

**DOWNERS GROVE LIQUOR COMMISSION
VILLAGE HALL COUNCIL CHAMBERS
801 BURLINGTON AVENUE**

Thursday, June 1, 2017

I. CALL TO ORDER

Chairman Strelau called the June 1, 2017 Liquor Commission meeting to order at 6:30 p.m.

II. ROLL CALL

PRESENT: Mr. Clary, Ms. Pietrucha, Ms. King, Chairman Strelau

ABSENT: Mr. Austin, Mr. Jacobson, Mr. Krusenoski

STAFF: Liaison to the Liquor Commission Carol Kuchynka, Assistant Village Attorney Dawn Didier, Village Attorney Enza Petrarca

OTHERS: Daniel Hanlon, Esq., Linda Hardy, Mike Rogan, Court Reporter

III. APPROVAL OF MINUTES

Chairman Strelau asked for approval of the minutes for the May 4, 2017 Liquor Commission meeting and asked members if there were any corrections, changes or additions.

Hearing no changes, corrections or additions, the May 4, 2017 minutes of the Liquor Commission meeting were approved as written.

Chairman Strelau reminded those present that this evening's meeting was being recorded on Village-owned equipment. Staff was present to keep minutes for the record and a court reporter was present taking the minutes verbatim.

IV. DISCIPLINARY HEARING FOR ALLEGED VIOLATIONS

Chairman Strelau made the following statements:

"Section 3-40 of the Downers Grove Municipal Code provides that the Local Liquor Commissioner may revoke or suspend any license issued if the Commissioner determines that the licensee has violated any of the provisions of this chapter or any State law pertaining to the sale of alcohol. Both under the Section cited above, and under Chapter 235, Section 5/7-5, Illinois Compiled Statutes, the Local Liquor Commissioner is required to hold a public hearing after notice to the licensee, in which the licensee is afforded an opportunity to appear and defend. Pursuant to Section 3-5 of the Downers Grove Municipal Code, this hearing is being conducted by the Local Liquor Commission at the request of the Local Liquor Commissioner."

"The Commissioner has the power to temporarily suspend a license without a hearing if there is reason to believe that continued operation of the licensed business would immediately threaten the welfare of this community. Such was not done in these cases. The licensee may be represented by counsel, although he need not be for the purposes of this hearing."

Chairman Strelau asked if there was a signed stipulation in these cases. Ms. Didier replied there was a stipulation in the Thai First case and stated that there was not a stipulation in the Karma Club case.

Ms. Didier requested that the order of the agenda be amended so that Karma Club's attorney could request a continuance for their case. Chairman Strelau agreed.

Karma Club - 1211 Butterfield Road

Ms. Strelau stated that the first order of business is a disciplinary hearing for Downers Grove Entertainment, LLC d/b/a Karma Club located at 1211A Butterfield Road, Downers Grove. She stated that the licensee has been charged with multiple violations of the Downers Grove Liquor Control Ordinance.

Chairman Strelau asked that any individual(s) in the audience who will represent the licensee to please step forward and be seated. She asked that they state and spell their name for the record, indicate their affiliation with the establishment and be sworn in by the court reporter.

Daniel Hanlon, Esq., with the law firm of Marquardt & Belmonte, P.C., was seated. He introduced himself as the attorney representing Karma Club.

Attorney Hanlon requested a continuance.

CHAIRMAN STRELAU MOVED TO CONTINUE THE DISCIPLINARY HEARING TO A FUTURE DATE MUTUALLY AGREED UPON BY COUNSEL. MS. KING SECONDED.

The Commission, Attorney Hanlon and staff discussed holding the continuance hearing on Wednesday, June 21st at 6:30 p.m. in the Council Chambers. Ms. Kuchynka stated that she would confirm the meeting date with all parties.

VOTE:

Aye: Ms. King, Mr. Clary, Ms. Pietrucha, Chairman Strelau

Nay: None

Abstain: None

MOTION CARRIED: 4:0:0

Motion carried.

Chairman Strelau stated that the next item on the agenda was to conduct a disciplinary hearing for Thai First. She made the following statements:

"In view of the stipulation for the Thai First case, the order of the hearing will be substantially as follows:"

- A. Prosecution will read the signed stipulation into the record with the opportunity for the licensee to register its concurrence or non concurrence for the record.
- B. Prosecution may present any additional evidence in this case with the right of the licensee to cross-examine.

- C. Licensee may present any defense or mitigating evidence with right of prosecution to cross-examine.
- D. Summary of case by prosecution and defense."

"The prosecution should establish that timely notice of this hearing has been provided to the licensee."

"Witnesses shall be sworn."

"Strict rules of evidence will need not be adhered to although the Commission expects to exercise control over the hearing to ensure that irrelevant or repetitive testimony does not unduly prolong the hearing."

"A court reporter is present and will take the proceedings verbatim. Staff is also present for the purpose of summarizing the proceedings."

"The Commission will submit the findings and recommendations to the Local Liquor Commissioner regarding the existence and nature of any violation."

"Upon receipt of the recommendation of the Commission, the Commissioner will render a decision and the licensee will be notified in writing."

Thai First - 2249 Maple Avenue

Chairman Strelau stated that Wanartit, Inc. d/b/a Thai First located at 2249 Maple Avenue has been charged with a violation of Section 3-25(a) of the Downers Grove Liquor Control Ordinance.

Chairman Strelau asked that any individual(s) representing the licensee step forward and be seated. She asked that any individual(s) giving testimony, state and spell their name for the record, indicate their affiliation with the establishment and be sworn in by the court reporter.

Ms. Linda Hardy and Mr. Mike Rogan were sworn in by the court reporter. Ms. Hardy was introduced as the owner and liquor manager for Thai First. Mr. Rogan introduced himself as the business advisor for Thai First.

Chairman Strelau asked the prosecuting attorney to present her case.

Ms. Didier stated that the parties to this hearing before the Liquor Commission of the Village of Downers Grove by and through their attorneys, if any, hereby stipulate as follows:

1. Wanartit, Inc. d/b/a Thai First, 2249 Maple Avenue, Downers Grove, Illinois, is the holder of a Class R-2 Liquor License #LQ-000207, issued by the Village of Downers Grove. That said Licensee has held a liquor license for this location from the Village of Downers Grove since December 7, 2016.
2. Notice of this hearing was served upon the Licensee by certified mail to its registered agent and by personal delivery to the manager of the licensed premises.
3. At approximately 5:58 p.m. on Tuesday, April 11, 2017, Downers Grove Police Officer Buzucky and Downers Grove Police Officer Lyerly observed I.C., a special agent of the Downers Grove Police Department under the age of twenty-one (21), whose date of birth is March 15, 2000 (making her 17 years old), enter Thai First located at 2249 Maple Avenue, Downers Grove.

4. The special agent was seated at a table in the restaurant and a young server asked her for her order.
5. The special agent ordered a bottle of Chang beer while Officers Buzacky and Lyerly observed her.
6. That the young server approached Laddawan Hardy (owner/liquor manager), whose date of birth is August 5, 1958.
7. That Laddawan Hardy retrieved a bottle of Chang beer, removed the cap and gave it and a glass to another female subject who was later identified as Ms. Hardy's relative who was visiting the county for a short period of time.
8. That Ms. Hardy's relative took the bottle of beer and glass and returned to the table.
9. That Ms. Hardy's relative placed the bottle of Chang beer and glass in front of the special agent.
10. That at no time was the special agent asked for identification.
11. Officers Buzacky and Lyerly, who witnessed the events in the foregoing paragraphs, identified themselves and advised that the delivery of an alcoholic beverage had been made to a minor.
12. That Laddawan Hardy, in lieu of her relative who was only visiting the country, was issued a Village ordinance administrative citation for her involvement in the delivery of alcohol to a minor in violation of Section 3-25(a) of the Downers Grove Municipal Code.
13. The Officers advised that notice of further action would be forthcoming from the Downers Grove Liquor Commission.

Ms. Didier asked that the signed stipulation be entered into the record as Village's Exhibit #1. Chairman Strelau accepted the signed stipulation as Village Exhibit #1.

Chairman Strelau asked the licensee to present its case.

Mr. Rogan read a statement prepared by Ms. Hardy for the record.

Mr. Rogan stated that Ms. Hardy is distraught and disappointed about the violation. He stated that she is aware of local and state regulations concerning the sale of liquor. He stated that she pays close attention to the activities in the restaurant and is conscientious of liquor laws.

Mr. Rogan stated that Ms. Hardy acknowledges and accepts full responsibility for the violation. He stated that on the evening of April 11th an underage employee and Ms. Hardy's sister were working at the restaurant. He stated that Ms. Hardy's sister was from Thailand and in order to spend more time with her sister, offered to help at the restaurant. Mr. Rogan stated that both employees were aware of the regulations to check the identification of patrons if beer or wine is requested. He stated that Ms. Hardy typically serves the beer or wine. He stated that the underage server informed Ms. Hardy's sister of the request and Ms. Hardy's sister assumed that the underage server checked the identification. He stated that Ms. Hardy assumed that one of the servers checked the agent's identification, however, there was a breakdown in communication as the identification was not asked for.

Mr. Rogan advised that Thai First passed a control buy at the location in April of 2016 and passed the most recent control buy follow up compliance test on April 26, 2017.

Mr. Rogan stated that the manual has been amended so that only certified servers can deliver beer or wine and that the identification of customers that appear under the age of 40 shall be checked. He stated that employees have been given the new policy.

Mr. Rogan stated that Ms. Hardy is proud of her restaurant and the quality of their food. He stated that Ms. Hardy is committed to taking action that would prevent any future violation.

Mr. Rogan asked that they prefer a suspension in lieu of fines for the violation.

Ms. Kuchynka asked if they would like the revised manual with employee acknowledgments entered into the record as the licensee's exhibits.

Mr. Rogan asked that the documents be entered into the record as Licensee's Exhibit #1. Chairman Strelau accepted the documents as Licensee Exhibit #1.

Chairman Strelau requested comments from the Commission.

Ms. King asked how many employees are certified. Mr. Rogan replied two, Ms. Hardy and her son Chuck Hardy.

Mr. Rogan was unaware if Ms. Hardy's sister had a valid certification. Ms. Kuchynka noted that all servers of liquor must have certification and is considered an aggravating circumstance if they do not.

Ms. King asked how old the underage server was. Ms. Hardy replied 17. Ms. Hardy stated that evening was the first time her sister met Eva, the underage server and did not know that she was under 21 and could not deliver beer or wine. Ms. Hardy stated that her sister thought Eva checked the identification.

Ms. King asked Ms. Hardy how long she has owned the restaurant. Ms. Hardy replied two years.

Ms. King asked Ms. Hardy if she is BASSET certified. Ms. Hardy replied yes.

Ms. King asked if there are only two people at the restaurant that can server beer and wine. Ms. Hardy replied yes. She noted that she does not serve a lot, only about 2% of her sales are beer and wine.

Ms. King stated she was concerned that her sister was able to hand off alcohol without the proper training.

Ms. King asked if they were busy at the time and what she was doing at the time of the transaction. Ms. Hardy said she saw it but thought that her sister had asked for identification.

Ms. King asked Ms. Hardy if the restaurant was busy. Ms. Hardy replied no.

Mr. Clary stated that there was one controlled buy. Ms. Kuchynka clarified that one test was passed when she held 50% ownership in the restaurant. She noted the past history can be taken into consideration. She stated that the second test was failed but noted that the control buy re-test was passed on April 26th.

Mr. Clary asked if it were a violation for an underage staff member to ask for identification. Ms. Kuchynka noted that identification was not asked for in this instance. She stated that it would be a violation if they did ask for identification as the Code requires someone over 21 to verify a patron's age.

Mr. Clary stated that there was a disconnect in that Ms. Hardy opened the liquor and gave it to the sister, who was not an employee, to deliver it. He stated that was a big mistake. He stated they stated that there was not a lot of liquor sales and the violation seemed irresponsible. Mr. Clary stated he was very concerned.

Ms. Pietrucha asked Ms. Hardy if she had other locations. Ms. Hardy replied no.

Ms. Pietrucha asked Ms. Hardy what her liquor handling experience was prior to holding this liquor license. Ms. Hardy replied none.

Ms. Pietrucha stated that Ms. Hardy passed a test shortly after the violation and asked what was done differently since the violation. Ms. Hardy replied that she personally checked identification. Mr. Rogan stated that Ms. Hardy has taken full responsibility for checking them.

Ms. Pietrucha stated that she also had concerns about the way things transpired on April 11th. She stated that it was irresponsible in passing off liquor serving to someone who was not trained.

Ms. Pietrucha stated that although liquor sales are a small percentage of the business, they must adhere to local and state laws.

Chairman Strelau asked for clarification on the aggravating circumstances in this case. Ms. Kuchynka replied that the owner was involved in the transaction and that the server who delivered the beer did not have a valid certification.

Chairman Strelau asked if there should be three as the underage server took the order. Mr. Rogan clarified that the underage server only relayed the drink order to Ms. Hardy's sister and did not ask for identification.

Chairman Strelau stated that servers have to be 21 to take an order or have to have someone come to the table and verify the identification. Mr. Rogan stated that this was the first night that the two worked together and they were not properly trained together.

Chairman Strelau stated that it seemed to be that the order was taken by the underage server as Ms. Hardy's sister did not approach the table to request identification. She stated that Ms. Hardy saw the transaction. Ms. Hardy stated that she has worked with Eva in the past and has gone to tables for her to take the order.

Chairman Strelau asked if the 17 year old employee was properly trained to understand her job responsibilities. Ms. Hardy replied yes and stated that Eva was instructed to never touch alcohol.

Chairman Strelau asked Ms. Hardy if she was present in the restaurant. Mr. Rogan stated that she was in the area where phone orders are taken and near the kitchen. He stated there is a lot of activity there for her.

Chairman Strelau stated Ms. Hardy testified that the restaurant was not busy. Ms. Hardy replied it was a little busy. Ms. Hardy stated that she mistakenly believed her sister carded the agent. Ms. Hardy stated

that her sister has helped her before and cards everyone. She stated that she did not request identification that night as she thought Eva did.

Chairman Strelau asked Ms. Hardy if she understood that her employees need to be BASSET certified. Ms. Hardy replied yes.

Chairman Strelau stated her sister is not an employee and asked if she did or did not have a BASSET certification. Ms. Hardy replied no.

Chairman Strelau stated that it is difficult to believe that they follow their policies and a manual is only as good as it is being followed. She stated that having a liquor license is a privilege and added that the Commission has never heard a violation similar to this.

Chairman Strelau stated that the violation makes no sense and noted that the lack of attention to the situation seems to be a nuisance.

Chairman Strelau asked Mr. Rogan if he was Ms. Hardy's lawyer. Mr. Rogan replied no that he was her business advisor. He stated that he helped her with the application and with the manual.

Chairman Strelau asked Mr. Rogan if he experienced a situation like this. Ms. Rogan replied yes, a complete breakdown in communication.

Mr. Rogan stated that although the restaurant was not busy, they can get 20-30 carry out orders a night. Chairman Strelau asked whose responsibility it is to monitor. Mr. Rogan replied that Ms. Hardy accepts full responsibility. He stated that he has been in the restaurant to dine and can testify to the fact that they regularly card patrons.

Mr. Rogan stated that Ms. Hardy takes full responsibility for not communicating to her sister that Eva was not allowed to request identification. He stated that they take the situation very seriously and are committed to not let this happen again.

Chairman Strelau stated that some licensees have managed to hold licenses without a violation and no break down in communication. She stated that training starts with Ms. Hardy.

Mr. Rogan stated that Ms. Hardy was extremely disappointed.

Mr. Clary stated that Ms. Hardy's sister has checked identification in the past and is not an employee certified to do that. He was concerned that Ms. Hardy stated that she always checked identification, yet had not been certified which is a violation.

Ms. King asked if the 17 year old can serve. Ms. Kuchynka stated that someone over 21 can do initial carding but someone at least 19 can take a subsequent order.

Chairman Strelau asked staff how many aggravating circumstances are in this case. Ms. Kuchynka replied that the underage server did not card, so that is not a violation. Chairman Strelau asked about taking an order but realized that they can take subsequent orders after someone over 21 did the carding. Staff agreed. Ms. Kuchynka noted neither requested the identification, thinking the other did. She stated that actual delivery was made and that the server delivering the beer was not certified.

Ms. Didier summarized by stating that Wanartit, Inc. d/b/a Thai First located at 2249 Maple Avenue, has stipulated to a violation of Section 3-25(a) of the Downers Grove Liquor Ordinance which prohibits the sale of alcohol to a minor. She recommended that the licensee be found guilty of a violation.

Chairman Strelau asked Mr. Rogan if he had any final comments for the record. Mr. Rogan replied no.

Chairman Strelau requested a motion as to whether the licensee be found guilty or not guilty of a violation of Section 3-25(a) of the Downers Grove Municipal Code.

MR. CLARY MOVED TO FIND WANARTIT, INC. D/B/A THAI FIRST LOCATED AT 2249 MAPLE AVENUE GUILTY OF VIOLATING SECTION 3-25(A) OF THE DOWNERS GROVE LIQUOR CONTROL ORDINANCE. MS. KING SECONDED.

VOTE:

Aye:	Mr. Clary, Ms. King, Ms. Pietrucha, Chairman Strelau
Nay:	None
Abstain:	None

MOTION CARRIED: 4:0:0

Motion carried.

VI. OLD BUSINESS

Chairman Strelau asked if there was any discussion, update from staff or comments from the Commission regarding any old business.

Ms. Kuchynka referred to the May month end report.

Ms. Kuchynka stated the Mayor's intent to issue a beer and wine license to Board & Brush which was issued on May 11th.

Ms. Kuchynka advised that Ultra Foods closed and an order of forfeiture formally closed out the license.

Ms. Kuchynka advised that renewals were being processed.

VII. NEW BUSINESS

Chairman Strelau asked if there was any discussion, update from staff or comments from the Commission regarding any new business.

Ms. Kuchynka stated that she would confirm the June 21st disciplinary hearing continuance for Karma.

Ms. Kuchynka did not believe there would be a July meeting.

VIII. COMMENTS FROM THE PUBLIC

There were none.

IX. ADJOURNMENT

Concluding business for the evening, Chairman Strelau called for a motion to adjourn.

Ms. King moved to adjourn the June 1, 2017 meeting. The meeting was adjourned by acclamation at 7:15 p.m.