

TAPED

The License Commission held its regular monthly meeting at 6:00 p.m. on Thursday, March 20, 2014. Present were Chairman Scott H. McDuffy; Commissioners Paul D. Sullivan, Kathy Kenney and Henry Tartaglia. Also present were Asst. City Solicitor Katherine Feodoroff; License Agents Lieut. Ken LeGrice and Officer Scott Uhlman; and Administrative Asst. Bonnie Tucker.

The meeting was called to order by Chairman McDuffy who welcomed new member Henry Tartaglia to the board.

1. Approval of the Minutes of the License Commission meeting of February 20, 2014.

A motion was made by Commissioner Sullivan to approve the minutes of the aforesaid meeting which motion was seconded by Commissioner Kenney. All members present voting in the affirmative, the motion carried.

2. Approval of the following police officers as license agents for the month of April, 2014: Lieuts. Paul Bonanca and Kenneth LeGrice; Sgts. George Khoury, Frank Vardaro, Michael Powers and Bryan Maker; Dets. Thomas Hyland, Nazaire Paul, Matthew Graham, Eric Clark, Santiago Cirino, Tim Donahue, Jackie Congdon and Chris McDermott; and Officer Scott Uhlman.

A motion was made by Commissioner Sullivan to approve the police officers as listed which motion was seconded by Commissioner Kenney. All members voting in the affirmative, the motion carried.

3. Requests for Special One-day Permits:

- (a) **All Alcoholic Beverages** – Brockton Firefighters Local 144 – William Hill, Manager, for a Fundraiser to be held at 80 Perkins Avenue on Saturday, March 22, 2014, from 5:00 p.m. to 12:00 midnight.

Present was William Hill, 80 Ellis Street, who stated they have planned a meat raffle which will take place at the Union hall on Saturday. Proceeds will benefit the pediatric center at the Brockton Hospital. In response to questions, Mr. Hill stated it is open to the public. This will be the third time they have held a meat raffle.

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

- (b) **All Alcoholic Beverages (2 Permits)** – Annunciation Greek Orthodox Church Ladies Philoptohos – Despina Papadopoulos, Manager, for a Food Festival to be held at 457 Oak Street on Saturday, May 17 and Sunday, May 18, 2014, from 12:00 noon to 10:00 p.m.

Present was Despina Papadopoulos, 444 West Elm Street, who stated this will be the organization's fourth Spring Festival. It will take place indoors only. On Saturday, the festivities will be open until 10:00 p.m. On Sunday, they usually finish up by 7:00 p.m. but she would like the option to remain open until 10. Everything is made and served inside the building. Mrs. Papadopoulos stated that she had taken the crowd manager course as requested by Lieut. Williams.

A motion was made by Commissioner Kenney to approve the permits. The motion was seconded by Commissioner Sullivan. All members voting in the affirmative, the motion carried.

- (c) **Wine and Malt Beverages** – Fetti Family Entertainment – Jeremy Belgrave, Manager, for a Fashion/Talent Show to be held at the Hilston Gymnasium & Fruth Center – 891 Montello Street on Saturday, March 29, 2014, from 6:00 p.m. to 10:00 p.m.

Present was Jeremy Belgrave, 93 Nilsson Street, who stated he is organizing an event for the youth. He explained that when he was younger, he had attended the Fruth Center for the Boys and Girls Club and he would like to give back. They have requested two police detail officers and they will also have their own security. He indicated he has been instructed to take the online crowd manager course which he will do.

In response to questions from the Commissioners, Mr. Belgrave stated this will be an 18 plus event with a talent show and fashion show. In addition, they have a DJ and an artist from the VHI show coming to entertain. Wrist bands will be used to identify individuals who are 21 years of age and older. They anticipate approximately 400 people will attend. The age range will be 18 plus and there will be one bartender. There is a kitchen set up at the center and they will be using the gas stove.

Commissioner Tartaglia commented that with so many people, it will be difficult for one bartender to serve drinks and check ID's. Mr. Belgrave stated the ID's will be checked at the door and those over 21 will get a wrist band. He was reminded that the bartenders are responsible for checking the IDs also. Commissioner Kenney indicated she is concerned with stopping under aged individuals from getting drinks or wristbands passed.

Lieut. LeGrice stated it is his opinion that two police officers are not enough for 400 people at a mixed event with one bartender. Mr. Belgrave stated he has never done this before. He is charging \$20 for admission.

Attorney Feodoroff suggested that a stamp be used instead of the wristband.

Commissioner Tartaglia suggested a police officer be stationed near the bar in case there is any doubt. Mr. Bellamy stated he will have security personnel roaming the area to make sure things don't get out of hand.

In response to questions from Lieut. LeGrice, Mr. Belgrave stated the doors open at 5:30 p.m. and the show starts at 6:00 p.m. His partner has contacted the police and he is

meeting with them early next week to make payment and to see who will be there. Lieut. LeGrice suggested that if a supervisor shows up at the event and deems it necessary to order more details due to the crowd, Mr. Belgrave must be amenable to do that which he stated he would agree to.

Chairman McDuffy asked if they should put a number on the details in order to avoid any disagreements. Attorney Feodoroff indicated it would be wise to make the number more concrete and the stamp should be fairly large and unique.

Mr. Belgrave agreed it might be possible to have another officer. They were planning to have one officer at the front door where people come in to check ID's and one in the back door for people exiting. It is not set up so people can enter and exit through the same door. There will be security to do pat downs.

Commissioner Tartaglia questioned whether people are allowed to re-enter once they leave and Mr. Belgrave stated they will not be allowed to come back in.

Commissioner Sullivan indicated it is his understanding that with 300 in attendance without liquor, it requires one police officer and with liquor, the rule requires two officers. He suggested that with 400 or more, there should be four police details.

Chairman McDuffy suggested that there be a minimum of two police details. If, at the beginning of the event or at any time during the event, the supervisor deems it necessary, additional police details will be required. Mr. Belgrave agreed to this.

Lieut. LeGrice indicated he would be agreeable but stated that although the event ends at 10:00 p.m., the officers are required to remain until the parking lot is cleared.

A motion was made by Commissioner Tartaglia to approve the one-day permit with the following stipulations:

1. No one is allowed to re-enter the premise once they have left.
2. At least two police detail officers be required. Additional details will be required at the police supervisor's discretion. Police details must remain until the parking lot is cleared.
3. A large and distinctive stamp must be used to identify persons 21 years of age and over.

The motion was seconded by Commissioner Kenney. All members voting in the affirmative, the motion carried.

- d) **All Alcoholic Beverages** – St. Theresa Maronite Catholic Church – Rev. Tony Mouanes, Manager, for a dance to be held at the Church hall – 343 North Main Street on Saturday, May 3, 2014, from 7:00 p.m. to 1:00 a.m.

Present was Michelle Nessralla, 2 Margo Lane, East Bridgewater.

Ms. Nessralla stated that their spring hafla will be held on May 3rd. It is a family event and 225 people are expected. There will be bands with a DJ that will play both Lebanese and American music. Last year they had both spring and summer haflis and there were no problems. Ms. Nessralla stated that the AMR has been very generous with allowing them to use their parking lot. The event is indoors.

In response to questions from Lieut. LeGrice, Ms. Nessralla stated it will be mostly Church members but is also open to the public. Lieut. LeGrice stated he sees no issues.

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

- (e) **Wine and Malt Beverages** - Brockton Symphony Orchestra – Robert Wisgirda, Manager, for a fundraiser to be held at the War Memorial Building 156 West Elm Street on Saturday, March 29, 2014, from 5:00 p.m. to 10:00 p.m.

Present was Robert Wisgirda, 227 Rockland Street, who reviewed that the Brockton Symphony Orchestra maintains an office at the War Memorial. Prior to the renovations at the building, most of the concerts were performed at the location. He has been on the board of directors for the orchestra for approximately 10 years. In prior years, they would serve wine and malt beverages at the location and it was done usually during the intermission.

Mr. Wisgirda stated they are proposing to have a gala at the War Memorial which has been approved by the Mayor's office. It is to re-introduce the Symphony and the War Memorial building to the City and the region. The event will be a 40's type of event and will not only include members of the Symphony but the Old Kids on the Block and the Council Chords. There will be wine and beer served from 5:00 p.m. to 10:00 p.m. In addition to the musical aspects of the evening, they will also be holding a tribute to the Veterans.

Mr. Wisgirda indicated he has been requested by the Fire Department to complete a crowd manager course. He stated he has served as Public Information Officer for the Emergency Management and has taken many courses. Security will be provided by the Brockton Police. The capacity at the hall is 350.

Commissioner Sullivan asked about parking. Mr. Wisgirda stated he will contact the County to see about using the Registry of Deeds parking lot.

Chairman McDuffy indicated that they are required to have a police detail present because it is a City owned building. As far as the liability insurance, Mr. Wisgirda stated he has spoken with the Law Department and was advised of what is needed.

The date of the event was amended to reflect the correct date of the event which is May 17, 2014.

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

4. Hearing on the request from Mirza Baig Corporation dba 28 Corner Convenience Store – Mirza Azhar Baig, Manager, for a Wine and Malt Package Store license at 95 Montello Street.

Present were Attorney Mark Lawton, 157 Belmont Street and his client Mirza Azhar Baig, 67 Chatham West Drive.

Attorney Lawton reviewed the application filed which indicates Azhar and Saquib signed a Purchase and Sale Agreement last year and are leasing the property at 95 Montello Street which is next door to W.B. Mason. When his clients purchased the assets from the owner of the business and signed the lease, they operated the business with the beer and wine license through December 31, 2013. The license was not able to be renewed because the holder of the license was no longer there. When the license expired and they were no longer able to sell the beer and wine, their income dropped 65 percent. They are a small business and when they purchased the business, they assumed the beer and wine license went with it but it was never transferred at the time. Attorney Lawton further stated that they have advertised the application and the only abutter to the business is Helen Greene, Trustee which is the W.B. Mason Company.

Chairman McDuffy asked if there was anyone present in favor who wished to speak and no one came forward.

In response to questions from Commissioner Tartaglia, Attorney Lawton stated they operated the business since May when they purchased the business and had no problems with the beer and wine license.

The Adm. Asst. stated the license should have been transferred when they purchased the business but it was not. There was one violation that came before the Commission involving a sale to an under aged person. Attorney Lawton stated that was before Azhar became the owner and since he has taken over there have been no problems.

Commissioner Kenney stated that he did operate under someone else's license and did not follow the rules and procedures. Attorney Lawton stated it was not done intentionally.

Chairman McDuffy then asked if there was anyone present not in favor of the license.

Councilor Dennis DeNapoli, Ward Five, was present but deferred to the individuals from the W.B. Mason Company who were present and stated he would speak after them.

Representing the W.B. Mason Company were Thomas Behenna, legal counsel, Tom Golden, 35 Franklin Rogers Road, Hingham, a partner in the W.B. Mason Company and Bill Coe who is the Director of Human Resources. Attorney Behar stated that they are present to oppose

the issuance of the license. Since the beer and wine license was granted at this location, there has been an adverse impact on Mason's business operations to the point where they have had to hire full time security to patrol the parking lot and area around the building. There have been incidents when employees are leaving the building, particularly female employees, which have resulted in some very uncomfortable situations. He indicated that although he is not sure whether the applicants were involved at the time, the business was cited for selling to minors in 2013. He stated that W.B. Mason would have been present in opposition when the original license was issued, however, they missed the notice.

Bill Coe stated he has seen first-hand that it presents an immediate safety risk to their 267 employees at that building. Although it may not be a reflection upon the ownership, there have been a number of employees who have been approached by the people who cut through the lot. The security detail was hired to monitor the lot. In addition, the location was one of the problematic establishments in the City that was shut down for illegal use of the EBT cards.

Chairman McDuffy asked Mr. Coe if it is his opinion that the unruly behavior is due to the wine and malt license because it is also a convenience store. Mr. Coe responded that he does feel it is a direct result of the beer and wine license. He used as an example Fernandes Liquors which he stated he travels by every morning and evening and he sees the same group of transients lining up to buy alcoholic beverages. He stated this is the type of clientele they are trying to keep out of the neighborhood and have the W.B. Mason Company has made significant investments in the area. W.B. Mason has made a long term commitment to stay in the neighborhood through their own personal renovations and have not only made a financial commitment but also a commitment to the City of Brockton. They feel this license would have an adverse impact on the employee population. Attorney Behenna stated that based on his conversation with Leo Mann who is the CEO, the hostile environment has definitely increased in the area since this store has been able to sell liquor at the location. Mr. Coe stated that over the past few months, there has been a marked difference in foot traffic coming through their lot by the transients because there is no need for them to go to the location because there is no alcohol being sold there and they have gone to another location.

Ward Five City Councillor Dennis DeNapoli stated the store is located in his ward. Councillor DeNapoli thanked the W.B. Mason representatives for staying in the City of Brockton. He stated that it seems that most convenience stores want beer and wine licenses and there are plenty throughout the City. This is an area that the City has spent a lot of money trying to clean up. There is a proposal for housing where the D'Angelo's was located. In addition there are the units coming in at the Gardner and Enterprise buildings. He indicated the location has been a disaster for a number of years. It is dark and there is not enough lighting and there were problems with the previous owner. He stated he is not in favor of granting the beer and wine license.

Lieut. LeGrice agreed that this location was one of the places targeted by police during the EBT card investigation. Officer Uhlman stated that two years ago he served a search warrant at the location and seized over \$7,000 worth of drug paraphernalia. They went to

Court and got an agreement that the materials would be destroyed and the charges dismissed. In January, he went to the store after being notified by the License office that the beer and wine license was not renewed. He had the new owners remove all of the alcoholic beverages from the building. He indicated the new owners were cooperative but they should not have been operating with the former owner's license. They never came in to transfer the license from the old owner.

Commissioner Tartaglia asked the W.B. Mason representatives if their concern is with people hanging around outside. Mr. Coe indicated he has seen people consuming alcohol around the back corner. They have not made complaint to either the Police or the License Commission. He asked if it would make a difference if they were not allowed to sell single containers and Mr. Coe indicated it is their opinion that it would make no difference. Mr. Coe stated they have spent \$44,000 on a security guard because of the situation. Commissioner Tartaglia stated the applicant is new to the business and there have been no complaints. It is his opinion that they should be given the opportunity to do business and to police it well.

Attorney Lawton stated they have submitted Mr. Azhar Baig's resume which talks about his experience in running various businesses. Mr. Baig stated he has worked for two years at Chelsea Liquors. He further stated that his building is totally separate from W.B. Mason. Since they bought the store, the W.B. Mason employees go to his store and never have mentioned anything. They smoke in his parking lot. They are cooperative with their employees. Mr. Baig stated they do not allow customers to drink outside on their premises. There is a fence and they have their own parking lot. They want to cooperate with their neighbors.

Attorney Lawton assured the Commission that if there is something serious which involves a public safety issue, it will be addressed.

Mr. Golden was present and stated he has been with the W.B. Mason Company for 42 years; there are over 200 people working at the Brockton location; and they have a major commitment to the City. They have very successfully worked with the police department with issues over the years. The location is their corporate headquarters and their concern is about protecting the employees. He stated the people who own the business can't be given the job of policing Mason's parking lot. The issue is what happens after the people leave the store. His concern is to not only protect the current employees but to also attract people to work in the City. He indicated he does not feel good about going against the applicants who are just trying to operate a business but W.B. Mason is supporting a far greater number of people in the City and they have made a multi-million dollar investment to make this their corporate headquarters. It is his opinion that the issuance of the license will not help them in getting better as a company.

Refer to tape for further comments from Attorney Lawton and the representatives from W.B. Mason Co.

Lieut. LeGrice stated he is for all business coming to the City of Brockton. He stated that for years, W.B. Mason has called the police on issues. He stated the Police Department is getting better at addressing every neighborhood problem. If there are problems, it is incumbent upon the owner to call police and he should have his property posted for no loitering. He stated he would have no problem with the W.B. Masons people calling him directly. He cautioned Mr. Baig that it is his responsibility to make sure people do not linger in his parking lot. He suggested he install an external camera and make sure it is posted that there is no trespassing. He stated he feels a new owner should be given a chance but they should also respect the investment that W.B. Mason has made. He stated the Police Department can cure the problem.

Chairman McDuffy indicated this is a difficult call for the Commission where they did violate the law for about eight months even though they have indicated they did not know they were in violation. He stated that if this is approved, they need to work together to resolve the problems reported.

A motion was made by Commissioner Kenney to approve the license with the contingency that Mr. Baig and his employees are Tips trained; that they post no loitering signs on the premises; that they install security cameras around the outside of the building; and that they work closely with the Brockton Police Dept. if there are any issues.

Mr. Baig stated they have already bought security cameras for outside and they have a sign posted.

The motion was seconded by Commissioner Tartaglia. With Commissioners McDuffy, Kenney and Tartaglia voting in the affirmative and Commissioner Sullivan opposed, the motion carried.

5. Hearing on the request from Max's Hideout, Inc. – Michael Asack, Manager, 68 Field Street, to extend the closing hour to 2:00 a.m. on Thursdays, Fridays, Saturdays and eves of legal holidays.

Present was Attorney David Asack, 95 West Elm Street and Louis Asack, 396 Summer Street, East Bridgewater.

Attorney Asack reviewed that Max's Hideout has been in operation for 13 years. There has been one violation when the police were not called for an incident in the parking lot. Other than that one incident, there have been no calls to police for noise, traffic or parking problems. Mr. Asack keeps a close eye on the establishment and there is a steady and loyal customer base. He is asking for the 2 a.m. license because there is a real economic hardship where the surrounding bars have 2:00 a.m. closing hours.

Attorney Asack stated that his client has a 1:00 a.m. license and he locks the door at midnight. On weekend nights that is significant. People are leaving his bar to go to the establishments that are open until 2 a.m. which includes places in Avon and the Oak Lounge which is within walking distance. Attorney Asack asked that the Board allow him the parity

to compete with the establishments who hold 2:00 a.m. licenses. He indicated there is no permanency to the 2:00 a.m. license and if there are any violations between 12 and 2, the Commission has the jurisdiction to address the issues. Mr. Asack and all of his help are Tips Certified and he does not anticipate that there will be any problems if the request is granted.

Officer Uhlman stated that the ZBA has limited the number of people allowed in the building to 96. In addition, the second floor cannot be used. Mr. Asack stated that restriction was removed as of the last Certificate of Inspection. Officer Uhlman asked that the number of people allowed in the building be reflected on Mr. Asack's license. He stated that Mr. Asack has been very amenable to any problems brought to his attention.

Lieut. LeGrice stated he researched calls to this establishment over the past eighteen months and there have not been many incidents that required police action. Other than the issues Officer Uhlman had brought up, he did not see anything detrimental over the last year.

Commissioner Kenney asked if this establishment is in a neighborhood. Mr. Asack stated he is located on North Montello Street and has a Laundromat to one side and a vacant lot on the other side. The T station is in the back. It is on the edge of a neighborhood.

Chairman McDuffy commented that although Attorney Asack has represented that a 1 a.m. to 2 a.m. license doesn't really change anything it does, past records show that when places are open until 2 a.m., they tend to bring in a different crowd, especially on the weekend.

Mr. Asack stated that he will hire a detail on the days he has entertainment and, in addition, he has his own guy inside. He stated he just wants to keep the customers that are already there.

A motion was made by Commissioner Tartaglia to grant the extension to 2:00 a.m. The motion was seconded by Commissioner Kenney.

It was agreed that the Entertainment license will also be amended to include the live entertainment to 1:30 a.m. and the television to 1:45 a.m. on the nights they close at 2.

A vote was taken and with Commissioners McDuffy, Kenney and Tartaglia voting in the affirmative and Commissioner Sullivan voting opposed, the motion carried.

6. Hearing on the request from Henrique Fernandes dba Reliable Auto Sales to transfer the location of the Class II Used Car Dealer license from 65 Court Street to 369 Court Street.

Present were Attorney John Creedon, 71 Legion Parkway and Henrique Fernandes, 25 Walton Avenue, Hyannis.

Attorney Creedon indicated he did not file the paperwork for the transfer but offered a plan for the new location at 369 Court Street. The location has been licensed as a used car lot for many years until the last owners defaulted and the property was taken over by Rockland Trust. Mr. Fernandes has a closing with Rockland Trust to buy the property this month. He is requesting 20 used car spaces. Mr. Fernandes plans to do repairs at the garage location which is a separate building on the property but needs to get the required licenses from the City Council. For the time being, he will be using V & A Repairs on North Main Street for his warrantee work.

Officer Uhlman stated that it was brought to his attention sometime last fall that Mr. Fernandes was evicted from his current location at 65 Court Street. He was then going to move his license to the Nilsson-Stewart Fence Company but that never occurred. He renewed his license for 2014 but had no place to operate because he had been evicted at the time.

Officer Uhlman stated he has reviewed and approved the plan for the new location but requested it be noted that there be no cars in the garage and no repairs because there are no licenses. The total number of cars allowed for sale will be 17. There are a total of 20 spaces which includes a handicapped spot, customer parking and employee parking.

In response to questions, Mr. Fernandes stated he has been at his current location since 2005 and still operates his business there. He indicated he had a problem with his landlord and there is now a repair business but he is still selling cars out of the location. He has spoken with the Plumbing Inspector and has already made arrangements with a contractor to do what needs to be done in order to get his repair license. With regard to the other side of the property which has office space, Mr. Fernandes indicated he intends to lease that in the future. Officer Uhlman stated that no cars of Mr. Fernandes can be put on the other side of the property and the lot will have to be lined.

Councillor DeNapoli indicated it is his recollection that this location was before the City Council for a Repair license last fall and was approved to a different person. He stated he will support Mr. Fernandes when he is ready to go for his license. Mr. Fernandes stated the Plumbing Inspector told him there is a gas trap in there now but is no longer up to code. Councillor DeNapoli asked that he be recorded in favor of this request.

Officer Uhlman stated that the plan might have to be modified when he goes for his repair license.

A motion was made by Commissioner Kenney to approve the transfer of the location of the license which motion was seconded by Commissioner Sullivan. All members voting in the affirmative, the motion carried.

7. Hearing on the possible revocation of the Class II Used Car Dealer license as a result of the charge against Henrique Fernandes dba Reliable Auto Sales that he is no longer operating the licensed business at 65 Court Street.

This hearing was not necessary based on the Commission's action to approve the transfer of the location as discussed in agenda item number 6.

8. Hearing on the charges against Manuel and Maria Rodrigues dba Cristal Restaurant – 250 Main Street, of the following alleged violations reported on January 12, 2014:

(a) M.G.L. Chapter 138, Section 23, to wit: "No license issued under section twelve fourteen or fifteen...shall authorize the sale of any alcoholic beverages other than those purchased from a licensee under section 18, 19, 19F or 19C...", reported on January 12, 2014; and

(b) M.G.L. Chapter 138, Section 22, to wit: "Licensees for the sale of alcoholic beverages... may transport and deliver anywhere in the commonwealth alcoholic beverages or alcohol lawfully bought or sold by them, in vehicles owned or leased by them or their employees, if each vehicle used for such transportation and delivery is covered by a permit issued by the commission..."

Present were Attorney John Creedon, 71 Legion Parkway and Maria Rodrigues, 95 Fairview Avenue.

The following persons were sworn by Attorney Feodoroff:

Officer Scott Uhlman, Brockton Police
Maria Rodrigues

On direct examination by Attorney Feodoroff, Officer Uhlman stated he filed a report on January 12, 2014, however, his report concerns an incident he observed on July 12, 2013. While he was off duty, he observed Maria Rodrigues purchasing large quantities of alcohol at BJ's Wholesale. A breakdown of the liquor purchased was submitted and marked Exhibit "1". A list of wholesale purchases by Cristal Restaurant was also submitted and marked Exhibit "2". He explained that the notes are his but there is a list which he obtained from BJ's Wholesale Club. This was obtained on November 27, 2013. He then went through his breakdown which showed the following purchases from Maria's membership at BJ's Wholesale:

- January 12, 2013 – 48 bottles of Bud Light
- January 18, 2013 – 4 Liter Bottle of Carlos Rossi
- January 27, 2013 – 2 cases Corona, 96 Bud longnecks, 96 Bud Lites
- February 1, 2013 – 72 Bud Lite longnecks, 96 Bud Lites
- July 12, 2013 – Johnny Walker Black Label, Chevas Scotch, Hypnotiq liqueur, Malibu Coconut Rum, 96 bottles Corona, 12 bottles Amstel Light, 96 bottles Bud and 96 bottles Bud Lite

When contacting BJ's Wholesale Club to ascertain the items purchased, he gave them her name and address. Her membership ID number was obtained through a search by BJ's.

Officer Uhlman stated that during an inspection of Cristal earlier in the year, he had observed that there were orange price tags on a number of the bottles of liquor at the bar. Liquor purchased from a wholesaler does not have price stickers on the bottles. At the time he made the observation, he was there with other inspectors and an overcrowding situation took priority and was dealt with accordingly. On another occasion, he received information from one of the other detectives that he had seen a van backed up to the rear. There was someone taking liquor out of a van. It was an unmarked van. It could not be determined where the liquor was being taken because Joe Angelo's, Tamboo and Cristal Restaurant all share a loading dock in the rear. It turned out that the liquor was not being taken in to Cristal. He stated he then requested Ms. Rodrigues provide all of her wholesale invoices over the past six months. The receipts were submitted. The last invoice was a purchase made after the License Commission meeting when he had brought it to their attention that an investigation was taking place.

Officer Uhlman continued and stated he contacted the ABCC and was told that they would conduct their own investigation and that he should bring his investigation before the local board. Officer Uhlman summarized and stated that the licensee is not buying all her liquor from a licensed wholesaler which is a direct violation of M.G.L. In addition, on one of the invoices from Horizon Beverages, it stated that Manny Rodrigues would pick up. (The invoice was included with the exhibits presented) Officer Uhlman stated that he checked with the ABCC and was informed that they have no permits to transport issued to either Cristal Restaurant, Maria Rodrigues or Manuel Rodrigues.

On cross examination by Attorney Creedon, Officer Uhlman stated it is customary to inform the owner at the time a violation is observed. At the time of his observations at BJ's, he was not working and was with family. The list from BJ's contained items other than alcohol. He never observed the liquor purchased from BJ's be sold to anyone. He did not observe either Mrs. Rodrigues or her four sons transport the liquor which was purchased at BJ's. On the evening when he observed the orange price tags on the bottles at Cristal Restaurant, Officer Uhlman stated they were clearing the bar on an overcrowding violation which took precedence over the liquor bottles. He is not aware if Lieut. Bonanca spoke to Mrs. Rodrigues about this.

Attorney Creedon stated that his client would be testifying this evening and he thanked Officer Uhlman for providing him with the information prior to the hearing.

On direct examination by Attorney Creedon, Mrs. Rodrigues stated that whatever Officer Uhlman had observed her purchase was not for Cristal Restaurant. All of her children use her membership card. If it was in July, she could have been having a party at her house because she has a bar at her house which is bigger than the one at Cristal.

On cross examination by Attorney Feodoroff, Mrs. Rodrigues stated she has one membership at BJ's which is shared by all members of her family.

(At this time a short recess was taken)

The Chairman announced that the meeting was being brought back to order.

Attorney Feodoroff continued with cross examination of Mrs. Rodrigues who stated that her son, Manny, never picks up the liquor. Sometimes her husband, Cipriano, picks up the liquor and transports it in his own private vehicle. He does not have a permit. She has called the wholesalers to deliver liquor but sometimes they cannot deliver because the restaurant is closed and she has to pay cash on delivery. She has sent her husband to pick up the liquor because she doesn't want to have to close the restaurant until they come back to make a delivery. When she found out that a permit to transport was required, they applied for it but she has not received it.

Mrs. Rodrigues stated she does not open every day anymore because business has been so slow. She used to be open from 11 a.m. to 2:00 a.m. On Thursday, she opens at 5:00 p.m.

Attorney Feodoroff clarified for the record that Mrs. Rodrigues has admitted to the transport charge and denied the purchase at BJ's stating that was for personal consumption.

In response to questions from Commissioner Tartaglia, Officer Uhlman stated he did not take the bottles out of the premises and he could see the stickers on the bottles but they were dealing with a more serious issue at the time. He did not return to take the bottles from the shelves. Commissioner Tartaglia indicated that the agents use to confiscate the bottles from the bar as evidence.

Attorney Feodoroff then explained to the Commission that there are two types of evidence in any case. There is circumstantial evidence which is what Officer Uhlman is asking the Commission to look at. The other is direct evidence which is the testimony of Ms. Rodrigues which they must judge the credibility of. That is what the Commission's main function is tonight. Commissioner Tartaglia stated they have nothing to go on where they do not have the bottle in front of them to show the sticker on it. It is his understanding that the agents have to take the bottle from the establishment and show it to the Commission.

Attorney Creedon agreed that in the usual situation, the agent would observe the sale, go in and confront the licensee or the person working there and that way there is no reasonable doubt.

Attorney Feodoroff stated she wants it to be clear that this is not a court of law and it is not a criminal prosecution so the board does not have to be convinced beyond a reasonable doubt but they do need to be convinced. She reviewed that having the bottle would be direct evidence. They have to decide whether they will rely on the circumstantial evidence as compiled by the City or whether they won't rely on it.

Commissioner Kenney asked Officer Uhlman if he has been back to the licensed premises since he observed the orange stickers on the bottles. Officer Uhlman stated in November he went back to Cristal Restaurant and saw no stickers on the bottles. He has been out of work since January due to an injury.

Commissioner Tartaglia stated that whether or not the licensee bought liquor from other than a wholesaler, she now understands that she is not suppose to do this. He indicated he does not think it will happen again.

Councillor DeNapoli stated that Cristal Restaurant is located in his ward. He asked Officer Uhlman if he has ever seen this happen before and whether he has taken a bottle out for evidence. Officer Uhlman indicated he observed the violation before the liquor was taken into the place but not after.

Chairman McDuffy then commented that there is no doubt that Mrs. Rodrigues went to BJ's to purchase supplies for the restaurant. Attorney Creedon disagreed and stated Mrs. Rodrigues was buying for home use. Mrs. Rodrigues stated all of her children are married and buy items for their homes on her card but some of the non alcohol items do go to her restaurant. He then made the suggestion that she have a separate card for the items she buys for her business rather than combining everything.

In conclusion, Attorney Creedon stated there was no evidence of sale but she has been warned on everything and he suggested that it be taken in that direction.

Attorney Feodoroff reviewed that there is an admission on the transport charge and the finding on that is clear. Although there are missing pieces of evidence she advised the Commission that they must take the evidence piece by piece and judge whether the amounts of beer and liquor purchased were for personal consumption. She suggested that this was credible evidence and there might have been an instance when they could not get a wholesaler out there and had to purchase from an unauthorized establishment.

A motion was made by Commissioner Kenney to find the licensee guilty of M.G.L. Chapter 138, Section 23 in that the alcohol was purchased from other than an authorized source for consumption at the restaurant. She indicated she believes there is enough evidence. The motion was seconded by Chairman McDuffy. With Commissioners Kenny and McDuffy voting in the affirmative and Commissioners Sullivan and Tartaglia opposed, the motion did not carry.

A motion was then made by Commissioner Kenney to find the licensee in violation of M.G.L. Chapter 138, Section 22, based on the admission to the charge. The motion was seconded by Commissioner Sullivan. All members voting in the affirmative, the motion carried.

A motion was made by Commissioner Tartaglia to place a letter of warning in the file. The motion was seconded by Commissioner Kenney with the recommendation that Mrs. Rodrigues needs to understand the laws and if there is something she doesn't understand, she needs to get counsel in order to avoid further mistakes. All members voting in the affirmative, the motion carried.

9. Hearing (postponed from meetings of November 21 and December 12, 2013 January 16, 2014) on the request from Maria and Manuel Rodrigues dba Cristal Restaurant

to extend the closing hour to 2:00 a.m. on Thursdays, Fridays, Saturdays and eves of legal holidays.

Attorney Creedon stated that he does not feel it is appropriate for him to ask on Mrs. Rodrigues' behalf for a 2:00 license tonight and suggested it be held for a month.

Chairman McDuffy stated it is up to the licensee on whether she wishes to go forward tonight or to hold off.

Attorney Creedon stated he would like to discuss it with his client and it will be left up to a letter from him for the Commission to proceed.

A motion was made to postpone the matter to the next regularly scheduled meeting at the request of the licensee. The motion was seconded by Commissioner Tartaglia. With Commissioners McDuffy, Kenney and Tartaglia voting in the affirmative and Commissioner Sullivan opposed, the motion carried.

10. Hearing (postponed from meetings of December 12, 2013 and January 16, 2014) on the charge against RJA Corporation dba Joe Angelo's Café – Joseph Angelo, Manager, 216 Main and 11 Crescent Streets, of an alleged violation of Brockton License Commission Rule #6, to wit: "All alcoholic beverages sold must be opened and consumed on the premises.", reported on November 6, 2013 at approximately 1:45 a.m.

Present were Attorney Louis Cassis, 18 Russell Park and Joseph Angelo, 10 Arborview Terrace, West Bridgewater.

The following persons were sworn by Attorney Feodoroff:

Det. Thomas Hyland, Brockton Police
Joseph Angelo

On direct examination by Attorney Feodoroff, Det. Hyland stated that on November 16, 2013, he was working as a license agent along with Det. Matthew Graham. At approximately 1:45 a.m. they were in the area of Joe Angelo's Café and observed a black male holding a bottle of beer and a couple of other individuals coming off the back deck. They observed him disappear behind a car and then heard glass breaking from behind the bar so the inference was that he smashed the bottle. A couple minutes later the detectives saw another black male exit from the Crescent Street exit and he was holding a plastic cup with a straw. The male saw them in their unmarked cruiser and placed the half empty cup on the bumper of an SUV and started to walk away. Det. Graham told him remove the cup from the bumper, empty it out and dispose of it properly.

The detectives then decided to park across the street on Crescent Street where they could observe both exits. They saw France Payne, who works the side door, walk down to the corner and look down the alley which is the old BAT bus terminal. The detective saw a

young man come out of the same exit and he was holding the same kind of plastic cup as they had previously observed. Mr. Payne stopped him and took the cup and placed it on the nearby newspaper dispenser. The detectives approached him and he identified himself as Vaughn Lewis, d.o.b. 5./2/80. When asked what was in the cup, he stated there was Ciroc vodka and he knew he was not supposed to leave with it. Det. Hyland stated the cup was visible as he exited from Joe Angelo's. It was in no way being concealed as he exited the door.

Det. Hyland stated he spoke with France Payne who told him he was responsible for working the door. When asked why he abandoned his post, he stated there were a couple of fights inside. Det. Hyland stated he asked him why he hadn't called the police and he said they weren't really fights but just arguments. While they were talking to Mr. Payne, they could hear some female voices yelling really loud. Det. Hyland stated he told him to call the police and not to abandon the door to make sure the alcohol is not being taken out.

Det. Hyland stated they went inside and there were two other security men working that night. They were identified as Isaac Remy and Joe Jackson. They were working at other areas beside the door.

On cross examination by Attorney Cassis, Det. Hyland stated that the first individual who was observed with the beer bottle was on the sidewalk. The second individual was observed coming from the exit of Joe Angelo's. The third individual came out when Mr. Payne had left the door to look at something else. There was no evidence of a fist fight when he went inside.

On follow up by Attorney Feodoroff, Det. Hyland stated there are two other establishments in the direct vicinity, however, only Joe Angelo's has an exit on Crescent Street. He could not see any type of disturbance outside the premise so Mr. Payne was not following a fight outside, he just seemed to abandon his post.

Attorney Cassis stated he would not be calling on Mr. Angelo to testify. He indicated that he is not saying whether it did or did not happen but it is obvious the first individual may or may not have come from the establishment; the second person may have come from the establishment; and the third individual left behind Mr. Payne. He stated that people do try to take alcohol out of places and try to hide it. To the extent that it is a violation, he asked the Commission to issue a warning.

Attorney Feodoroff stated it is her opinion that they must find a violation because it is clear that the drink was not concealed and the fact that it was not concealed is concerning because it gives the idea that the drinks can be taken out of the establishment. There is circumstantial evidence that there are two other people who are just outside with drinks, one who had to have come from Joe Angelo's because that is the only establishment with an exit on Crescent Street. If a violation is found, she would not agree that it is a minor violation but they should take into consideration that there was an altercation going on inside the bar which might be a priority. A letter in the file might be appropriate in that there have been very egregious violations at Joe Angelo's in the past which seems to have

changed based on the Commission's stern hand. She indicated the effort on the part of the bar owner is important to consider also. She further stated there is evidence that warrants a finding of a violation which should not be ignored so this can be documented for any future considerations.

Attorney Cassis disagreed with Attorney Feodoroff's characterization of egregious violations in the past and stated there may have been some violations but there were also some that he was vindicated of after further hearings. He indicated a letter of warning would be appropriate.

Lieut. LeGrice stated that from a Police Department standpoint, in a case like this he spoke with Det. Hyland earlier. He indicated that in reading the report, it might have been the broken bottle that drew the doorman outside but the fact is that alcohol did leave the building. Det. Hyland has worked with the security person in the past and has found him to be very reputable. He suggested that there should be security at each exit and two inside to move the people out. After speaking with Det. Hyland, he agrees that by virtue of the laws, it is a violation but he feels a warning or letter in the file is appropriate because the employee was trying to do the right thing and may have made a bad decision on this occasion.

In response to questions, Mr. Angelo stated they close the deck at 1:00 a.m.

Commissioner Tartaglia asked the officers if they are supposed to have the contents of the cup analyzed in order to determine if there is alcohol in it. He indicated that it was his experience in the past that the officers would take a sample and leave a sample with the owner. Det. Hyland stated that common sense will dictate in this case and he is using his physical observations. He did get the names of the individuals and stated that Vaughn Lewis would have been arrested for drinking in public which he had informed him of.

Attorney Feodoroff stated there was admission by the person carrying the drink that it was alcohol.

A motion was made by Commissioner Kenney to find the licensee in violation of allowing alcohol to be taken from the premise. The motion was seconded by Commissioner Sullivan. With Commissioners McDuffy, Sullivan and Kenney voting in the affirmative and Commissioner Tartaglia opposed, the motion carried.

A second motion was made by Commissioner Tartaglia to place a letter in the file for the record in case this comes up again.

Commissioner Kenney stated she would like to amend that and add the recommendation from the police department that another person be placed at the other exit to eliminate the possibility of another violation.

Commissioner Tartaglia agreed to amend his motion to Commissioner Kenney's recommendation. With Commissioners McDuffy, Kenney and Tartaglia voting in the affirmative, and Commissioner Sullivan opposed, the motion carried.

Communications

Any other business to properly come before the Commission.

Texas Road House Holdings, LLC dba Texas Roadhouse – 124 Westgate Drive – Change in Beneficial Interest (Sign Form 43)

The Adm. Asst. reviewed that paperwork is in order and a Form 43 needs to be signed to be sent to the ABCC

ABCC decision regarding RJA Corporation dba Joe Angelo's Café
(Vote required to accept ABCC decision or to affirm original decision to suspend license for 3 days)

The Adm. Asst. reviewed that the decision from the ABCC regarding the hearing held on the appeal of the three day suspension at Joe Angelo's disapproves the Brockton board's finding and action to suspend. In turn, the License Commission must either accept the ABCC's decision to disapprove or to affirm their original decision to suspend the license.

Attorney Feodoroff reviewed that the ABCC found that there is no affirmative obligation on the part of the bar owner to call the police because there is no local rule which is a bad defect. She explained that as a licensee there must be a rule forcing them to make the call. She recommended that the board accept the ABCC decision and amend the rules to make that an affirmative obligation of the bar owners because they want police involvement with situations.

Chairman McDuffy reviewed that there had been a special meeting approximately a year ago to discuss changes and ordinances. He suggested that this rule be added to the list. He stated he will be meeting with Attorney Feodoroff to discuss this and will bring recommendations back to the Commission.

Commissioner Tartaglia then stated that it is his understanding that in a case the Commission hears, if the License Commission finds an establishment in violation, without the appropriate evidence, the licensee can beat it in Superior Court. Attorney Feodoroff stated she disagrees with that analysis because it is not a court of law and the courts which review the decisions also understand that. The board is not held to the same standard because it is not a criminal prosecution. She further explained that a licensee has been given a privilege above and beyond other people so the Commission's evidentiary standard is lower than that required in a court of law. She indicated that they can accept hearsay if they find it credible. This would be totally forbidden rule in Court. The appeal from the License Commission goes to the ABCC or Superior Court and is reviewed under that standard.

A motion was made by Commissioner Kenney to accept the ruling of the ABCC to disapprove the License Commission's decision regarding Joe Angelo's. The motion was seconded by Commissioner Tartaglia. Will Commissioners McDuffy, Sullivan and Tartaglia voting in the affirmative and Commissioner Kenney opposed, the motion carried.

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 Kenney. All members voting in the affirmative, the motion carried.

The next regular License Commission meeting is scheduled for April 17, 2014.

Respectfully submitted,

Scott H. McDuffy
Chairman

APPROVED:

Paul D. Sullivan, Commissioner

Bruce G. Dansby, Commissioner

Kathy Kenney, Commissioner

Henry Tartaglia, Commissioner

Catherine B. Holbrook
Alternate Commissioner

Paul Merian
Alternate Commissioner