

APRIL 28, 2011

**Copy to: City Manager
City Clerk**

**Time: 10:00 a.m.
Room: Esther Howland Chamber**

Views: 9:30 a.m. – SSBY, LLC, 18 Grafton Street

Approval of minutes of License Commission meeting of April 14, 2011

**Special All Alcoholic
license requested by:**

**The Bartending Service of New England, LLC
Higgins Armory
100 Barber Avenue
May 5, 2011
6:00 p.m. – 10:00 p.m.**

**William Fuller was present on behalf of application. USA Gymnastics Association reception for parents.
Expecting 200 people.**

**The Bartending Service of New England LLC
Faculty parking lot at Holy Cross
May 7, 2011
1 College Street
2:00 p.m. – 6:00 p.m.**

**William Fuller was present on behalf of application. Application will only be only malt & wine.
College senior event in the faculty parking lot. Fenced in area and security will be checking id and
only 21 year or older will be allowed in secured area where alcohol will be served. Police will meet
with Mr. Fuller to review security for event.**

**Motion made by Peter Luke to approve both requests by The Bartending Service of New England LLC.
Karon Shea seconded.**

**Holy Cross College-Paul Irish
1 College Street-Kimball Hall
May 26, 2011
9:00 p.m. – 1:00 a.m.**

**Jeremy O'Connor was present on behalf of application. Event is for Baccalaureate Ball.
Only for seniors and their parents. Wristbands will be used to identify 21 and over.
Motion made by Peter Lukes to approve. Seconded by Karon Shea.**

**Assumption College Alumni Reunion
Committee
500 Salisbury Street- Auditorium
June 3, 2011
6:00 p.m. – 1:00 a.m.**

**Assumption College Alumni Reunion
Committee
500 Salisbury Street –Atrium of Science Center
June 3, 2011
6:00 p.m. – 1:00 a.m.**

**Assumption College Alumni Reunion
Committee
500 Salisbury Street – Auditorium
June 4, 2011
5:30 p.m. – 1:00 a.m.**

**Assumption College Alumni Reunion
Committee
500 Salisbury Street –Atrium of Science Center**

June 4, 2011
6:00 p.m. – 1:00 a.m.

Assumption College Alumni Reunion
Committee
500 Salisbury Street – Taylor Dining Hall
June 4, 2011
6:00 p.m. – 1:00 a.m.

All events will be held inside. Events are all for alumni. No students. June 3 in Auditorium, 30 people expected. June 3, 2011, 40 people expected, June 3, 2011-Atrium of Science Center, 40 people expected, June 4, 2011-Auditorium, 60 people expected, June 4, 2011-Atrium of Science Center, 60 people expected, June 4, 2011-Taylor Dining Hall, 100 people expected.

Peter Lukes mad motion to approve. Seconded by Karon Shea.

499 Sampong
Our Lady of Mt. Carmel Church
28 Mulberry Street
September 17, 2011
8:00 p.m. – 2:00 a.m.

No on appeared on behalf of application. Since event is not being held until September, 2011 Commission will hold item until next meeting scheduled for May 12, 2011.

Domino's USA
Our Lady of Mt. Carmel Church
28 Mulberry Street
May 21, 2011
10:00 a.m. – Midnight

Monica Velez appeared on behalf of application. The event is for a dominos tournament that will be held at church. 200-300 people are expected. Paul Mullan asked bar could not be opened to noon. Off-Duty officers have been hired for event and will start at 11:00 a.m.

Peter Lukes made motion to approve. Seconded by Karon Shea.

Kimberly M. Salmon
YMCA of Central Massachusetts
May 19, 2011
5:30 p.m. – 8:00 p.m.

Applicant contacted the License Commission Office and stated they have postponed event and are withdrawing application.

Elizabeth Champi
Conchagua & Inka's Restaurant
118 Cambridge Street
May 7, 2011
7:00 p.m. – 2:00 a.m.

Elizabeth Champi appeared on behalf of application. The event is for a Mother's Day party. The restaurant holds about 40 people.

Peter Lukes made motion to approve. Seconded by Karon Shea.

Special Malt & Wine
license requested by:

Bill Battelle
100 Institute Road
May 27, 2011
4:00 p.m. – 8:00 p.m.

Bill Battelle
100 Institute Road
June 4, 2011
4:30 p.m. – 10:30 p.m.

Bill Battelle
100 Institute Road

May 4, 2011
5:00 p.m. – 8:30 p.m.

Bill Battelle appeared on behalf of applications. May 27, 2011 event is a graduation dinner. June 4, 2011 is a WPI alumni reception, May 4, 2011 is a Preservation Worcester reception.
Peter made motion to approval all three licenses. Seconded by Karon Shea.

Dzian Gallery
65 Water Street
May 4, 5, 14, June 3, 2011
7:00 p.m. – 10:00 p.m.

David Papazian appeared on behalf of applications. May 4, 2011 is a fundraiser, May 5, 2011 is fundraiser for Worcester Animal Rescue League, May 14, 2011 is an artist opening, June 2, 2011 is a group called Spin Sisters who ride bikes for MS and will raise money for the charity.
Peter Lukes made motion to approve. Seconded by Karon Shea.

SSBY LLC

18 Grafton Street

Request for alteration of premises

Bernard Young appeared on behalf of application. Peter Lukes, Paul Mullan and Lt. Johnson viewed the site.

Karon Shea was unable to go to the view.

Mr. Young stated he wanted to alter the premises to include a full function hall as he wants to move away from the bar business and go into the event planning business. The alterations would take about a year to complete.

Commissioner Mullan stated he had concerns on the view about the egress out the backdoor. He did not feel that Fire Department would not approve the area.

Chairman Lukes had concerns that the past record of this establishment was not good and would like to see a record of no violations before they move forward with approving any new alterations.

Chairman Lukes also brought up that an event had already occurred in the proposed function room when it not had yet received approvals from city or state. Mr. Young stated he was not there early in the evening the night that happen but it was a misunderstanding with promoter who was running the event who thought he could utilize the function room. Mr. Young said he arrived later in the evening and event was already in process in the function room and there was nothing he could do to stop it.

Mr. Young stated that he had been in business in for twelve years and has been moving toward going away from the bar business and since he has re-opened there have been no problems.

Chairman Lukes stated that the promoter having an event in function room that wasn't approve shows that there have been problems at the location.

Chairman Lukes stated he would like license holder to go through 2011 without any violations and then come back before Commission with application.

Peter Lukes, Karon Shea, Paul Mullan voted to deny the request for alterations of premises.

Brick House LLC

dba Nuovo Restaurant
92 Shrewsbury Street

Request for entertainment license to include jukebox, tv, radio, dancing by patrons, recorded music, live music amplification system, play, moving picture show, floor show, light show theatrical exhibition, karaoke, any other audition or visual show, whether live or recorded

Attorney John Nelson and Loreta Gjonca appeared on behalf of application. Attorney Nelson stated that Brick House LLC is looking to have entertainment at location.

Chairman Lukes stated that when Commission members first viewed this location it was made clear that the Commission did not want location to turn into a nightclub type of atmosphere. Mr. Lukes said he still maintains that position.

Attorney Nelson stated that applicant is willing to work with Commission on limiting what type of entertainment. Attorney Nelson said his client have no interest in running a nightclub.

Commissioner Mullan noted that there is houses right behind establishment and asked if applicant would be willing to take out light show and theatrical exhibition. Attorney Nelson stated applicant would agree to that.

Commissioner Mullan asked if a ending entertainment at Midnight should be looked at.
A letter was presented from Representative Pedone relative to the concerns that if application is approved as is Shrewsbury Street would change from restaurant row to entertainment row and that would be problematic as street is mix of business and residents.
Gary Vecchio on behalf of the Shrewsbury Street Neighborhood Association supports all the comments in Representative Pedone's letter.
Chairman Lukes suggested that entertainment application be amended to include, jukebox, tv, radio, recorded music and karaoke.
Attorney Nelson stated that would be acceptable. If any additional entertainment will be included the applicant will come back before the Commission to request amendment to entertainment license.
Peter Lukes, Karon Shea, Paul Mullan voted to approve application as amended.

The Shisha Room
86 Shrewsbury Street

Request to amend entertainment license
to add singer, comedy shows, dj

Rosemarie Melkonian & Berge Melkonian appeared on behalf of application. Rosemarie stated that they would like to add some additional entertainment to increase business.

Chairman Lukes stated that DJ would be something Commission would have concerns about adding to entertainment license. Rosemaire said she would be willing to not have the DJ. The hours are 7:00 p.m . to 2:00 a.m. at the establishment.

Representative Pedone's letter was presented stating same concerns that if application is approved as is Shrewsbury Street would change from restaurant row to entertainment row.

Peter Lukes, Karon Shea, Paul Mullan voted to approve application as amended to add singer, comedy shows.

Carrington Hall LLC
90 Harding Street

Status hearing

Lt. Johnson stated that he is working with ABCC on on-going investigation and will follow up with investigation and present to Commission.

City Cyber Café LLC
120 Stafford Street

Request for entertainment license to
include, tv, radio, audio, visual show

Legal counsel nor applicant appeared for the meeting.

Commission voted unanimously to deny application as there was no one present for the meeting.

BMG Creations
560 Lincoln Street

Status hearing

Lt. Johnson has not been contacted by the State police relative to the emergency regulations adopted by Attorney Martha Coakley.

Lt. Johnson will prepare a hearing report and a meeting will be scheduled on item when report is received.

Hearings

UMA Group
dba Kelley Square Liquors
7 ½ Kelley Square

Violations of Rules #6, #21, 204 CMR 2.05 (2)
G.L. c. 138, §34

Transcript Attached

1 Exchange Place Inc
dba Michael's Cigar Bar
1 Exchange Place

Violations of Rules #14, 204 CMR 4.03

Transcript Attached

Executive Session

License Commission meeting April 14, 2011 transcript of the Uma Group, Incorporated doing business as Kelly's Square liquors.

Peter Lukes

Could everyone that is going to testify please raise your right hand. Do you swear this is tell the truth so help you God? Okay, Lieutenant. Johnson please start us off with the police report.

Lieut. James Johnson

This is a report of Officer Robert Belsito. The undersigned License Commission investigator requests that the License Commission notify Kelly Square Liquors located at 7 ½ Kelly's Square, Kirti Patel, manager to appear before hearing of the License Commission to answer to a police complaint the violation of rule number six and rule number 21 of the rules and regulations of the License Commission which occurred on July 18, 2010. Rule six state sales to persons under 21 a punishable by fine or imprisonment or both. Chapter 138, section 34. Rule 21 states managers of all licensed liquor establishments shall be responsible for all violations or infractions of the law occurring on the premises whether present or not. The licensee is responsible for any disorder, and disturbance or illegality of any kind taken place on licensed premises whether present or not. On July 18, 2010 Officer Robert Belsito along with an undercover minor were conducting a citywide alcohol sting on random licensed liquor stores. At approximately 1642 hrs. Officer Robert Belsito instructed the undercover minor to purchase a 40 ounce Budweiser without producing identification. Officer Robert Belsito gave him five dollars and at that time he went to Kelly Square Liquors located at 7 ½ Kelly's Square. He observed him enter Kelly Square Liquors and approximately 5 min. later he exited holding a paper bag which appeared to have a bottle in it. He then produced a 40 ounce Budweiser. He stated that the clerk did not ask for identification. He also stated that the alcohol cost \$3.46. I notified the establishment of the violations and informed them that they would have to appear in front of the License Commission.

That's all I have.

Peter Lukes

Okay, do you want to tell us what happened?

William Carroll

Okay my name is William Carroll. I represent Mr. Patel who is the manager and the owner of Kelly Square Liquors. I don't have any questions for the board that were submitted. Unfortunately, I was here about a year and a half ago if I think about not mistaken for similar violation. Same thing. I think it was a local police sting and it was an employee who was slated to be terminated for pilfering and knew he was going to be terminated and we think it was a willful act. Mr. Patel is the owner of the premises is also part owner of a liquor store in Grafton and at the time he was splitting his time between the two stores. So that the since that violation occurred he has pretty much dropped his involvement with the Grafton

store and has been at the premises now for at least 60 hours at the time he had two part-time people and he terminated the employee that was guilty of the violation and I believe you let the other one go because he was now working full-time. He has a veraphone machine in there.

Peter Lukes

When was that put in?

William Carroll

He put that in right after the last violation. It was the same thing they did not check an ID. The plan was to check everyone's IDs

Peter Lukes

So about six months ago?

Kirti Patel

Maybe less

Peter Lukes

Do you have to update that every month?

Kirti Patel

I have to update

William Carroll.

Good insurance. The area has a lot of college kids and I don't have to tell you they can testify. They probably turned have turned down four or five people every day without licenses trying to buy and so forth and everything. At any rate he has become much more actively involved in the premises. He has installed the veraphone. This incident took place on the only day that he has off which was a Sunday and he is kind of mystified about the violation because Sunday is the slowest day of the year. Employee that worked there, the slowest day of the week. The individual that worked there was 34 years of age and TIPS certified. He is a fellow that was in the Worcester area only in the summer months because he has children here from a divorce and he works part-time at Kelly Square Liquors. He has been reliable and trustworthy. He doesn't steal anything. In all honesty, he was mystified as to the violation. We had notice of the thing very very late so we don't have any film and I'm not questioning the police they would not have any reason to lie about it. He would've liked to know about it earlier because he could've confronted the guy but now to call the guy out-of-state and try to find out what the hell went on basically on a quiet Sunday he is never going to recall. There is basically. It is indefensible and he has his life savings invested in **the store**. This is his job and he has a part interest in the Grafton store and I know the board gave a break the last time around and gave him a two-day suspension and suspended that for a year. Can you say this thing is never going to happen again? It won't happen on his watch. The

only other employee is John Assad who owned the store for about 20 years. So those are the people primarily there are other than Sunday they do have they do have a part-time person there

Kirti Patel

I will be there every year over the day. I can't promise that John will be there every hour because he has been working at 23 years. So the other guy that I've hired now used to own a store in Worcester. So he knows the area and we will be the only ones. We will make sure that we are the only ones at the register checking everyone. It will just be us

William Carroll

And they are all tips certified

Kirti Patel

And I try to go by and try to take all the steps to make sure it doesn't happen.

Peter Lukes

And I appreciate that you have taken some measures to mitigate. The verifying system, hiring some professionals to work with. Even if you hire 20-year-olds you still have to beat them over the head to check IDs. It is very important,

Karon Shea

You're mystified but it happened. It can happen on Sunday. It can happen on any day. The quietest time.

Kirti Patel

My bad luck the one day that I'm not there. That's what got me also

Lieut. James Johnson

I have had some of the concerns with this location and I'm not sure if we brought this forward. We bring so many violations forward. We had a sexual assault that occurred you recall? The sexual assault did not occur there. The suspect had gone in there but the tapes were missing and we went there three times. Part of the rules and regulations that you have got to cooperate with the police on investigation and that still little concerning to me that's what I was talking to them about. I am concerned about that. We come in there and were doing and investigation were looking for different things and part of you getting that liquor licenses you have to cooperate with us.

Kirti Patel

I told you at the time I was more Grafton. I wasn't at the store and by the time I got there and return your phone call the answer

Lieut. James Johnson

I don't want to get into an argument but the thing that was troubling about it all sudden we go there and I know guy was a regular customer and this guy was a suspect in a sexual assault and also the tapes are gone. I could go on because of that but the fact remains is you still have to cooperate with us and that is still troubling to us that we do not get the level of cooperation that we should have got. I just want to mention that.

William Carroll

I spoke to you and the other officers in the hallway earlier and he should return the phone calls earlier instead of back burnered at that time

Lieut. James Johnson

Right

William Carroll

He did apologize and honestly if there is an issue again and

Lieut. James Johnson

He could've gotten back

William Carroll

He could've and we acknowledge that and he is a good neighbor. They sponsor, there are charities, they donate, and they do try to fit in and they're not just in it to make business, to make a profit they try to obey the rules. Unfortunately, given before the board and were given a break. We're hoping the board and we know that that every time we come before the board they are not going to give us a pat on the wrist but if the board would consider the circumstances and make some mitigating efforts to ensure that it will not happen again and this is his investment. His college-educated. This is his only job and I hope the board could take into consideration. Thank you

Peter Lukes

Okay let us take a roll call of the violations

Deborah Steele

Karon Shea?

Yes

Deborah Steele

Paul Mullan?

Paul Mullan

Yes

Deborah Steele

Peter Lukes?

Peter Lukes

Yes

Peter Lukes

Okay we have found the violation and you're really on the cusp of getting some type of suspension. I will open it up for suggestions. Commissioners.

Paul Mullan

One day suspension,

Peter Lukes

One day to be served? I would amend that to three days suspension with one day served because I want something dangling in case something else happens. So that will be my motion.

William Carroll

Any suggestion on the day?

Peter Lukes

What is a good day?

William Carroll

I know, I don't want to say Sunday is a good day.

Peter Lukes

What day did this happen?

Lieut. James Johnson

Sunday

Peter Lukes

Sunday?

Lieut. James Johnson

Sunday, they're still busy on Sunday, that is when they have the college crowd. I know that

William Carroll

We don't deny that. He makes money on a Sunday. Sunday is not the busiest day of the week probably.

Peter Lukes

Sunday then

Karon Shea

Sunday then

Deborah Steele

It will be a three-day suspension with one day served?

Peter Lukes

It will be the three-day suspension with one day served.

Deborah Steele

Karon Shea?

Karon Shea

Yes

Deborah Steele

Paul Mullan?

Paul Mullan

Yes

Deborah Steele

Peter Lukes?

Peter Lukes

Yes

William Carroll

Can that be this Sunday coming up?

Peter Lukes

Sure

Deborah Steele

They have to receive decision and have a chance to appeal

Peter Lukes

If you want you can say that you withdraw your right to appeal

William Carroll

We would definitely waive our right to appeal and agree to an immediate suspension

Peter Lukes

Okay, then you can surrender license

William Carroll

Okay we like to get it over with and will bring it in.

Deborah Steele

It's on a Sunday so they will bring it to the police department

Karon Shea

So it is this Sunday.

Lieut. James Johnson

So bring it down to the station and we will get back to you on Monday

William Carroll

See anybody in particular?

Lieut. James Johnson

I will stop by and see you Saturday night

William Carroll

Thank you very much

Peter Lukes

Thank you

License Commission meeting April 28, 2011 transcript of one Exchange Place., Incorporated doing business as Michael's cigar bar

Peter Lukes

Next, One Exchange Place doing business as Michael's Cigar Bar violations of rule 14 and 204 CMR 4.03.

Good morning. Okay please state your names for the record

Raymond Reed

Okay my name is Raymond Reed I represent Michael's Cigar Bar.

Jason Yeem

Jason Yeem

Lois Maraia

Peter Lukes

Okay everyone is going to testify please raise your right hand. Swear tell the truth so help you God.
Lieut.

Lieut. James Johnson

The undersigned License Commission investigator requests that the License Commission notify Cigar Masters located at One Exchange Street sorry Place to appear before hearing of the License Commission to answer a police complaint the violation of rule 14 of the rules and regulations of the License Commission occurred on December 8, 2010. Rule 14 states managers of all licensed liquor establishments shall be responsible for all violations or infractions of the law occurring on the premises whether present or not. The licensee is responsible for any disorder, disturbance or even legality of any kind taken place on licensed premises whether present or not. On December 8, 2010, sorry, this is a report of Officer Mark Jolin who was working in his current assignment as a member the Worcester police alcohol enforcement unit. He was wearing plainclothes and operating a unmarked police cruiser. Lieut. James Johnson received a flyer from Cigar Masters located at 1 Exchange St. The flyer advertised the happy hour for the business. Massachusetts law prohibits the practice of happy hours. Officer Jolin entered the business at approximately 1910 hrs. He sat at the bar. There were two other customers at the bar and a group of 3 to 4 people of the sitting area. A male was tending bar. This male was later identified as, Roy Christian, May 8, 1989. Two female employees were wrapping pictures with Christmas wrapping paper. The bartender asked what he could get Officer Jolin. Officer Jolin asked if it was still happy hour. The bartender asked one of the females about the time. The female said it ran from 5 PM to 7 PM and it was now after seven. The bartender informed Officer Jolin that he missed it by a few minutes. Officer Jolin acted disappointed and asked how much he would've saved if it were happy hour. The bartender said that if I ordered a mixed drink it is about eight dollars but during happy hour it will be five dollars. If officer Jolin wanted a beer it will be five dollars but during happy hour 3 dollars. Officer

Jolin identified himself as a Worcester police officer. He informed staff that they cannot run a happy hour. Explain that prices had to remain fixed. Officer Jolin informed the bar that he would bring them before the Worcester License Commission for violation. That is all.

Peter Lukes

Do we have a copy of the flyer?

Lieut. James Johnson

No, we do not have a copy of the flyer

Raymond Reed

Yes I have one. I believe this is the same flyer

Lieut. James Johnson

I'm not sure now. I think that was the one

Raymond Reed

Just so just so that I'm accurate before I begin can I show? This is a better one

Lieut. James Johnson

Did you have pictures on it? That one was a little different from this one. No, I don't think that was it

Jason Yeem

That is the only flyer. There are, there are table tents that I have

Peter Lukes

Okay, go ahead

Raymond Reed

May I proceed? Usually David Officer would be here on behalf of the Corporation but he had sought a continuance as he is unavailable so I am here and the only reason I'm suggesting to you is to see what type of opening you allow. This case is just a misunderstanding about the law and the facts as we see it. First we had the officer say that Massachusetts law says it's illegal to have a happy hour. I believe the regulation is 204 CMR 4.03 section C I believe is what is referred to and basically says that you can't sell these drinks at a price less than is normally charged during the same week that is a provision he is talking about I will draw your attention to the flyer and you have testimony that we had set these drinks, these prices for an entire month. The language at the very bottom the flyer expressly states that. That prices will remain the same during operation for an entire month. So we believe there was a happy hour but we don't believe there was an illegal happy hour. So, we believe there's a misunderstanding what

actually was the happy hour then. We believe there was whether inadvertently or not what was on sale at that time was that the food was free from 5 to 7. We didn't do anything with the drinks. We basically tried to get patrons to come in for food and we have discontinued this practice. Now without trying to make this overly adversarial only to have the witness testify as to how this worked

Peter Lukes

Please

Jason Yeem

From this night, I was not at the facility. The gentleman's name here is not correct, is Christian Roy and Officer Jolin spoke to the bartender who is Christian Roy who was on that night and I wasn't there so I don't know the conversation but I spoke to Mr. Jolin and to my bartender and he asked if he wanted anything and he said I'll just take a look and then asked about the happy hour, what exactly said I wasn't there, but Christian Roy the bartender said can I call my boss and picked up the phone and I spoke with Officer Jolin and this isn't in the report. Officer Jolin said that I'm running an illegal happy hour and I said from my understanding I don't believe that. He said to me can you explain to me what a legal happy hour is and I explained to him that we **offer drinks**. There is a menu and we offer drinks and all hours of operation, seven days a week for a whole month. He said that is correct but your bartender explained it this way. Whether there was a miscommunication from the bartender because what I understood it was a general question as to how does your happy hour work and I'm not sure if Christian was thinking about the food or what what the communication was. Like I said, I wasn't there. I did explain it to Officer Jolin and he said yes you're right but the bartender explained it wrong so I have to write you up for a citation. He did ask if I would take it off my website and off my Facebook and I did so the next day. Took it off because he said it was illegal so took off. We don't offer anymore.

Raymond Reed

Can I ask a few more questions please? In this report it refers to the bartender and also refers to two females at the bar at that time

Jason Yeem

Yes

Raymond Reed

Were you able to identify who those females were?

Jason Yeem

I don't know

Karon Shea

Two female employees

Raymond Reed

Do you know who those two female employees were?

Jason Yeem

No we have 12 employees and that was around Christmas time and we did have some employees come in to decorate. Who they were I have to go back and look.

I'm not sure.

Raymond Reed

And you have any invoices or receipts from that day that you be able to identify that there was no discount for the prices

Jason Yeem

No, because our computer system does not, our register system doesn't do that. To be 100% honest I don't know if any have been in our facility before we have a very classy facility. Since I have been there we have not had to call the police for anything. It is a classy organization. People come in to smoke cigars and watch the game. We've never had any problems. The business is finally starting to pick up and doing well this was just a setback in the first time since I have been at the facility that I've been in front of you guys

Peter Lukes

What is your position?

Jason Yeem

At the time here I was considered a manager.

Peter Lukes

At the time of the violation you are considered a manager?

Jason Yeem

Yes there was a misunderstanding on that behalf

Peter Lukes

Yes we are having several of those

Jason Yeem

No, the misunderstanding wasn't on your side. I didn't know the procedure on filling out an application. We had a manager there and still on Adam Gallagher. He goes between two of our facilities. I was taking

it over. I didn't know I had to fill out the application at the time that the liquor license came and it was still in Adam's name and I said how come? I talked to Deborah Steele and she told me to fill it out and I filled out but I sent to Boston and they sent it back and then I sent to you guys and I got denied. So, I recently found a gentleman that is working for us for two years and he's going to be the new manager of record that he is going to put an application but it took

Karon Shea

But you were denied

Jason Yeem

Yes

Peter Lukes

Who is manager record now?

Jason Yeem

Lois and Lois is the owner and licenses in her name and Adam Gallagher

Karon Shea

So Lois is there?

Lois Maraia

It was confusing. Jason is an acting manager but Adam works as many hours so I considered them as co-managers but once Jason was denied. So it is a misunderstanding. So how do we deal with that right now if we are going to have Mark as manager?

Lieut. James Johnson

He needs to put an application in. At this point he's not approved

Lois Maraia

But don't we need to have an application in to get that to happen. So my question to you is if I do have that application in will that satisfy

Lieut. James Johnson

No. No it doesn't. We still have to background him and we still have to approve him as far as the police department does that still has to come before the commission for their vote. So at this point whoever's name is on that with the license or whoever is disclosed as leadership of that Corporation would be responsible. I need to know who the go to person is.

Lois Maraia

I thought it was my understanding that once you have the application and that during that process while you are approving that the person can act

Lieut. James Johnson

You're incorrect

Lois Maraia

So do I have to be there

Lieut. James Johnson

Or Adam. You have to be to.

Lois Maraia

I live in Rhode Island.

Lieut. James Johnson

It's a small state. I want to know who is going to be down there. I want to know who's going to be down there for the bulk of the hours that night. I know this is aside from the hearing we're holding but I need to know who was down there. I need a manager who is disclosed who's running the show and the go to.

Lois Maraia

So it can't be Mark

Lieut. James Johnson

No not until; he is approved before **the commission** to be the manager

Lois Maraia

Have to be accessible

Lieut. James Johnson

I can find them quickly. You don't have to be there 150 hours a week but.

Lois Maraia

So it can be me?

Lieut. James Johnson

Are you disclosed?

Lois Maraia

Owner

Lieut. James Johnson

Owner of the business absolutely. So just my understanding until we have a new manager in place her name and Adam on. She is the owner and basically it and she can run the show under liquor license and I can go to her. You can't be a ghost. You have to be around. We will be spot checking. You have to be readily available

Karon Shea

Not just a cell phone

Lois Maraia

You got to tell me

Paul Mullan

The problem is how you run the place. If there is a problem and they need to go down there and they can't find you will be brought in on a violation. Then it will be two violations. You will have all violation of the conduct that is happening and for not having a manager premises

Lois Maraia

So I have to be in that facility?

Lieut. James Johnson

No

Paul Mullan

No, you can't have him make a decision for you forefront that this is going to happen. We're not going to cover all the bases

Lieut. James Johnson

What do we usually say 40 to 50 hours they have to be there?

Karon Shea

At least 40

Lieut. James Johnson

At least 40 hours you have to be at that location. Obviously, we know you can't be there 24 hours a day seven days a week but if you're there for 40 hours and we know you're there and we spot check it as we do that we know you're around and you're there during the day and we know that you may not be that night but you should be around when some of the action is occurring. It should be there 40 hours until you get a new manager place.

Karon Shea

Someone has to be there

Lois Maraia

How long does it take for that process?

Lieut. James Johnson

We can background someone. You can be brought in on the 12th of the 13th whatever the next hearing date is and that once we have the manager below through Deb will do a quick background check if we find him acceptable it comes to the commission and we will say he passed the police background if they have any other questions that they will vote. So could be as quick as two weeks from today. Oh, but then has to go to Boston but maybe not that quick

Lois Maraia

But don't usually approve

Lieut. James Johnson

I understand a question. We approve but it doesn't get the final stamp of approval until it goes to ABCC in Boston

Lois Maraia

But once you approve can he act

Lieut. James Johnson

No I don't think you can. I think it has to go to a ABCC

Peter Lukes

So the former person remains on the paperwork as manager

Lieut. James Johnson

That is just how works and once it goes to them they approve or disapprove

Peter Lukes

Getting back to the actual violation does Officer Jolin have anything to add?

Lieut. James Johnson

I have Officer Jolin here to testify to the drink, the price change. If you'd like him to testify to that.

Raymond Reed

Excuse me I don't wish to intercede but could I finish with this with this witness?

Peter Lukes

You have more questions?

Raymond Reed

Yes according to the report the officer came in at 710. Do you recall that? It identifies that there were two other customers at the bar do you recall seeing that?

Jason Yeem

I wasn't there

Raymond Reed

Do you know who those two other customers were?

Jason Yeem

No

Raymond Reed

It also refers to a group of three or four other people in the sitting area to recall that the report?

Jason Yeem

Yes

Raymond Reed

You know who those people were that it also identified their bartender do recall that?

Jason Yeem

Yes

Raymond Reed

And what was his name again?

Jason Yeem

Christian

Raymond Reed

And did you ask question Roy if there were any drink or alcoholic beverages that were sold that evening at a different price

Jason Yeem

No I didn't

Raymond Reed

Did you not speak the following day to the bartender?

Jason Yeem

Yes I did

Raymond Reed

What did you say to him?

Jason Yeem

Well he knows that all the prices were on that list. It is not all liquor, it is specific liquor on that list.

Raymond Reed

So to those prices vary between 5 and 7 PM?

Jason Yeem

No all day every day

Raymond Reed

Did they change at 710?

Jason Yeem

No, the only thing at seven, 5 to 730 I put on a little buffet for people to come down

Peter Lukes

You weren't there that night?

Jason Yeem

No

Peter Lukes

So you didn't put out the buffet or were selling any drinks?

Jason Yeem

Well buffet out every night

Peter Lukes

You didn't do it?

Jason Yeem

No

Raymond Reed

I have no further questions

Officer Mark Jolin

On that night I went to the cigar bar. A lot of misunderstandings obviously, miscommunications by asking the prices for happy hour and he told me it was happy hour and eight dollars for a mixed drink, non happy hours five dollars for the same drink. For a beer three dollars, non happy hour five dollars. There was no talk about anything involved. Later on when I talk to you on the phone you explained your side of the story and I explained my side of the story it with the bartender told me and you said yes that is a violation

Jason Yeem

Yes that is what I said. I said before when I spoke to you on the phone and I explained it to you, you said I was correct and the way he explained it, it was incorrect and it was a violation and you had to issue

Officer Mark Jolin

A violation. Thank you

Peter Lukes

Any more questions? Thank you.

Paul Mullan

Any of these promotions still going on? It's off the website?

Jason Yeem

Yes it's off the website and I took off everything the next day

Paul Mullan

When you had this going on did you have signs outside? Were they provided by the distributors?

Jason Yeem

No, that's what I read it in here Lieut. Johnson said he had received a flyer I didn't know where he had got the flyer as these were all made, these are all table tents, these: the plastic holder, you know the plastic holders and base it on the table

Lieut. James Johnson

It wasn't that one. It was something different.

Officer Mark Jolin

There was actually one posted on the window. On the side of the business that said the same thing as the flyer

Jason Yeem

And it had Cigarmasters name on it?

Lieut. James Johnson

Yes

Jason Yeem

I don't

Paul Mullan

But those are on the bar anyways and they say happy hour drink price

Peter Lukes

Okay. Anything else? I'm a little troubled before we go to the violation but the weight of the evidence because we don't have a flyer and we have to consider hearsay and we don't have the bartender that was here that night but we do have Officer Jolin's testimony and I guess in the end we have to weigh. Okay and on that I would like a roll call

Deborah Steele

Roll call the violation

Peter Lukes

A roll call of the violation please

Deborah Steele

Karon Shea?

Karon Shea

Yes

Deborah Steele

Paul Mullan?

Paul Mullan

Yes

Deborah Steele

Peter Lukes:

Peter Lukes

Yes

Peter Lukes

Okay we found the violation. Past violation was one violation

Deborah Steele

Open after hours

Peter Lukes

After hours. 2008

Lieut. James Johnson

ABCC has the other violation. It was Thanksgiving two years ago they were supposed to shut down but they actually opened up

Peter Lukes

Suggestions?

Karon Shea

We have two, we have an owner and a manager and that other manager you are saying they are not going to be there?

Lois Maraia

I will have to be there

Karon Shea

But he is the manager so he can be there if you're not there

Peter Lukes

So any suggestions. I going to suggest a three-day suspension with one to serve. Roll call

Deborah Steele

Karon Shea?

Yes

Deborah Steele

Paul Mullan?

Yes

Deborah Steele

Peter Lukes?

Yes

Peter Lukes

So you understand the license is suspended for three days and you will serve one day of that suspension. Should you have another violation in the next year the additional violation kicks in automatically and you have to serve that in addition to whatever for the new violation. Okay

Deborah Steele

Mr. Chairman, are you going to give a specific day?

Peter Lukes

What days are you open?

Jason Yeem

Seven days

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940 CMR 30.00: Illegal Lotteries, Sweepstakes and De Facto Gambling Establishments

These regulations are adopted as emergency regulations. The immediate adoption of 940 CMR 30.00 is necessary to prevent businesses from continuing to harm consumers and the public by operating illegal and unregulated lotteries, sweepstakes and other forms of gambling under the pretext of selling goods and services. Delaying adoption of these regulations by meeting the notice requirements of M.G.L. c. 30A, §§ 2 and 3, would allow these unlawful businesses to continue to take advantage of and harm Massachusetts consumers and lawful businesses.

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30.01: Purpose of Regulation

Outside certain statutory exceptions, existing statutes prohibit the business of gambling, including M.G.L. c. 271 which prohibits, among other unlawful gambling activities, illegal lotteries, namely, soliciting or accepting a payment for the chance to win a prize. The purpose of 940 CMR 30.00 is to protect Massachusetts consumers and the public from unlawful lotteries, sweepstakes and other forms of illegal gambling by defining unfair and deceptive acts or practices in the promotion and sale of lotteries, sweepstakes and other forms of illegal gambling. These statutes are designed to protect the public's health, safety and welfare. A business that induces consumers to participate in illegal and unregulated forms of gambling by posing as a legitimate business or claiming to offer legitimate sales transactions is unfair and deceptive in violation of M.G.L. c. 93A, § 2(a).

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30.02: Scope of Regulation

The Attorney General's regulations under M.G.L. c. 93A, § 2(c) define unfair and deceptive acts or practices. 940 CMR 30.00 does not apply to any lottery, game, gaming device, contest or activity that is expressly authorized by Massachusetts laws and regulations, including, without limitation: (1) any lottery conducted by the State Lottery Commission pursuant to M.G.L. c. 10, §§ 24, 24A, 27, 27A, 37, 38, and 39A; (2) pari-mutuel wagering on horse races, whether live or simulcast, under M.G.L. c. 128A and 128C; (3) the game of bingo conducted under M.G.L. c. 10 and 271; or (4) as charitable gaming, so called, conducted under M.G.L. c. 271.

The Attorney General's regulations are not intended to be all inclusive as to the types of activities prohibited by M.G.L. c. 93A, § 2(a). Acts or practices not specifically prohibited by 940 CMR 30.00 are not necessarily consistent with Chapter 93A. All references in 940 CMR 30.00 to statutes and other regulations shall include amendments made to such statutes and other regulations after the promulgation of 940 CMR 30.00.

940 CMR 30.00 shall not be interpreted to authorize any lottery, game, gaming device, contest or activity prohibited by M.G.L. c. 271 or any other applicable law.

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30.03: Definitions

Chance means the opportunity to win a prize where the likelihood of winning is determined by some element of chance.

Customer means any natural person who pays for, or is solicited to pay for, directly or indirectly, either (i) a chance to win a prize; or (ii) goods or services offered in connection with a chance to win a prize.

Establishment means the location of the business or entity, physical or otherwise, that sells or offers for sale either (i) a chance to win a prize; or (ii) goods or services offered in connection with a chance to win a prize.

Free Play means the play of a lottery, sweepstakes, similar game or use of gaming devices without providing anything of value in return for that play or use.

Free Play Option means the opportunity to play a lottery, sweepstakes, similar game or use of gaming devices without providing anything of value in return for that play or use.

Gambling purpose means that the motivation of the customer in making a payment is to participate in a lottery, sweepstakes, similar game or use of gaming devices.

Game means an activity that involves some element of chance and an opportunity to win a prize.

Payment means providing any money, property or thing of value.

Person means a natural or artificial entity, including, but not limited to, individual, partnership, limited liability company, association, trust or corporation or other legal entities.

Prize means any gift, award, gratuity, good, service, credit, or anything else of value, which may be transferred to or for the benefit of a person, whether possession of the prize is actually transferred, or placed on an account or other record as evidence of the intent to transfer the prize.

Lottery means a game or activity that includes a payment for a chance to win a prize.

Sweepstakes means any game, advertising scheme or plan, or other promotion, which, with or without payment of any consideration, a person may enter to win or become eligible to receive a prize, the determination of which is based upon an element of chance.

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30.04: Prohibition on unlawful lotteries, sweepstakes and de facto gambling.

(1) It is an unfair and deceptive act or practice in violation of M.G.L. c. 93A, § 2(a) for a person to solicit or accept payment for a chance to win a prize.

(2) With respect to a business or a transaction that involves or purports to involve both a chance to win a prize and the sale or purported sale of a good or service, it is an unfair and deceptive act or practice in violation of M.G.L. c. 93A, § 2(a) for any person to engage in a business or engage in a transaction where a gambling purpose predominates over the *bona fide* sale of *bona fide* goods or services.

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30.05: Criteria for determining whether a gambling purpose predominates.

The determination under 940 C.M.R. 30.04(2) whether, with respect to a business or a transaction, a gambling purpose predominates over the *bona fide* sale of *bona fide* goods or services, shall consider the facts and circumstances of the business or transaction including, without limitation, the following criteria:

(1) The portion of goods or services sold that are actually used or redeemed by the customers of the business;

(2) The portion of customers that engage in lotteries, sweepstakes or similar games without accepting, using or redeeming the goods or services sold or purportedly sold;

(3) The manner in which the business or the transactions are marketed, advertised, or promoted, including without limitation:

(a) signage at the establishment;

(b) advertising and other methods of soliciting customers;

(c) the business's interaction with customers at the establishment;

(d) the overall atmosphere and environment at the establishment, including whether it appears or is designed to appear similar to a casino or other gambling establishment;

(4) Whether and the degree to which instructions are provided with respect to: (i) use or operation of the lottery, sweepstakes, other games or gaming devices, as compared to (ii) use or operation of goods or services sold or purportedly sold;

(5) The motivation or purpose of either: (i) the customers of the business; or (ii) the business in offering a transaction involving a lottery, sweepstakes, similar game or use of gaming devices;

(6) Whether customers are permitted to participate in the lottery, sweepstakes, similar game, use of gaming devices or similar gambling aspect of the business without purchasing the goods or services offered or purportedly offered by the business; and in the event that a free play option is available or purportedly available:

- (a) the terms and conditions to access, implement or use the free play;
- (b) whether the free play option permits customers to play in a manner and at a time substantially identical to those customers paying for or purportedly paying for goods or services;
- (c) the burden to access, implement or use a free play option;

(7) Whether customers who purchase or purportedly purchase goods or services in connection with a lottery, sweepstakes, similar game or use of gaming devices achieve any advantages, whether immediate or over a period of time, in winning a prize over customers who do not purchase or purportedly purchase goods or services.

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30.06: Severability

If any provision of these regulations or the application of such provision to any person or circumstances is held to be invalid, the validity of the remainder of these regulations and the applicability of such provision to other persons or circumstances shall not be affected.

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30.07: Effective Date

This is an emergency regulation and shall be effective upon its filing with the Secretary of the Commonwealth, that is, on April 7, 2011.

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