

TAPED

The License Commission held its regular monthly meeting at 6:00 p.m. on Thursday, March 19, 2015, in the G.A.R. Room at City Hall. Present were Chairman Henry Tartaglia; Commissioners Paul D. Sullivan, Bruce G. Dansby, Scott H. McDuffy and Joao DeAndrade. Also present were Asst. City Solicitor Kate Feodoroff; License Agent Lieut. Ken LeGrice and Administrative Assistant Bonnie Tucker.

1. Approval of the Minutes of the License Commission meeting of February 19, 2015.

A motion was made by Commissioner McDuffy to approve the minutes of the aforesaid meeting 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 April, 2015: Lieuts. Kenneth LeGrice and Paul Bonanca; Sgts. George Khoury and Frank Vardaro; Dets. Thomas Hyland, Nazaire Paul, Eric Clark, Santiago Cirino, Jackie Congdon, Chris McDermott, Michael Bunker, Michael Cesarini and Patrick Donahue.

A motion was made by Commissioner McDuffy to approve the police officers as listed as license agents for the month of April, 2015 which motion was seconded by Commissioner Sullivan. All members voting in the affirmative, the motion carried.

3. Requests for Special One-day Permits

There were no applications for Special One-day permits.

4. Hearing on the request from Nancy Nicholas dba Fatima Tarot Card and Palm Reader to relocate the business from 794 Belmont Street to 860 Belmont Street.

Present were Attorney John Creedon, 71 Legion Parkway and Nancy Nicholas, 794 Belmont Street.

Attorney Creedon stated he has represented Mrs. Nicholas and her husband who have been in the City of Brockton doing business since 1988. They currently reside at 794 Belmont Street and will be moving the business to another building a short distance away at 860 Belmont Street. They will operate in half the building and a real estate office will be located in the other half. Attorney Creedon stated Mrs. Nicholas has held a license for almost 20 years and there have been no problems.

A motion was made by Commissioner Dansby 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.

5. Hearing on the request from Golab Corporation, Inc. dba Fernandez Family Liquors – 127-129 Pleasant Street to appoint Jose M. Fernandez as the manager.

Present was Jose M. Fernandez, 87 Highland Street, Stoughton, who reviewed the request and stated he has been in the liquor business since 1994. Ms. Tucker stated that Mr. Fernandez owned the store prior to the current owners buying it from him. In response to questions, Mr. Fernandez stated he is not purchasing the business at this time but is taking over as the manager.

A motion was made by Commissioner Sullivan to approve the appointment of Mr. Fernandez as the manager. The motion was seconded by Commissioner McDuffy. All members voting in the affirmative, the motion carried.

At the end of agenda item #7, Mr. Fernandez attorney, Ethan Schaff, came forward and asked to have the hearing reopened because of something he needed to disclose to the board. Attorney Schaff stated that he prepared the applications and on one of the pages, it should be amended to reveal that Mr. Fernandez technically holds an interest in the license where he holds the pledge of the license and the stock of the corporation. He reviewed that the current licensee, Mr. Harud, is currently have difficulty with the business and asked if Mr. Fernandes would come back to help him manage the business.

Attorney Schaff was informed that he could make the amendment to the application and resubmit it to the office.

6. Hearing on the request from The Brockton Assets, LLC – Barznab Khan for a Lodging House license at 1006 Main Street.

The applicants were not present when this matter was called. It was taken up at the end of the agenda.

Present was Barznab Khan, 15 Westchester Dr., Canton.

Mr. Khan stated that he and his partner had purchased this building in 2008 and had operated the Lodging House. A short time after they took over, there was a problem with the sprinkler which damaged the entire building and made it uninhabitable. It has taken several years and they suffered financial hardship but the building is now fixed it in every aspect. He stated the final permit has been signed off on. He is requesting that the Lodging House license be reissued so he can begin renting the units.

In response to questions, Mr. Khan stated he has not had all of the departments sign off but will contact each department. Ms. Tucker stated there are outstanding taxes owed and he will have to make arrangements with the Tax Collector if he does not pay them off.

A motion was made by Commissioner McDuffy to approve the Lodging House license pending receipt of all of the required inspection approvals and payment of the outstanding taxes. The motion was seconded by Commissioner Dansby. All members voting in the affirmative, the motion carried.

7. Hearing on the charges against Antonia V. Cardoso dba Malu's Lounge – 23-25 Montello Street of the following alleged violations reported on October 4, 2014, at approximately 1:06 a.m.:
 - (a) **Brockton License Commission Rule 8(b)(1) (Restaurant licenses)** pertaining to Holders of Licenses with a 2:00 a.m. closing hour, to wit: "No patrons are allowed admittance after 1:00 a.m. Any patron leaving the establishment, not to include patrons going outside to smoke, is not allowed to re-enter after 1:00 a.m. A violation . . . will result in an automatic one hour rollback of the closing hour as well as any other sanction(s) deemed appropriate."
 - (b) **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. (Marijuana being smoked on the premise)"; and
 - (c) **ABCC Rule 204 CMR 2.05(10)**, to wit: "Hotels, Restaurants, Clubs, Taverns and "Package Goods" Stores shall keep their licensed premises adequately and properly lighted at all times in a manner satisfactory to the Licensing Authorities."

Representing the license was Attorney John Creedon, 71 Legion Parkway, Antonia Cardoso, 480 West Elm Street and Michael Marsh, 51 Reservoir Drive.

The following persons were sworn by Attorney Feodoroff:

Det. Nazaire Paul, Brockton Police
Antonia Cardoso
Michael Marsh

On direct examination by Attorney Feodoroff, Det. Paul stated that on October 4, 2014, he and Det. Hyland were checking licensed liquor establishments and were in the area of Malu's Lounge. At approximately 12:45 a.m., he and Det. Thomas Hyland were parked in a lot on Franklin Street monitoring the activities around the side entrance of Malu's Lounge. At 1:04 a.m., they observed two patrons coming from the parking lot just behind the bar attempting to enter the building through the side door and were unable to get in. They then went to the front door which is located on Montello Street and entered the establishment with no problem. The time was 1:06 a.m. which the detectives confirmed by the cell phones. At 1:08 a.m., both he and Det. Hyland entered the bar through the front door. They came upon a bouncer, identified as Carlos Santos. Det. Paul told him he would like to speak with the

owner or the manager. Santos informed him that the owner was not around and that he was in charge. Det. Paul stated he informed him that no one was allowed to enter the establishment after 1:00 a.m.

Det. Paul stated that after speaking with Mr. Santos, the detectives went upstairs. As soon as they started up the stairs, they could smell a very strong odor of freshly burnt marijuana emanating from the second floor. At the top of the stairs, he observed a bouncer sitting on a stool at the second floor entryway. They could not see anyone smoking. They then returned downstairs and asked Mr. Santos why there were people smoking and he stated he was not aware of anyone smoking. Det. Paul stated it was very dark upstairs which in his opinion created a safety hazard.

On cross examination by Attorney Creedon, Det. Paul stated he did not take the names of the two individuals observed enter the establishment. He had not seen either come out of the building. They could not get in the side door because it was locked. He stated he observed one of the individuals drinking a beer. Det. Paul stated he recognized Mr. Marsh and believes he was upstairs that evening. He did not find anyone with a marijuana cigarette. He acknowledged that the smell of marijuana can stay on clothing but not smell as strong as it was inside the bar that night. It is his understanding that the lighting inside must be light enough for safety reasons. The establishment was very busy that night.

Det. Paul stated that no one gave them a hard time that evening and were polite and cooperative.

Attorney Creedon stated their defense is that the two people who the police officers observed outside had come from the inside to check the doors and the parking lot.

Attorney Creedon then called on Antonia Cardoso who stated that she was present that evening. Her ex-husband helps her out and she pays \$400 for security each night. There are two security people upstairs and two downstairs. She stated that Det. Paul goes to her place three times a week, on Friday, Saturday and Sunday. She stated no one was smoking in her place. Her security people check everyone. No one can get in with a hat. She did not speak to either of the policeman that evening.

On cross examination by Attorney Feodoroff, Ms. Carodoso stated her ex-husband and a woman had gone to check outside the building. The female works for her and cleans the tables. She called the security company to check the video but they didn't make a copy. The police looked at the video. She stated that Det. Paul's report of marijuana is a lie. When she reviewed the video she saw her ex-husband go out the front door and went to the side door and it was locked. She stated the security company will charge her \$300 to make a copy of the video. When she is working she goes everywhere in the building. At 1:00 a.m. she was downstairs. She stated she saw Det. Paul enter the building that evening but she did not approach him. There is strobe lighting and behind the bar is always well lit.

Attorney Creedon then called on Michael Marsh who testified that he works security at Malu's Lounge on a regular basis. He stated there is no stool at the top of the stairs but there is a couch. There are two sets of lights, one which is directly overhead and one that shines down the stairs. It is his opinion that there is adequate lighting. If there had been a smell of smoke, it came in on someone's clothing. He described how thoroughly patrons are searched upon entering the establishment. Mr. Marsh stated that Det. Paul had not spoken with him or his boss that night. Mr. Marsh stated he works all the time on Friday, Saturday and Sunday. The only time he met Det. Paul previously was outside at the Franklin Street exit.

On cross examination by Attorney Feodoroff, Mr. Marsh stated he was working upstairs. During his shift from 10 p.m. to 2 a.m., he roams the top of the stairway, throughout the club upstairs checking the men's room and women's room hallway and through the sliding glass doors. He has been working at Malu's for two years. He checks some individuals more thoroughly than others because some look to be more of a risk. Mr. Marsh stated he frisks everyone but does not go through a person's wallet. He does not make patrons take their shoes off but he checks inside their shoes. It would be reasonably possible to get marijuana into the club. He did not view the video but stated he saw Ms. Cardoso's ex-husband when he entered the building. Attorney Feodoroff reminded Mr. Marsh that he had testified that he was upstairs at 1:00 a.m. He then stated that there is light behind the bar. The dance floor has strobe lighting and the remainder of the area has overhead recessed lights. There are additional lights that shine down the stairway and into the entrance area of the dance floor. He stated he turns the lights on as soon as he comes in. At 1:00 a.m., he had all of the lights on.

Ms. Cardoso stated she has two lights on the stairs which are on all night. There is also a light which is on that shines to the DJ booth. The dance floor has strobe lights and there are lights on at the bar.

In response to questions from Commissioner McDuffy, Det. Paul stated that when he and Det. Hyland entered the building, there was no one at the front door. He stated that he had gone to Mr. Santos and asked to speak with either the manager or the owner of the bar. Mr. Santos told him that the owner was not there and that he was in charge. He stated with the smell of marijuana so strong, someone had to have been smoking just prior to his arrival.

Commissioner McDuffy stated he is concerned that it was after 1:00 a.m. and the doors were not being monitored and they were not locked making it possible for anyone to walk in. Det. Paul stated he was working in plain clothes that night. Commissioner McDuffy stated that if there was a video they should have brought it in for the board to see.

Ms. Cardoso stated that the door was locked at 1:00 a.m. Commissioner McDuffy asked how the two individuals as well as the police officers could enter if the door was locked. He feels there has been enough testimony to verify that persons were allowed to enter the building after 1:00 a.m.

In response to questions from Commissioner Dansby, Det. Paul stated he saw two males enter the building, not a male and female as Ms. Cardoso said. He spoke to one of the males who was drinking a beer after being served at the bar. He was inside the club for 10-12 minutes. When he walked in there was no one at the door. Carlos is known to him and was closer to the Franklin St. door. He went through a crowd of people to talk to Carlos. He smelled the marijuana as soon as he started up the stairs to the second floor.

Commissioner Dansby asked Mrs. Cardoso why she had not gone over to address the police officer when she saw him come in. She stated her security told her to let him talk to the police officer because she is a woman. There is no one by the name of Carlos working there, his name is Jose. She stated it must have been someone else who told him the owner was not there.

Commissioner Dansby then reviewed that Mr. Marsh had stated that if there are any issues in the Club, he is the head of security and would try to be the first person to respond. Mr. Marsh stated his boss is the head of security and his name is Jay. Jay was present that evening but did not speak with the officer. Commissioner Dansby expressed concern that the owner of the club and the head of security were both present when the police officers went in and neither felt it was incumbent upon them to address the police officers. Ms. Cardoso stated that Det. Paul had not mentioned anything about marijuana.

Det. Paul stated that as a license agent, he checks the bars and if he sees a violation, he reports it. On several occasions, he has observed violations at this establishment which he brought to their attention but he did not write it down to report.

Attorney Feodoroff argued that Det. Paul's testimony as to the strength of the odor of the marijuana which increased as he walked up the stairs is not consistent with the residual smell of marijuana that lingers on someone's clothes. With regard to Det. Paul's testimony that he observed two males walk in, Mrs. Cardoso's testimony was that it was a male and a female walking into the bar because she watched the video. She had paid the video surveillance company hundreds of dollars to look at the video so she could see it herself, yet after paying out the money she didn't ask them to make a copy so she could prove her innocence. The fact that one of the males Det. Paul observed enter the establishment was served a beer at the bar which would indicate that the person was not working security. If they were doing a security check outside as Mrs. Cardoso stated, they would not be drinking on the job. Attorney Feodoroff stated that the other component that would make the testimony not credible is the fact that Det. Paul was in the establishment for 10-12 minutes and although Mrs. Cardoso testified that she saw the detective, the head of security told her not to approach him because they would take care of it. Where there had been some suggestion by Mrs. Cardoso that she felt she was being targeted by the Brockton Police, it would seem that she would want to provide the video to prove her innocence. It is also problematic that Mr. Santos misrepresented himself as management to the police and stated that Ms. Cardoso was not there. Attorney Feodoroff suggested that for the reasons she has stated, the Commission find the licensee guilty of the charges and apply the appropriate penalty.

Attorney Creedon suggested that they have heard the testimony with regard to the lighting and cannot find the licensee responsible. He then reviewed that no one was seen smoking marijuana and it comes down to the question of whether the licensee permitted the situation. They would need more evidence for a guilty finding in the marijuana situation. With regard to the charge of allowing people in after 1:00 a.m., what has been said is that the security people went outside and came back in. The security people are allowed to do this. If the officer had the name of the two individuals he saw enter, that might be more evidence for the board to find them in violation. Attorney Creedon stated his clients did not permit any of the violations.

With no further evidence to present, a motion was made by Commissioner McDuffy to find the licensee violated Brockton License Commission Rule 8(b). The motion was seconded by Commissioner Dansby. With Commissioners McDuffy and Dansby voting in the affirmative and Commissioners Sullivan, DeAndrade and Tartaglia opposed, the motion did not carry.

A second motion was made by Commissioner McDuffy to find the licensee guilty of violating ABCC Rule 204CMR 2.05(2) – marijuana being smoked on the premise. The motion was seconded by Commissioner Tartaglia. The vote being 4 to 1 with Commissioner McDuffy voting in the affirmative and Commissioners Tartaglia, Sullivan, Dansby and DeAndrade voting opposed, the licensee was not found in violation of the charge.

A third motion was made by Commissioner Dansby to find the licensee Not Guilty of violating ABCC Rule 204 CMR 2.05(10) (lighting). The motion was seconded by Commissioner McDuffy. All members voting in the affirmative, the motion carried.

8. Communications

Advisories from the ABCC regarding licensing of Continuing Care Retirement Communities and Powdered Alcohol had been distributed to the members for review.

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

- (a) Blazin Wings, Inc. dba Buffalo Wild Wings – 500 Westgate Drive – Change in Officer

A motion was made by Commissioner McDuffy to approve the change in officer as requested which motion was seconded by Commissioner Sullivan. All members voting in the affirmative, the motion carried.

- (b) License Commission Annual Report for 2014 – Vote to accept and place on file

A motion was made by Commissioner Sullivan to accept and place on file the Annual Report for 2014 as prepared by the Administrative Assistant. The motion was seconded by Commissioner McDuffy. All members voting in the affirmative, the motion carried.

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

Respectfully submitted,

Henry Tartaglia
Chairman

APPROVED:

Paul D. Sullivan, Commissioner

Bruce G. Dansby, Commissioner

Scott H. McDuffy, Commissioner

Joao DeAndrade, Commissioner

Catherine B. Holbrook
Alternate Commissioner

Paul Merian
Alternate Commissioner