

TAPED

The License Commission held its regular monthly meeting at 6:00 p.m. on Thursday, January 21, 2016, in the G.A.R. Room at City Hall. Present were Chairman Henry Tartaglia; Commissioners Paul D. Sullivan, Scott H. McDuffy, Joao DeAndrade and Harold C. Marrow, Jr. Also present were License Agent Lieut. Ken LeGrice; Asst City Solicitor Kate Feodoroff; and Administrative Assistant Bonnie Tucker.

Chairman Tartaglia asked for a moment of silence in memory of former City Councillors Peter Marciano and Robert Coffin who had both passed away recently.

1. Approval of the Minutes of the License Commission meeting of December 10, 2015 and the Special Meeting of December 29, 2015.

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

2. Approval of the following police officers as license agents for the month of February 2016: Lieuts. Kenneth LeGrice and Paul Bonanca; Sgts. George Khoury, Frank Vardaro and Michael Dennehy; Dets. Thomas Hyland, Nazaire Paul, Eric Clark, Santiago Cirino, Jackie Congdon, Chris McDermott, Michael Bunker, Michael Cesarini, Patrick Donahue and Erin Cummings.

A motion was made by Commissioner McDuffy to approve the police officers as listed as License Agents for the month of February 2016. The motion was seconded by Commissioner Sullivan. 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 E. Hill, Manager, for a Memorial Celebration to be held at 80 Perkins Avenue, on Thursday, March 10, 2016, from 12:00 noon to 12:00 midnight.

Present was William Hill, 80 Ellis Street, who stated this is a Memorial Celebration for the 75th Anniversary of the Strand Theatre Memorial which is held every year on March 10th.

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

- (b) **Wine and Malt Beverages** – Manuel B. Mizhirumbay, for a Valentine's Day Party to be held at The Fruth Center – 891 Montello Street, on Saturday, February 6, 2016, from 7:00 p.m. to 10:00 p.m.

This hearing was taken up after agenda item #7.

Present was Manuel Mizhirumbay, 16 Oakdale Street, who stated he is holding a cultural Valentine's Day party at the Fruith Center.

Ms. Tucker reviewed that the Commission has approved another Special license to an individual who is holding a function at the Fruith Center on the same date, February 6th. She asked if there were two halls.

Commissioner McDuffy indicated it is his recollection that there is a lower hall and then a larger hall out front. Ms. Tucker stated she had contacted the other individual who was before the Commission last month to see if his function was still being planned for February 6th and he said that it is.

In response to questions, Mr. Mizhirumbay stated he expects approximately 200 people to attend. His event will be held in the gym. He is not selling tickets. He contacted the detail officer but was told he needed to get the license first. Commissioner McDuffy stated that there is no way the lower hall will hold 200 people. No one from the Fruith Center was present. Mr. Mizhirumbay stated the arrangements were being made through Jim Benson at the Fruith Center.

Commissioner DeAndrade suggested this be held for a special meeting in order to get more information concerning the events.

Lieut. LeGrice stated he could go to the Fruith Center tomorrow to find out how many people it can hold. He stated there is plenty of parking. If it is found that there is not enough room for two functions, Mr. Mizhirumbay will have to make other arrangements. He stated the Fruith Center is the building located on Montello Street.

In order to avoid having to hold a special meeting, Commissioner Marrow suggested that they approve the request subject to Lieut. LeGrice's determination and approval.

A motion was made by Commissioner Marrow to approve the one-day license subject to Lieut. LeGrice's inspection and approval.

Commissioner Sullivan expressed concern as to whether the bartenders will be Tips Certified and the Chairman asked if Mr. Mizhirumbay is Tips Certified. He stated he will only be selling beer and wine. He asked about minors and the applicant stated everyone will be over 21.

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

Commissioner McDuffy suggested that in the future, someone from the Center should be required to attend any meeting where a one-day license is being applied for.

4. Hearing (postponed from meeting of December 10, 2015) on the request from Dian Zheng dba Express Panda to transfer the Common Victualer license at 43 Legion Parkway to Express Panda, Inc. – Yijuan Zheng.

Present was Yijuan Zheng, 222 Mountain Street, Sharon. Mr. Zheng stated that his brother is working and could not be present at the meeting.

Mr. Zheng stated the inspections have not been done yet. He stated he would call for the inspections the following day and will get them done in the next week.

A motion was made by Commissioner McDuffy to approve the transfer of the license pending receipt of the department inspection approvals. The motion was seconded by Commissioner Marrow. All members voting in the affirmative, the motion carried.

5. Hearing on the request from PR Restaurant, Inc. dba Panera Bread for a Common Victualer license at 1301 Belmont Street. (Common Victualer license at this location currently issued to Panera, LLC.)

Present was Enrique Diaz, 35 Totem Village Road, Taunton.

The Adm. Asst. reviewed that a new entity had taken over the operation of this Panera Restaurant. Paperwork has been filed with the exception of the inspection approvals. Mr. Diaz stated he is in the process of obtaining the inspections.

A motion was made by Commissioner Marrow to approve the Common Victualer license pending receipt of the department inspection approvals. The motion was seconded by Commissioner Sullivan. All members voting in the affirmative, the motion carried.

6. Hearing on the request from David Butler dba David's Auto Sales, holder of a Class II Used Car Dealer license at 1114 Montello Street, to transfer the location of the license to 189B Clinton Street.

Present was David Butler, 19 Thornell Street.

In response to questions from Lieut. LeGrice, Mr. Butler stated he is looking to have eight cars on the lot for sale. The back area is used for storage of the towed vehicles. He indicated he also has another lot for storage if the area is full. The plan was reviewed and Lieut. LeGrice stated that if the vehicles are placed in accordance with the plan, there is no room for customers or employees to park. Lieut. LeGrice stated he is concerned with the traffic on Clinton Street due to the school. The way the cars have been placed on the plan

would prevent any tow truck from entering the lot. He suggested that there be two spaces designated for employee and customer parking leaving him with six spaces for sale vehicles. Mr. Butler agreed he could keep five vehicles across the back and could live with a total of six cars for sale.

A motion was made by Commissioner Marrow to approve the license with the stipulation that there be no more than six cars for sale, 1 employee space and 1 customer parking space. The motion was seconded by Commissioner Sullivan. All members voting in the affirmative, the motion carried.

7. Hearing on the request from DTR Corp. – Daniel and Mary Rosman, Owners, for a Lodging House license at 58 Huntington Street.

Present were Mary and Daniel Rosman, 609 Salem Street, Rockland.

The Adm. Asst. reviewed that the paperwork is in order with the exception of the department inspection approvals. Mrs. Rosman stated she is in the process of securing the inspections.

A motion was made by Commissioner Marrow to approve the Lodging House license pending receipt of the department inspection approvals. The motion was seconded by Commissioner Sullivan. All members voting in the affirmative, the motion carried.

8. Hearing on the request from Gislene Registre dba Gygy's Breakfast, Lunch and Catering for a Common Victualer license at 207 Belmont Street.

Present was Gislene Registre, 78 North Street, Randolph.

Ms. Registre stated that this location was formerly Mindy's Breakfast.

At this time, Chairman Tartaglia recused himself from participating in the hearing.

The applicant stated she will be operating on Sunday through Friday from 5:00 a.m. to 2:00 a.m. She is in the process of getting the inspection approvals and hopes to have them all by next week.

A motion was made by Commissioner DeAndrade to approve the license pending receipt of the department inspection approvals. The motion was seconded by Commissioner Marrow. All members voting in the affirmative, the motion carried.

9. Hearing on the following requests from Brockton Country Club – 265 Samuel Avenue:
 - (a) To appoint Kelly Bucherri as the manager; and

- (b) To change officers and directors of the corporation.

This matter was taken up prior to agenda item #3.

Present was Stephen Kelley, 395 Elm Street, the president of the Club. Ms. Bucherri was in the hospital and could not be present this evening. Ms. Tucker stated the paperwork is in order.

A motion was made by Commissioner Marrow to approve the applications as submitted which motion was seconded by Commissioner McDuffy. All members voting in the affirmative, the motion carried.

10. Hearing (postponed from meeting of December 10, 2015) on the charges against Fuhs Enterprises, Inc. dba Dylan's Bar & Grill – Paul J. Fuhs, Manager, 789 Centre Street, of the following alleged violations reported on October 24, 2015, at approximately 2:01 a.m.:

- (a) **ABCC Rule 204 CMR 2.05(2)**, to wit: “No licensee for the sale of alcoholic beverages shall permit any disorder, disturbance or illegality of any kind to take place in or on the licensed premises. The licensee shall be responsible therefor, whether present or not.”; and
- (b) **M.G.L. Chapter 138, Section 63A**, to wit: “Any person who hinders or delays any authorized investigator...or who refuses to give to such investigator, inspector or agent such information as may be required for proper enforcement of this chapter.”

Representing the licensee was Attorney Jon Aieta, 18 Russell Park, Quincy. Also present was Paul Fuhs, 33 Loring Street.

Also present was Attorney Kate Feodoroff, Senior Asst. Solicitor, Det. Nazaire Paul and Officer Jesse Drane.

Prior to beginning, Attorney Feodoroff explained that the City will present its case and the licensee will be able to cross examine the officers. The licensee will then be allowed to present their witnesses.

The following individuals were then sworn by Attorney Feodoroff:

Mr. Fuhs
Det. Paul, Brockton Police
Officer Drane, Brockton Police

The first witness called by Attorney Feodoroff was Det. Paul, who stated he is a detective assigned as a license agent. On Saturday, October 24, 2015, at approximately 2:01 a.m., Officers Drane and Baker were dispatched to Dylan's Bar to investigate a complaint by an individual who stated he had been assaulted while inside Dylan's Bar. He and Det. Hyland also responded to assist them with the call. When they arrived, they saw the victim in the parking lot. He was very upset and told the officers he was assaulted inside the bar and the person who assaulted him fled the scene. He thought he might be an employee of the bar. The owner, Mr. Fuhs, came outside and spoke with the officers. They asked to see the video which he showed them.

Attorney Feodoroff stated that last month she had asked for a continuance because she needed a copy of the video. She indicated she was furnished a copy of the video and reviewed it. However, she does not have a computer this evening to view the video. She has spoken with opposing counsel who has no objection to proceeding without the video.

In response to further questions, Det. Paul stated that on the video, they observed the victim talking to a couple of females. Another female came between them and there was a short conversation. A white male then came over and grabbed the victim and tossed him on the floor. Det. Paul described the bar and where the individuals were standing. There were two female bartenders behind the bar. The owner was passing by in front of the bar just prior to the assault that took place. No one from the establishment had called the police to report the incident. When he asked Mr. Fuhs why he hadn't called when the assault took place, his response was that the victim was a "pain in the ass" and he was looking for trouble. He told him that the individual was hitting on someone's girlfriend. Det. Paul stated he spoke with the two bartenders as well as a customer who was sitting at the bar. Both bartenders claimed they did not see anything.

On cross examination by Attorney Aieta, Det. Paul stated he had no problem finding the owner of the bar when he arrived. He came outside just after they arrived and introduced himself as the owner. Det. Paul stated he asked Mr. Fuhs what had happened and he asked to see the video. Mr. Fuhs took all four officers to his office to view the video. He was satisfied with what he had observed on the video. His knowledge of the events of the evening came from the video, the victim as well as questioning the staff. He wrote his report from the information he had gathered. Mr. Fuhs told him he did not see the assault.

Attorney Aieta read from the report that surveillance footage showed the victim inside the bar engaging in what appeared to be a cordial conversation with a female and another female came over and that everything appeared to be fine between the three individuals. Mr. Fuhs had walked by and then the victim was grabbed and tossed to the floor. The last time he viewed the video was in October. Det. Paul stated he remembers everything and his report is written exactly as to what he viewed in the video. The assault was quick and Mr. Fuhs was in the immediate area of where it took place. There were no chairs knocked over during the assault. It is his opinion that the bartenders were not telling the truth when they said they had not seen anything.

Attorney Aieta pointed out to Det. Paul that the violation he cited on the front of his report stated "Failure to call police to report an assault inside the establishment. " Det. Paul indicated it is his opinion that the violation is that neither Mr. Fuhs or his staff called police to report the incident.

Attorney Feodoroff objected to this question.

Attorney Aieta then asked if Det. Paul was aware that at the time, the Commission did not recognize the failure to call police as a violation. He indicated he was not aware of that.

Attorney Feodoroff stated she has no further witnesses.

Attorney Aieta then called on Paul Fuhs who stated he has operated Dylans for two years and has been in the restaurant/bar industry for 9 years. On October 23rd/24th he was working at Dylan's. He first learned of the incident when he went outside to check the parking lot. He had never spoken to the victim but had conversation with the person identified as the suspect who told him he left abruptly because there was a customer who was being a pain and trying to hit on his girlfriend. He never indicated there was any physical altercation. When he observed the video with the police, it was the first time he saw the two individuals having an altercation. He saw the victim and the suspect talking and they walked over to the right and had their altercation. As this was happening, he was walking to the left around the wall and getting ready to close up and get everyone out of the bar. When he said the victim was being a pain, he was relaying what the suspect had told him. None of his staff had indicated to him that they had seen anything happen.

In reply to follow up questions from Attorney Feodoroff, Mr. Fuhs described his duties which include monitoring both inside and checking outside. It is the normal course for him to go outside along with his bouncer to make sure nothing is going on in the parking lot. He told the police that he did not know he was suppose to call police every time there is an altercation in the bar.

In response to questions from Commissioner Marrow, Mr. Fuhs stated that after he had passed by the individuals, he went into another area of the establishment. There is a petition that would block his view from the area he had just left. He does not know where his bouncer was when this took place. He did not see any indication prior to the assault that the individual was causing a problem. His employees did not tell him there was a problem. If they had told the bouncer, he would have escorted them out.

In response to questions from Commissioner McDuffy, Mr. Fuhs stated the victim left after the assault. The assailant was not an employee. There were no arguments outside.

In response to questions from Chairman Tartaglia, Mr. Fuhs stated he does not know how long the victim was in the bar or how many drinks he had. He always has two bartenders on duty. This is the first time there has been a problem at his establishment.

After closing remarks by Attorneys Feodoroff and Aieta, the hearing was closed.

A motion was made by Commissioner McDuffy to find the licensee not guilty of the charge of violating ABCC Rule 2.05(2). The motion was seconded Commissioner Sullivan. All members voting in the affirmative, the motion carried.

A second motion was made by Commissioner Sullivan to find the licensee not guilty of violating M.G.L. Chapter 138, Section 63A. The motion was seconded by Commissioner Marrow. All members voting in the affirmative, the motion carried.

Commissioner McDuffy reminded the licensee that he is responsible for himself and his staff as to what takes place in his establishment. He reminded Mr. Fuhs that there is a new rule that requires licensees to call police to report problems.

Chairman Tartaglia reminded Mr. Fuhs to protect his 2:00 license and suggested that he get together with his bartenders and bouncers to go over what is expected of them.

Commissioner Marrow agreed with the Chairman's statements and advised Mr. Fuhs that the people who work for him have to be trained to be more observant and to know what is going on on the premise.

11. Hearing on the charges against Tamboo, Inc. – Chrismin Charlot, Manager, 252-260 Main Street, of the following alleged violations reported on November 28, 2015 at approximately 12:37 a.m.:
 - (a) **ABCC Rule 2.05(2)** – Permitting a disorder, disturbance and/or illegality, on the licensed premises, to wit: “exceeding the total occupancy of 448 allowed by the Certificate of Inspection.
 - (b) **M.G.L. Chapter 138, Section 63A**, to wit: “Any person who hinders or delays any authorized investigator...or who refuses to give to such investigator, inspector or agent such information as may be required for proper enforcement of this chapter.”

Present was Chrismin Charlot, 15 Housic Drive, Canton.

Attorney Feodoroff indicated Det. Paul has already been sworn in. She then swore Mr. Charlot.

The first witness called by Attorney Feodoroff was Det. Nazaire Paul, who stated on Saturday, November 28, 2015, he was working as a license agent along with Det. Hyland. As they went by Tamboo Bistro at approximately 12:37 a.m., they observed an unusually large number of vehicles parked in front of Tamboo Restaurant as well as out back. In addition, the nearby parking lot for the D.A.'s office was also full. There was a large crowd gathered at

the entrance waiting to go in. Prior to entering the building, Det. Paul stated he approached the bouncer and asked him what was going on. He stated there was a party and there were approximately 259 people and showed him his counter. He told Det. Paul he was in charge and that the owner had an emergency and could not be there.

Prior to going inside to check, Det. Paul stated they called Dets. Hilliard and Vellios and waited for them to arrive. The additional officers arrived and they all went inside. As soon as they walked in they could see it was packed and there were more than 259 people. Det. Paul went outside and the bouncer showed him his counter again and it showed 319 people instead of 259. They had been inside for a couple of minutes. Det. Paul stated he told the bouncer that they would wait until the end of the night and count the people as they were exiting because he believed there were more than 448 allowed.

Dets. Hilliard and Vellios stood at the front entrance to count people as they left and Det. Paul and Hyland were at the side door. They counted a total of 490 people which included the staff. As they were talking to the bartenders, Det. Paul stated he went to the kitchen area where there is a back door exit and saw people were leaving from this door. Some people had already exited but he counted 10 people exiting this way. He was told they were band members, however, he did not see any equipment. He observed that there was one person rushing them out of the building.

Mr. Charlot was then given the opportunity to ask questions to Det. Paul. In response, Det. Paul stated that the person letting the people out of the back was not a security person. He has been to the Tamboo many times and there have been no problems. By 1:30 a.m., everyone is out and by 2 it is completely shut.

In response to questions from Chairman Tartaglia, Mr. Charlot stated that when he spoke with his security person he agreed there was a large gap between the number of people he had inside and the number reported by the officers. He stated he cannot say that his security person is correct because he was not there himself.

With no further information submitted, a motion was made by Commissioner McDuffy to find the licensee guilty of violating ABCC Rule 2.05(2) by exceeding the total occupancy of 448 allowed by the Certificate of Inspection. The motion was seconded by Commissioner Marrow.

Commission McDuffy commented that many don't realize what a safety issue overcrowding can be and reminded the licensee of the importance to be more aware of his occupancy total and to make sure it is enforced.

With Commissioners McDuffy, Marrow, Tartaglia and Sullivan voting in the affirmative and Commissioner DeAndrade voting opposed, the motion carried.

With regard to the charge of violating M.G.L. Chapter 138, Section 63A, Chairman Tartaglia stated he feels the officer got a fairly accurate count.

A motion was made by Commissioner McDuffy to find the licensee guilty of the charge based on the discrepancy of the numbers first given by the bouncer to Det. Paul.

Mr. Tamboo stated he asked his employee the reason for this and was told that he had checked with another security person and that was why the other 60 was included in the second count. He was not trying to give the officer the wrong information.

Chairman Tartaglia then seconded Commissioner McDuffy's motion to find the licensee guilty.

With Commissioners McDuffy and Tartaglia voting in the affirmative and Commissioners Sullivan, DeAndrade and Marrow voting opposed, the motion did not carry.

Commissioner Marrow stated that since this is the licensee's first problem and it does not involve any type of violence, he recommended he be given a break and reminded him to protect his license and to be careful of not exceeding the capacity.

Commissioner Sullivan then made a motion to place a letter of warning in the file. The motion was seconded by Commissioner McDuffy. All members voting in the affirmative, the motion carried.

12. Hearing on the charges brought against Cardoso Café, Inc. – Carlos Cardoso, Manager, 146-148 Montello Street, of the following alleged violations:

October 18, 2015 at approximately 1:53 a.m.

ABCC Rule 204 CMR 2.05(2), to wit: "No licensee for the sale of alcoholic beverages shall permit any disorder, disturbance or illegality of any kind to take place in or on the licensed premises. The licensee shall be responsible therefor, whether present or not."

November 29, 2015 at approximately 12:45 a.m.

- (a) **ABCC Rule 204 CMR 2.05(2)**, to wit: "No licensee for the sale of alcoholic beverages shall permit any disorder, disturbance or illegality of any kind to take place in or on the licensed premises. The licensee shall be responsible therefor, whether present or not." – Assault and Battery w/Dangerous Weapon 265/13A Pepper Spray"; and

- (b) **M.G.L. Chapter 138, Section 63A**, to wit: “Any person who hinders or delays any authorized investigator...or who refuses to give to such investigator, inspector or agent such information as may be required for proper enforcement of this chapter”

Present were Attorney Scott Martin, 10 Mazzeo, Suite 201C, Randolph, Carlos Cardoso, 112 North Warren Avenue and his daughter Stephanie Cardoso.

Attorney Feodoroff stated Det. Paul who will be testifying on this matter has already been sworn in. She then swore in Det. Jesse Drane, Carlos Cardoso and Stephanie Cardoso.

The first witness called by Attorney Feodoroff was Det. Nazaire Paul who stated on Sunday, November 29, 2015, at approximately 12:45 a.m., he was riding with Sgt. Vardaro and Det. McDermott in an unmarked cruiser and monitoring traffic in the area of 11 Crescent Street. They were approached by an individual whose eyes were red and watery and he told the officers he had just been maced while inside Cardoso Café by the owner Mr. Cardoso. They went to Cardoso Café to investigate. Upon their arrival, they found two bouncers outside in front of the bar. Det. Paul stated he asked them what had happened and they said nothing happened. He told them he had a report that someone was maced inside the establishment but they denied that anything had happened. While he was talking to the bouncers the victim came back and was yelling at them and calling them liars. Mr. Cardoso came outside and told Det. Paul that the individual was acting up and he was afraid for his life so he maced him and escorted him outside. Nobody had called the Brockton Police to report the incident except for the victim who had flagged them down.

Det. Paul continued and stated he asked the victim if he wanted any medical assistance and he declined. Upon checking back on police records, Det. Paul found there had been a similar incident in October at Cardoso Café. Officer Drane had been the investigating officer at the time and he told him that Mr. Cardoso had maced someone and the victim was the one who called police. Nobody inside the bar including Mr. Cardoso had called to report the incident. Pepper spray is considered a dangerous weapon. Det. Paul then described the effects pepper spray has on an individual which include severely watery eyes and nose which can last up to 45 minutes.

On cross examination by Attorney Martin, Det. Paul stated that Mr. Cardoso had not called police on either occasion. Attorney Martin then presented a police log which stated on October 18, 2015, Carlos Cardoso had called police at 1:54 a.m. There was also a Miguel whose last name is unknown who had called police. Attorney Martin stated that Miguel was one of the bouncers. Det. Paul stated he was the lead investigator of the incident that took place on 11/29. The name of the victim was Antonio Sequeira.

In reply to further questions from Attorney Martin, Det. Paul stated he had not viewed the video of the incident and had not asked to see it. He had filed a complaint on the same night as the incident. He had sent it to court the same week. It is the policy of the Brockton Police Department to have a report approved by a Supervisor. Det. Paul stated the Court Complaint is sent to Court. The report he submitted to the License Commission is a letter submitted to Lieut. LeGrice who forwards it to the License Commission. The report to the Court is a Criminal Complaint. Mr. Cardoso is known to him. No license is required to carry pepper spray. Det. Paul indicated he does not know whether Mr. Cardoso has a license to carry a firearm. He had not checked. With regard to the victim, he did not ask him who he was with at Cardoso Café. The victim told him that he hadn't done anything prior to getting sprayed and that he was having a good time when the owner had asked him to leave. Det. Paul stated he took out the criminal complaint against Mr. Cardoso because it was an Assault and Battery DW (Pepper Spray). Det. Paul read from his report which stated he was kicked out by the owner of the place.

In response to questions from Attorney Feodoroff, Det. Paul stated his report to the License Commission was generated sometime between the date of the incident and when it was submitted to the License Commission on December 10th. When he arrived at Cardoso's Café that evening, the bouncers were outside the front door of the establishment. Anyone being thrown out the door would have been observed by the bouncers.

On further cross by Attorney Martin, Det. Paul stated he was not aware that Mr. Sequeira had left the bar and attempted to go back in and this is when he was sprayed.

Attorney Feodoroff then called on Officer Jesse Drane who stated he is a patrol officer and was working on October 18, 2015 and responded to Cardoso Café as a result of a call from the complainant that he had been sprayed by some kind of gas at Cardoso Café. He responded to the bar and observed a bunch of other people running out of the bar saying they had been sprayed by some sort of gas. Officer Drane stated he went inside and spoke with Mr. Cardoso who stated there was a fight inside the establishment and he feared for his life. The caller was sitting on the curb complaining about the gas and that he eyes were burning. There were at least a half dozen people outside saying they had been gassed which turned out to be pepper spray. Mr. Cardoso admitted to spraying the pepper spray.

Officer Drane stated the victim who reported the incident was Jose Lopes from Dorchester. He asked Mr. Cardoso why he didn't call police and he stated he feared for his life and that is why he used the pepper spray. Officer Drane stated he was about a block away when he first received the call and arrived within five minutes. Prior to his arrival, no call was made by the establishment.

On cross examination by Attorney Martin, Officer Drane stated that the only reason he did a criminal complaint was because Mr. Lopes had gone to the hospital. He is the only victim listed on the report. He did not inquire as to whether there was any video of this incident. He did not take down the names of any witnesses. The initial report is sent to the supervisor for his approval once it is done. Officer Drane stated he had not discussed it with his supervisor. His investigation involved speaking with the victim, Mr. Lopes, and Mr. Cardoso and getting their statements. Officer Drane stated he does not know who Mr. Lopes was with or how he had travelled to the establishment. He does not know who made the call to police. Mr. Cardoso had told him that he did not have time to call the police. Recently there have been more calls to the establishment in addition to the ones reported on October 18th and November 29th. He recalled a disturbance that was reported a couple of week previous and the security guard had stated he called the police.

Attorney Martin then called on Mr. Cardoso and asked him to explain what had taken place on October 18th. Mr. Cardoso stated that just prior to closing time, Mr. Lopes and another individual looked like they were going to fight. Mr. Lopes grabbed a bar stool and looked like he was going to throw it at him so he sprayed the pepper spray. He put the barstool back and asked for some water to wash his face so Mr. Cardoso stated he took him to the bathroom. He talked to him and then he left. The bouncers had escorted the other individual to the door so they could not help him at the time. He told his bouncer to call the police. He had not seen Mr. Lopes previously.

On November 29th, everything was quiet. Someone had called to meet him at the door. The individual, Tony Sequiera, is a problem all of the time. Mr. Cardoso stated he had worked with Tony's father for five years. When he went to the door he asked him if the bouncer had put him outside and he said he had so he told him he couldn't let him back in. He then left. Mr. Cardoso stated he stepped outside and did not see Mr. Sequiera. He came back a short time later and he looked like he had something like a rock in his hands and he told him he was going to get in. He tried to push him and so Mr. Cardoso stated he sprayed him in the face and then went inside to try and call the police and he told his bouncer to go outside. At the same time, Det. Paul came in the door and started talking to his bouncer but they had no information. The detective called him outside and asked him if he had sprayed the man and he said he did. His bouncer had not seen him spray anyone. Mr. Cardoso stated he was not arrested and was not told to save the video. The next time he heard anything further about the incident was when he got the letter to attend the meeting. Mr. Cardoso stated he is at the bar every day.

Attorney Feodoroff reviewed that there is a short history which was allowing a disorder which involved a fight inside the establishment. Attorney Feodoroff stated she will withdraw the hindering charge.

In his closing remarks, Attorney Martin stated that no one had asked for the video on either occasion, there was no thorough investigation and there was an absence of evidence and of witnesses.

Commissioner McDuffy expressed concern with the fact that Mr. Cardoso did not back off and call police instead of using the pepper spray. He understands he has the right to protect himself but he could have handled this differently. Attorney Martin indicated he spoke with Mr. Cardoso and he will not be carrying the pepper spray anymore just in order to avoid a similar incident from occurring.

Commissioner Marrow indicated he understands that things can happen quickly and sometimes you have to react just as quickly. Chairman Tartaglia stated it would have been helpful to have the names of the witnesses or a copy of the video of the incident. Commissioner Marrow stated it might be helpful to have another bouncer there.

With no further information to be presented, a motion was made by Commissioner Marrow to find the licensee Not Guilty of violating ABCC Rule 2.05(2) on October 18, 2015 which motion was seconded by Commissioner DeAndrade.

With Commissioners Marrow, DeAndrade and Tartaglia voting in the affirmative and Commissioners Sullivan and McDuffy opposed, the licensee was found Not Guilty.

A motion was made by Commissioner DeAndrade to find the licensee Not Guilty of violating ABCC Rule 2.05(2) on November 29, 2015. The motion was seconded by Commissioner Marrow. With Commissioners DeAndrade, Marrow and Tartaglia voting in the affirmative and Commissioners Sullivan and McDuffy opposed, the motion carried and the licensee was found Not Guilty.

13. Hearing on the charges brought against Brockton Phalanx, Inc. dba Pisces Lounge – Alexander Strangis, Manager, 816-818-820 Main Street, of the following alleged violations observed by police on January 29, 2015, May 7, 21, 2015, June 18, 2015, July 16, 2015, August 19, 2015, September 2, 2015, October 8, 2015, December 9, 2015 and many other dates not documented:
 - (a) **Brockton License Commission Rule #1**, to wit: “Any licensee intending to close his place of business for a period of more than forty-eight (48) hours

must notify the Brockton License Commission in writing before such closing and he shall state in his letter the reason and length of such closing.” ; and

(b) **Brockton License Commission Rule #25, VIDEO SURVEILLANCE REQUIREMENT**

- (a) Any holder of an “All Alcoholic Restaurant” license, a “Wine and Malt Restaurant” license, an “All Alcoholic Hotel” license, an “All Alcoholic General On-Premise” license, or an “All Alcoholic Club” license, which permits the sale of alcoholic beverages after 12:00AM (midnight) (“Affected Licensees”) shall install and maintain security cameras which shall monitor and record the interior entrances and exits of the licensed establishment used by the general public, to include 50 feet from all exterior entrances and exits of the licensed establishment used by the general public” (Refer to Regulations for entire Rule #25)

This matter was postponed at the request of the attorney for the licensee.

14. Communications

15. Any other business to properly come before the Commission

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

Respectfully submitted,

Henry Tartaglia
Chairman

APPROVED:

Paul D. Sullivan, Commissioner

Scott H. McDuffy, Commissioner

Joao DeAndrade, Commissioner

Harold C. Marrow, Jr., Commissioner

Paul Merian
Alternate Commissioner