspected 52 pages with a date range from July 3, 2008 to February 10, 2010 encompassing a year and eight months. Lieut. Williams indicated he found violations on 29 of the 52 pages. Of the 52 pages, 29 were chronologically out of order. He then referred to a spread sheet he had prepared. He pointed out that vehicles are supposed to be entered into the book as they are purchased. He indicated there was a total of 155 errors and omissions he found in the book. These included title numbers and dates not being properly recorded in the book and addresses of people buying the cars or where they had bought the cars were not properly recorded. There were vehicles sold

with no disposition in the book. In some cases, dates of acquisition were not documented. There were dates that contradicted other dates such as vehicles being sold before they were actually acquired. There were problems with six of the titles to vehicles on the lot which had been signed over by the former owner on the title but nothing was filled in at the top. Information required is the sale price, name of purchaser, date of sale, address and mileage.

Lieut. Williams explained that the purpose of the book is to document sales, what has been sold, where the vehicle came from, VIN numbers or engine numbers if there is no vehicle involved, whether numbers been altered, amended or defaced on the vehicle and, if so, they want to know why, whether the vehicle is repairable, parts only, collision, fire, flood and, in general, the things that people should know. In the lower portion, they need to know where the vehicles go and in several cases there was no record of where the vehicle went. He explained that this is done for reasons such as taxes, fraud and consumer protection. Lieut. Williams then explained that the Registry of Motor Vehicles has approved the Used Vehicle Record Book. In the front of the book, there are instructions for the dealers telling them exactly how the book should be filled out.

In response to further questions from Attorney Feodoroff, Lieut. Williams stated you couldn't miss the sign advertising "Under New Management" which was located on the north side of the property. He heard Mr. Pereira say he was running the place.

Officer Uhlman reviewed a chronology of events that have taken place. (Refer to report and file) He also stated that Mr. Popa has obtained repair plates for his establishment despite not being licensed to do any repair work. Officer Uhlman indicated he has notified the RMV and they will revoke the repair plate.

Officer Uhlman reviewed that he has submitted pictures of the smashed cars which are on the property, a picture of the sign stating brake service, etc. and on the front page of the brochure is a sign that states, "North Main Auto Sales Service".

On cross examination by Attorney Hutton, Lieut. Williams stated he told Mr. Pereira to shut down operating the portable heaters. He also told him the power had to be restored and the fire alarm had to be repaired and that the body work and repair work had to cease. He stated he had not put this in writing and he had not given him a specific amount of time to rectify the conditions. He has been back to the location since the initial inspection. Mr. Pereira had indicated he was under the impression he could operate a body shop and a repair shop. He was also under the impression that Mr. Popa knew he was sleeping on the second floor. Mr. Pereira told them that the place was infested with rats and had glue pads on the floor across the door so the rats couldn't get into his sleeping area. Mr. Pereira also mentioned that Mr. Popa does not go there very often.

In response to further questions from Attorney Hutton, Lieut. Williams stated that there was nothing mentioned about Mr. Popa being sick. He is unsure as to whether Mr. Pereira and Mr. Rosa are the same person. Attorney Hutton pointed out that both names are in the book. He has spoken with Mr. Popa about what he needed to do to get the building back in operation such as removing the propane and making the repairs to the wiring. Lieut. Williams then went through numerous entries in the book which contained violations or insufficient entries.

Lieut. Williams stated that Mr. Pereira (Rosa) had indicated to him that he had purchase the vehicles with his own money. The vehicles were for sale. He informed him that there was a deal with Teddy that when the vehicle was sold, Teddy took his cut of the money and he got the rest. He got reimbursed for the vehicle when the vehicle was sold. Teddy had not given him anything in writing as far as a contract but there was some indication that he had been running the place for a couple of months.

On cross examination of Officer Uhlman by Attorney Hutton, Officer Uhlman stated that he had been observing the premises for months prior to making the inspection. He indicated they have had previous dealings with Mr. Popa when he operated at other locations. On the day of the inspection, they were there for a couple of hours. He indicated Mr. Pereira was the first person he saw when entering the premises. He has never seen any customers on the premises. Mr. Pereira told he and Lieut. Williams that he was a subcontractor with Teddy Popa.

Officer Uhlman stated he took possession of the Used Vehicle Record Book and that on page 265 both he and Mr. Pereira had signed that page to indicate they were in agreement that that was the last blank page. Attorney Hutton asked Officer Uhlman to turn to page 262 and asked him whose signature he saw on the last entry at the bottom of the page where it refers to disposition of the motor vehicle. Officer Uhlman stated there was no signature on his copy. Officer Uhlman then asked Attorney Hutton if he had a name on his book and he stated he did. Officer Uhlman stated that if there is a name there, the book has been altered since he took it for evidence. Officer Uhlman stated he has a true and accurate copy as given to the Commission members from the day he seized the book. Attorney Hutton then went through several other pages of the book.

Attorney Hutton called on Teddy Popa as a witness. Mr. Popa stated his name and address for the record. In response to questions, Mr. Popa stated Antonio Pereira Rosa was his manager. He had been sick with a cold and out for a couple of weeks in February. While he was out, Mr. Pereira Rosa was in charge of going to the auction and buying vehicles as well as selling the vehicles. Mr. Pereira Rosa did not have the authority to set the price on the vehicles. Mr. Popa stated he does not take trade in vehicles from customers. Mr. Popa stated he would give money to Mr. Pereira Rosa to purchase vehicles. He did not use his own money. Mr. Popa stated that he maintains the book. He had tried to teach Mr. Rosa Pereira to do the book but he made mistakes. Mr. Popa stated he wrote up the sales he made and that no one would sign his name. Every vehicle on his lot has a title. There are vehicles on the lot that have not been sold and he does not intend to sell them. He stated people buying cars would leave their old cars with the titles on his lot. Those vehicles were not entered into the book because they were not his vehicles.

Mr. Popa stated that with regard to the under new management sign, Mr. Pereira had told him this was an advertising strategy to bring in new customers. Prior to this, business had been very slow. He had never entered into a contractual agreement with Mr. Pereira Rosa as a subcontractor.

On cross examination, Mr. Popa stated he had not altered his book since the investigation. He indicated he had called Lieut. Williams the following day after the inspection and had then gone to the police station to speak with Officer Uhlman and informed him that there were some vehicles that had been purchased and left on his property. He indicated he had taken a couple of hours to fix his book and then admitted that he had altered his book. He stated he has cars on his lot that he is selling as well as some cars on the lot that customers have left and not come back for even after calling and sending letters. Attorney Feodoroff then reviewed some of the vehicles that Mr. Popa said were left on the lot by customers or his mechanic. Mr. Popa explained that the vehicle which belonged to his mechanic did not run properly. He parked it and had never worked on it. The mechanic gave Mr. Popa the title to the vehicle which he stated cannot be fixed on his lot because he can no longer allow repairs to be done. He stated that sometimes owners leave their vehicles on consignment.

In response to questions from Commissioner Kelley, Mr. Popa stated that Mr. Pereira Rosa is not a subcontractor but was his manager. He indicated Pereira Rosa pays his own taxes and when he sells a car he gets paid a commission. Mr. Pereira Rosa does not split the profit with Mr. Popa. Commissioner Kelley then asked Mr. Popa why the top area of back of the title is not filled out and reviewed that this area must be filled out. Commissioner Kelley stated the amount of money paid for the vehicle must also be filled in and indicated it must be on the back of the title in order for the document to be legal. Mr. Popa agreed that if he is reselling the vehicle he is doing so as a dealer but is buying it from the individual. Commissioner Kelly indicated that it would appear Mr. Popa is trying to bypass a part of the process. He then pointed out the required information that was left blank on several of Mr. Popa's titles. Attorney Hutton Mr. Popa has already answered that the contract had not come to fulfillment yet. Commissioner Kelley stated it shows someone is signing over a title with a signature but does not show who is in possession of the title and can only assume Mr. Popa is in possession. Attorney Hutton stated that is an assumption and Commissioner Kelley advised him that is the process of the Registry of Motor Vehicles.

In response to questions from Attorney Feodoroff, Mr. Popa stated he had entered his mechanic's Yukon into the book a couple of days after the investigation. He stated he purchased the vehicle after Officer Uhlman went to his establishment and Officer Uhlman had the title indicating he had purchased the vehicle. In response to further questions from Commissioner Kelley, Mr. Popa stated that some of the vehicles were left on his property. On two occasions he had taken vehicles to the junkyard. He had titles to the vehicles and had called the customers at home. He had no signature on the title but handed it over to the junkyard with the vehicle.

In response to questions from Commissioner Wood, Mr. Popa stated his accountant files his taxes under his social security and he is a sole proprietorship. He stated he fills out a Schedule C. With regard to Mr. Rosa, at the end of the year he fills out a 1099 for him. Mr. Popa corrected this and stated Mr. Rosa pays his own taxes and he does not give him a 1099. His accountant writes down Mr. Rosa's social security and how much he got paid. Mr. Popa stated he pays no taxes for Mr. Rosa, no social security for him and no unemployment insurance.

Mr. Popa then stated Mr. Pereira Rosa started working for him in December. Attorney Feodoroff pointed out that in October Mr. Pereira Rosa had made an entry into the Used Car Book. Mr.

Popa stated he had met Mr. Pereira Rosa at the auction back in October and they had developed a friendship and he asked him to work for him at his dealership back in December.

With no further information presented, Commissioner Kelley declared the hearing closed.

During discussion, Commissioner Kelley stated he feels there is a lot wrong with this license and a lot of intent to mislead. He indicated he feels Mr. Popa has been less than truthful. He reviewed that the officers have shown due diligence in the investigation of the licensed premise. Commissioner Kelley further stated there are a lot of serious Registry violations and sales tax implications. He stated he feels the business is in total disarray.

A motion was made by Commissioner Wood to find the licensee in violation of subcontracting the license to Antonio Pereira. The motion was seconded by Commissioner Sullivan. With Commissioners Kelley, Sullivan and Wood voting in the affirmative and Commissioner Fontaine opposed, the motion carried.

A second motion was made by Commissioner Fontaine to find the licensee guilty of violating M.G.L. Chapter 140, Section 62. The motion was seconded by Commissioner Sullivan. All members voting in the affirmative, the motion carried.

With regard to the penalty phase, Commissioner Kelley stated that with the evidence and findings on what has taken place, he feels Mr. Popa should not be doing business in the City.

On the violation of subcontracting the license, a motion was made by Commissioner Wood to revoke the license which motion was seconded by Commissioner Sullivan. Commissioner Fontaine voted opposed. With Commissioners Kelley, Sullivan and Wood voting in the affirmative, the motion carried.

On the second violation, Commissioner Fontaine suggested a suspension of the license.

Commissioner Wood made the motion that based on the first penalty, the appropriate penalty under the circumstances would be revocation. The motion was seconded by Commissioner Sullivan. All members voting in the affirmative, the motion carried.

Officer Uhlman requested to make it a part of the record that once Mr. Popa received his written notice of revocation, he has 72 hours to clear the vehicles off of his lot.

In response to questions from Mr. Popa, he was informed that there is an appeal process.

10. Communications

It was agreed that a hearing will be scheduled on the report from police concerning Bar Dino's.

A letter from ABCC legal counsel, William Kelley, was reviewed which indicated that the owner of Progressions had appealed the rollback of hours to the ABCC and they have informed Mr.

Summers that the Brockton License Commission's notice was sufficient and that the ABCC would not hold an appeal hearing and would take no further action in this matter.

A letter from Attorney Creedon was reviewed in which he requested a two month postponement of the hearing scheduled on charges against The Tekoah. It was agreed that the hearing will be scheduled at the Commission's June meeting.

11. Any other business to properly come before the Commission

(a) Annual Report for 2009 – The Annual Report had been distributed to the members and is posted on the City's website.

Officer Uhlman then stated he would like to go into Executive Session in order to discuss a matter concerning an ongoing investigation which is of a sensitive nature.

Attorney Feodoroff informed the Commission and Officer Uhlman that in order to hear something in Executive Session, it must be published that it will be held in Executive Session and the reason for the Executive Session.

Officer Uhlman stated he needs some guidance from the License Commission and Commissioner Kelley suggested he meet with the Law Department and if the Law Department deems an Executive Session is necessary then a special meeting can be scheduled and properly posted.

A motion was made by Commissioner Sullivan to adjourn the meeting. The motion was seconded by Commissioner Wood. All members voting in the affirmative, the motion carried.

The Commission will meet again on May 20, 2010.

Respectfully submitted,

Joseph P. Kelley
Acting Chairman

APPROVED:

Paul D. Sullivan, Commissioner

Bruce G. Dansby, Commissioner

Joshua J. Wood, Commissioner

Scott H. McDuffy, Commissioner

Fred Fontaine, Alternate Commissioner