

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

Thursday, April 4, 2019

I. CALL TO ORDER

Chairman Strelau called the March 7, 2019 Liquor Commission meeting to order at 6:30 p.m.

II. ROLL CALL

PRESENT: Mr. Clary, Ms. Flanagan, Mr. Heafner, Mr. Jacobson, Mr. Krusenoski, Ms. Pietrucha, Chairman Strelau

ABSENT: None

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

OTHERS: Issam "Sammie" Mahmoud, Paul Tanzillo, Esq., Court Reporter

III. APPROVAL OF MINUTES

Chairman Strelau asked for approval of the minutes for the March 7, 2019 Liquor Commission meeting and asked members if there were any corrections, changes or additions.

Hearing no changes, corrections or additions, the March 7, 2019 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 this case. Ms. Didier replied yes.

Chairman Strelau made the following statements:

"In view of the stipulation the order of this 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."

Brick House Tavern & Tap - 1461 Butterfield Road

Chairman Strelau stated that the next order of business was to conduct a disciplinary hearing for Brick House Acquisition, Inc. d/b/a Brick House Tavern & Tap located at 1461 Butterfield Road. She stated that the licensee 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.

Attorney Paul Tanzillo introduced himself as the attorney representing Brick House Tavern & Tap. Sammie Mahmoud introduced himself as the manager of the location. Mr. Mahmoud was sworn in by the court reporter.

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. Brick House Acquisition, Inc. d/b/a Brick House Tavern & Tap, 1461 Butterfield Road, Downers Grove, Illinois, is the holder of a Class R-1/O Liquor License #LQ-000220, 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 5, 2017.
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 6:01 p.m on Tuesday, March 19, 2019, Downers Grove Police Officer Chapin and Downers Grove Police Officer Lylerly observed S.O., a special agent of the Downers Grove Police Department under the age of twenty-one (21), whose date of birth is July 11, 2001 (making her 17 years old), enter Brick House Tavern & Tap located at 1461 Butterfield Road, Downers Grove.
4. The special agent was seated at the bar in the restaurant and bartender Jeanna Allen, whose date of birth is October 7, 1987, asked the special agent for her order.
5. That the special agent ordered a Mango Mojito cocktail while Officers Chapin and Lylerly observed her.
6. That bartender, Jeanna Allen, prepared the Mango Mojito and placed it in front of the special agent.
7. That at no time did Jeanna Allen request identification from the special agent.
8. That Officers Chapin and Lylerly 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.
9. That Jeanna Allen was issued a Village ordinance administrative citation for delivering alcohol to a minor in violation of Section 3-25(a) of the Downers Grove Municipal Code.
10. The Officers advised manager Issam Mahmoud 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.

Attorney Tanzillo presented to the Commission a packet which included Exhibits A through H. He stated that Exhibit A was a corporate Landry's listing with 600 restaurants throughout the U.S. and Canada. He noted that 18 currently operate in the State of Illinois.

Mr. Tanzillo stated that Exhibit B was the BASSET Certificate of Jeanna Allen.

Attorney Tanzillo advised that this location originally operated as a Joe's Crab Shack prior to 2009. He stated it sold to Ignite and transferred operations to Brick House. He noted that since 2017, Brick House Acquisitions acquired the business pursuant to a bankruptcy.

Attorney Tanzillo stated that Carol provided him with a history of the Brick House control buys prior to the recent acquisition. He stated that from 2009-2017 they had passed every control buy test. He noted that the same management team remained intact since the acquisition. He stated that one control buy test was passed in January, 2018 under the existing corporation. Attorney Tanzillo stated he believed this was an isolated incident.

Attorney Tanzillo stated that Jeanna Allen did not only receive BASSET Certification but was trained with the company safety and risk orientation manual which is referenced as Exhibit C. He stated that all employees were re-orientated in 2017 with their beverage service policies and procedures. He stated that she had acknowledged that she had reviewed all the areas of training and safety that was covered and that she was aware that termination would be a possibility if she violated these rules.

Attorney Tanzillo stated that Exhibit D is document signed by Ms. Allen which she acknowledges receiving an employee handbook dated August 20, 2017.

Attorney Tanzillo stated that Exhibit E is the beverage service policy acknowledgement signed by Ms. Allen on August 20, 2017. He stated that in this document, she acknowledges that she has reviewed Landry's policy that she has received and reviewed the policy regarding the service of beverages and procedures for carding and that she fully understand sthe policies, one of which (paragraph 1B) says "alcohol age requirement". He stated that the policy reads [that] "*the minimum age to consume alcohol in all states is 21. When a guest appears to be under the age of 30, you must ask for that person's age before checking the id and ask how old are you". Once the guest has stated their age you must verify the age by then checking the guest id and if the guest states that they are over 21 (1) the id must be checked.* He added that the last statement on the document states "*under no circumstances should you serve alcoholic beverages to a guest believed to be under 30 years of age without checking id*" and states "*I agree to comply with all policies regarding the service of beverages and the procedures for carding...it is my responsibility to ensure that nobody is served an alcoholic beverage that is underage or showing signs of intoxication. I understand that the failure to perform any of the actions noted above will result in disciplinary action up to and including termination.*"

Attorney Tanzillo stated that Exhibit F (dated March 20, 2019) is a Disciplinary Action Report regarding Ms. Allen, and as she violated safety rules on March 19, 2019, Code of Conduct #35 with regard to service of alcohol to a minor, she was terminated.

Attorney Tanzillo stated that Exhibit G was a document sent by Michele Fishtorn, Corporate Operations Communications Manager to licensees (including the Downers Grove Brick House) on March 7, 2019 entitled "IMPORTANT REMINDER – Responsible Alcohol Service". It states "*Please review the attached information regarding responsible alcohol services. It is important that you cover this information with all management and staff on an ongoing basis, and especially during this Spring Break time of year. If you have any questions regarding the attached information, contact your Concept Beverage Manager*".

Attorney Tanzillo stated that Exhibit H, included Disciplinary Action Reports entered into the personnel files of each of the four local managers. He stated they were written up as an employee served an underage person under their watch.

Attorney Tanzillo stated that Mr. Mahmoud has been a long term employee of Brick House since 2010.

Attorney Tanzillo stated that Jeanna had been a bartender since 2005 at the Schaumburg Joe's Crab Shack and in 2015 she transferred to the Downers Grove Brick House location and had been bartending since and has never had a violation for serving a minor.

Attorney Tanzillo stated that Mr. Mahmoud during his employment has never had an employee have a violation for serving a minor.

Attorney Tanzillo asked that the packet be entered into the record as Defendant's Exhibit #1.

Chairman Strelau accepted the packet as Defendant's Exhibit #1.

Mr. Krusenoski asked what Ms. Allen said about failing to card and serving a minor and if she gave any excuse. Mr. Mahmoud stated that she had no excuse and said that she screwed up. Mr. Mahmoud stated that Ms. Allen said she didn't know what she was thinking.

Mr. Krusenoski noted that control buys are done randomly once a year and when a licensee fails, it makes the Commission wonder about the other 364 days. He stated it's hard to believe that she just happened to get caught on that day and who knows what has been happening all the other days of the year.

Mr. Krusenoski stated that while the Defendant's exhibits, short of an apology, are impressive, was that she acknowledged all of the training, yet she was unaware that this person looked under 30, that she was supposed to ask for id, etc. He stated that it is not a failure of the system, a person does. He stated it is obvious that she works in an environment where everything she signed and knows did not matter. He felt that the culture may be such that it was ok for her not to card someone. He noted it may be a failure of the work environment.

Mr. Krusenoski asked Mr. Mahmoud how often they have meetings with servers reminding them of the importance of responsible liquor handling. Mr. Mahmoud replied during morning and evening shift meetings.

Mr. Krusenoski asked what was discussed during shift meetings. Mr. Mahmoud replied carding procedures and that they are told if someone cannot produce an id, they must not be served. Mr. Krusenoski asked if Ms. Allen was present during that day's shift meeting. Mr. Mahmoud replied she was present at the 10:30 morning shift meeting.

Mr. Jacobson asked Mr. Mahmoud if he was the manager on duty at the time of the incident. Mr. Mahmoud stated another manager was running the floor and he was running the office.

Mr. Jacobson asked when management was advised. Mr. Mahmoud replied that Ms. Allen came to the office to retrieve him to speak with the officers.

Mr. Jacobson asked what is being done to prevent underage sales. He noted that the record of the licensee is that they failed 50% of their tests. He stated on January 30, 2018 a test was passed and on March 19, 2019 a test was failed. Attorney Tanzillo stated that he was not taking into account the prior record. Mr. Jacobson stated that for the licensee they have failed 50% of the time. He asked what they have done to stop this from happening again.

Mr. Mahmoud replied that they hold shift meetings and give employees corporate messages. He stated that he cannot be next to every employee for every guest transaction. He added that they provide the tools, training and policies.

Mr. Jacobson asked if corporate does any quality control testing in-house. He asked if they ever double check patrons. Mr. Mahmoud replied that if staff has any questions, they do involve management to verify a transaction and noted that if there is any question about an identification they are to enlist help.

Mr. Jacobson asked if management makes certain that employees are complying with policies. Mr. Mahmoud replied yes.

Mr. Jacobson asked Mr. Mahmoud about his Disciplinary Action Report and if he was reviewing the Responsible Alcohol Service policies before the memo came out from corporate with all staff and manager. Mr. Mahmoud replied yes. He stated that all managers were documented concerning the incident.

Mr. Jacobson asked if the Disciplinary Action was meaningless. Mr. Mahmoud replied no. The management also was written up for the incident. Mr. Jacobson wondered why the report is telling managers to review policies although they have been doing it all along.

Mr. Jacobson asked what they have done to prevent this incident from happening again. Mr. Mahmoud replied that they will continue to further educate servers.

Mr. Heafner was concerned about the lack of action taken to remediate the gap in training immediately after the violation. He confirmed that Ms. Allen was terminated. Mr. Mahmoud replied yes.

Mr. Heafner asked what additional training the remaining bartenders have to insure this does not happen again. Mr. Mahmoud stated that they are planning to have Carol conduct an in-house training and refresh training with all staff. Mr. Mahmoud stated that they have continued pre-shift meetings and refreshed training on proper carding.

Ms. Flanagan stated that supervisors had been disciplined and asked what affect that would have on them. Mr. Mahmoud replied that it puts their job in jeopardy.

Ms. Flanagan asked if Ms. Allen made any other comments about the agent and that they might have looked older to her. Mr. Mahmoud stated that she apologized and said that she screwed up.

Ms. Flanagan asked if they intend on looking into other practices to reinforce their existing training. Mr. Mahmoud replied yes.

Ms. Pietrucha asked what their liquor sales percentages are. Mr. Mahmoud replied 55% food, 45% alcohol.

Ms. Pietrucha asked how a bartender is trained to evaluate the age of a patron and what characteristics of an under 30 year old they look for. Mr. Mahmoud replied that anyone who looks under 30 is to be carded.

Ms. Pietrucha wondered what does “under 30” look like and if the servers are carding based upon their own beliefs. Mr. Mahmoud noted that they should be carding everybody. Mr. Mahmoud stated he saw the agent and it was obvious that she needed to be carded, but Jenna could not explain why she did not and knew she screwed up.

Ms. Pietrucha recalled the policy if staff believes that someone is under 30, they are to ask for id. Mr. Mahmoud stated that the policy is under 30 but employees can card everybody.

Ms. Pietrucha asked if employees ask patrons “how old are you”? Mr. Mahmoud replied that Jeanna apparently did not know she can ask “how old are you”. Ms. Pietrucha pointed out that she acknowledged being trained and that she would ask the patron’s age before checking id. Mr. Mahmoud replied that she did not.

Ms. Pietrucha asked if the 2017 policy was still in effect March of 2019. Mr. Mahmoud replied yes. Ms. Pietrucha replied from what she gathers, nobody is following and wondered who else did not know this was policy. Mr. Mahmoud replied that staff knows the policy and to ask the age. He could not explain why she did not follow policy.

Ms. Pietrucha asked if a patron who appeared to be under 30 would staff realistically ask how old the patron was. Mr. Mahmoud replied certainly.

Mr. Clary stated that he was concerned what they are going to do about the incident going further. He stated that solutions were not offered. Mr. Mahmoud replied that training will be refreshed with staff. Attorney Tanzillo noted that Carol offered to come in to conduct meeting with employees. Mr. Clary noted that they should be more proactive. He recommend that they update their employee manual and come up with more solutions about how to prevent under age sales.

Chairman Strelau asked Mr. Mahmoud to clarify the pre-shift meeting. Mr. Mahmoud replied that pre-shift meetings discuss events going on and what staff needs to be on the lookout for.

Chairman Strelau asked how many times these issues were discussed. Mr. Mahmoud replied daily. He stated that the important announcements are also posted on the employee bulletin board for them to read as well.

Chairman Strelau stated that according to them, they have done everything they possibly can, with acknowledgements, meetings with staff, yet here they sit with a violation. She wondered if they ask themselves how they keep a license. Mr. Mahmoud replied that they are going to work hard to ensure that this message is delivered.

Chairman Strelau stated that she is looking for steps they will take and how management can make it clear to staff that serving a minor is unacceptable. Mr. Mahmoud replied with re-training. Chairman Strelau noted that staff should have already been re-trained.

Chairman Strelau stated that they need to question if they have become lax in their operations and following policies. She stated that it matters how they tell staff what the rules are. She stated that not only must management remind them every day, but that they really mean that it matters. She stated employees take cues from management, not what's written in a book or put on a piece of paper. She stated that management must put the onus on staff and management to do the right thing.

Attorney Tanzillo asked Mr. Mahmoud if they held meetings with staff members. Mr. Mahmoud replied yes.

Attorney Tanzillo asked Mr. Mahmoud if during those meetings he reiterated the policies concerning service of alcohol to a minor. Mr. Mahmoud replied yes.

Attorney Tanzillo asked Mr. Mahmoud if he informed staff what happened to Jeanna as a result of this incident and if they serve a minor that it will result in immediate termination. Mr. Mahmoud replied yes. He stated that during the shift meeting he noted that this type of incident can affect their future employment as a bartender.

Ms. Didier summarized by stating that Brick House Acquisition, Inc. d/b/a Brick House Tavern & Tap, located at 1461 Butterfield Road, Downers Grove, has stipulated to a violation of Section 3-25(a) of the Downers Grove Liquor Control Ordinance which prohibits the sale of alcohol to a minor. She recommended that the licensee be found guilty of a violation.

Chairman Strelau asked Attorney Tanzillo if he had any final comments for the record. Attorney Tanzillo replied he appreciated their time and comments from the Commission that were provided. He added that this particular employee was as prepared as she could be for not serving a minor and nobody can explain why she served the minor. He stated that managers cannot be with servers at every second of every day, but that they can do better. He stated that they can do quality checks and have managers watch to ensure that employees are carding patrons. He stated that Jeanna acted outside the scope of her employment and training and not only damaged her career but put their license in jeopardy. He stated that they take the incident seriously and have zero tolerance. He apologized for the incident. He added that if there is any positive that came out of this incident that it has been a great and further teaching lesson for management and staff. He stated that they do not condone this activity and because of this they are reminded harshly of the consequences that resulted.

Attorney Tanzillo asked when considering a penalty that they would prefer a fine in lieu of a suspension.

Upon hearing the evidence presented in this case, 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. JACOBSON MOVED TO FIND BRICK HOUSE ACQUISITION, INC. D/B/A BRICK HOUSE TAVERN & TAP LOCATED AT 1461 BUTTERFIELD ROAD GUILTY OF

VIOLATING SECTION 3-25(A) OF THE DOWNERS GROVE LIQUOR CONTROL ORDINANCE. MR. KRUSENOSKI SECONDED.

VOTE:

Aye: Mr. Jacobson, Mr. Krusenoski, Mr. Clary, Ms. Flanagan, Mr. Heafner, Ms. Pietrucha, Chairman Strelau

Nay: None

Abstain: None

MOTION CARRIED: 7:0:0

The Motion carried.

V. 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 there is a potential item for the May meeting, however, a conflict with the May 2nd hearing date. She asked if the Commission members would be available May 9th in lieu of May 2nd. She will advise the Commission if the meeting will take place.

Attorney Tanzillo asked if his exhibits were entered into evidence for the record. Ms. Kuchynka confirmed.

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 month end report. She advised that the Mayor indicated his intent to issue the Class R-3/O license to Cooper's Hawk Restaurant and Winery. Ms. Kuchynka advised that she anticipated application from Cooper's Hawk for the café that will operate in their corporate office building headquarters. She advised that the café license for 3500 Lacey Road will be considered separate and in addition to the 1801 Butterfield location.

VII. COMMENTS FROM THE PUBLIC

There were none.

VIII. ADJOURNMENT

Concluding business for the evening, Chairman Strelau called for a motion to adjourn. Mr. Krusenoski moved to adjourn the April 5, 2019 meeting. The meeting was adjourned by acclamation at 7:25 p.m.