

**Meeting Minutes
Board of License Commissioners
Caroline County, Maryland**

DATE: Wednesday, August 28, 2019

PLACE: Health & Public Services Building
403 S. 7th Street, 1st Floor, Room 110
Denton, Maryland 21629

BOARD MEMBERS: Greg Eigenbrode, Chairman
Nicholas Loukides, Vice-Chair
Glen Plutschak, Member
Michael Mann, Alternate

OTHERS PRESENT: Crystal Dadds, Asst. Director of Codes
Phillip Moore, Alcoholic Beverage Inspector
Heather Price, County Attorney
Melanie Smith, Administrative Assistant to the Boards

Chairman Eigenbrode called the meeting of the Caroline County Board of License Commissioners to order at 9:30 a.m. He announced that the agenda would be amended to first hear the temporary license applications.

TEMPORARY LICENSE APPLICATIONS

American Legion Mannie Scott Post #193 – September 7, 2019

Chairman Eigenbrode swore in:

Doncella Wilson, 223 Briarwood Circle, Denton, MD 21629

Ms. Wilson represented the Mannie Scott Post to request a one-day temporary license to sell beer and liquor at a lawn party event. Ms. Wilson explained that the Legion has been down for some time and they are rebuilding. They have a new Commander, a new member auxiliary and a motivated staff. Their first event would take place on September 7th from noon to dusk. There will be a cash bar and live music. All proceeds will support the Mannie Scott Post. They aspire to be a community hub and to help local veterans. She is a Social Worker willing to offer free mental health services to veterans that visit the post and to also offer referral services. Ms. Chanisha Wilson, Ms. Andrea Fields and Ms. Wilson have TIPS certification for the event.

- Motion:** Mr. Loukides made a motion to approve the application citing that there has never been an issue with events at the post in the past.
- Second:** Mr. Plutschak seconded the motion.
- In Favor:** The motion was unanimously approved (3-0).

Downtown Denton Main Street, Inc. – October 12, 2019

Chairman Eigenbrode swore in:

Audrey Clemens, 213 South 5th Ave., Denton, MD 21629

Downtown Denton Main Street applied for a one-day temporary license to sell beer and wine at their fifth farm to table style dinner. The proceeds will support Downtown Denton Main Street. It would take place along the 200 block of Market Street. The road would be barricaded off from 2nd Street to 3rd. Should it rain the event will be held at the visitor's center. The event is planned for Saturday, October 12th from 6-9 PM. Ashley Woods and her sister are TIPS certified for the event. They will have wrist bands for those that are over 21 years of age.

- Motion:** Mr. Plutschak motioned to approve the Denton Downtown Main Street application for the one-day temporary license.
- Second:** Mr. Loukides seconded the motion.
- In Favor:** The motion was unanimously approved (3-0).

SHOW CAUSE HEARINGS

Wetcher Whistle – 305 Bloomingdale Ave., Federalsburg, MD

Chairman Eigenbrode swore in:

Bharat Chandubhai Patel, 102 W. Central Ave., Federalsburg, MD 21632
Hitesh Patel, 12507 Blue Ponds Terrace, Beltsville, MD 20705
Nishabhen Patel, 12507 Blue Ponds Terrace, Beltsville, MD 20705

Mr. Robert Thornton was the counsel for the license holders.

Ms. Price explained to the Board that this hearing is unusual because of objections received by the license holders' counsel regarding language in the Inspectors Report and the Board's viewing the report in advance of the hearing.

Ms. Dadds read the summonses into the record. The license holders were summoned to appear before the Board for the following alleged violations:

CHARGE NO. 1 – MD Code §6-304 and C.C. BLC Rule & Regulation No. 2.26, specifically, selling an alcoholic beverage to an underaged person.

CHARGE NO. 2 – C.C. BLC Rule & Regulation No. 2.01(a), specifically, failure to have a valid Alcohol Awareness Certificate at the establishment and failure to present the certificate upon request.

CHARGE NO. 3 – MD Code §15-1902(a)(2) and C.C. BLC Rule & Regulations No. 2.01(c), specifically, failure to have a log book.

CHARGE NO. 4 – C.C. BLC Rule & Regulation No. 2.17(b), specifically, failure to provide employee records upon request.

CHARGE NO. 5 – C.C. BLC Rule & Regulations No. 2.36, specifically, failure to have two years of alcoholic beverage transactions available.

Ms. Dadds read the following exhibits into the record:

Exhibit 1 – Bharat Patel's Summons

Exhibit 2 – Nishabahen Patel's Summons

Exhibit 3 – Motion in Limine

Exhibit 4 – Motion to Dismiss

Exhibit 5 – Compliance Check Inspection Report of June 15, 2019

Exhibit 6 – Violation History Report

Exhibit 7A – Premise Inspection Report of August 9, 2019

Exhibit 7B – Health Dept Recognition Certificates regarding tobacco sales

Exhibit 8 – Copy of TIPS Cards presented by Mr. Patel

Ms. Price suggested they take care of some preliminary concerns first.

Mr. Thornton filed a few requests; one of them was to limit information seen by the Board members (Motion in Limine). He also submitted a motion to dismiss the first allegation, specifically, selling alcohol to an underaged person.

He stated that the two reasons he filed the motion to dismiss was, first, this was a due process hearing because the Board did not have Rules of Procedure to follow. He added that in a case like this they would have to rely on the Constitution. Secondly, he suggested that the assignment should have ended when Mr. Patel first denied the sale.

Mr. Thornton and Ms. Price worked together to redact certain information that appeared in the Inspection report that Mr. Thornton considered suggestions and explanations rather than facts.

Ms. Price suggested the Board vote whether or not to allow the motion in limine and accept the Inspectors report as it had been redacted. She added that this in no way means that she believes the Inspector acted wrong or right. She is only agreeing to redact the information as Mr. Thornton wished.

Mr. Thornton also requested that the pictures and the informant's report be withheld on the grounds that they neutralize the information that was redacted in the report. Ms. Price informed

the Board that she was not convinced the additional information should be redacted. They include nothing of the Inspector's opinion, they only show the facts. She added that this was an Administrative Hearing, which is more relaxed than a Court of Law.

Mr. Thornton argued that the first charge was a crime and his client deserved due process. Ms. Price explained that she spoke with Mr. Thornton, before the hearing, to explain that the rules of the Board are separate from those of the court and Mr. Patel was not being charged with a crime, only a violation. She suggested the Board may want to view the pictures and testimony because, the pictures have no opinion or speculation as Mr. Thornton charged portions of the report did and was therefore redacted.

Ms. Price stated that Mr. Thornton's objection is noted in the record. She added that in these tribunals the events are relaxed, they are not formal hearings. She added that the pictures are relevant and probative. She advised the Board to view them with Mr. Thornton's objection on record.

The Board members agreed that the remaining evidence should be seen and responded to the Motion in Limine.

Motion: Mr. Loukides motioned to allow the photographs and CI testimony to be seen by the Board.
Second: Mr. Plutschak seconded the motion.
In Favor: The motion was unanimously approved (3-0).

Ms. Price did not understand Mr. Thornton's claim that due process is required, because the Board does follow Rules of Procedures (ROP). Ms. Dadds added that Mr. Thornton himself created the Rules of Procedures in 1993 that they follow. Mr. Thornton stated that he had asked for them and was told they are on the Website, but he never found them. Ms. Smith made copies of the ROP for all participants of the hearing.

Ms. Price asked for clarification of the Motion to Dismiss from Mr. Thornton that his defense was entrapment; that Mr. Patel was induced to commit this crime by the nature of the government's actions.

Mr. Thornton agreed that this was a characterization of his defense, but the other part is that Mr. Patel did deny the sale and that should be where the operation stopped. Ms. Price asked what was his "but for" in this case. Mr. Thornton stated "but for" the extended operation nothing more would have occurred. He stated that it was not only entrapment but that the operation continued past when it should have stopped.

Chairman Eigenbrode explained that they have not seen the report yet. He asked Mr. Thornton if he was claiming his client did not sell alcohol to an underaged person. Ms. Price suggested that if entrapment was the defense, they should hear his motion to dismiss at the end of the hearing. She added that the burden would then be on Mr. Thornton to prove his client wouldn't have sold the alcohol to a minor, but for, the action of the government. This is the element for entrapment.

The redacted report was passed out to the Board members to read for the first time. Inspector Moore read the redacted Inspection Report into the record.

Mr. Thornton focused on charges 2-5 and asked Inspector Moore if he went back to the establishment to view the documents that were not available on June 15, 2019. Inspector Moore replied that he had, and the report was admitted into the record as Exhibit 7. Mr. Thornton asked Hitesh Patel, owner of the establishment, to testify.

Mr. Hitesh Patel had copies of TIPS certification for himself, Bharat Patel, Nisha Patel, Sonje Patel, and Nilam Patel that he claimed was displayed on the wall of the establishment at the time of the Inspectors visit on June 15, 2019.

He also stated that the documents that the Inspector requested were available, but Mr. Bharat Patel was unable to find them. He showed the green folder the documents are stored in and suggested something may have been placed on top of the file, keeping it from view. The sales records are kept separately in boxes stored in his office.

Mr. Patel also offered Certificates he has received in the last three years from the C. C. Health Department recognizing their commitment to preventing youth from purchasing cigarettes. Ms. Price stated that she did not object to adding them into the record but considers them irrelevant in this case.

Chairman Eigenbrode asked Mr. Patel to clarify for the record, if all of the TIPS Certificate copies he produced were available the day of the inspection. Mr. Patel stated that they were, and they were also in frames on the wall. Chairman Eigenbrode asked twice more if they were all displayed on the walls on June 15, 2019. Mr. Patel confirmed that they were.

Chairman Eigenbrode stated that three of the certificates were not issued until July 14, 2019. Mr. Patel explained that the originals were on display and he copied the new ones. Ms. Price noted that they had all of their TIPS Certifications in April for renewal and their being certified is not in question.

Chairman Eigenbrode stated that the problem is that this was unavailable for the Inspector to review on the date of his inspection. Mr. Patel stated that he will keep it now under the register and not in the office so anyone can locate it. Ms. Price confirmed that the owner's testimony and the Inspectors report agree that the documents were not available to the Inspector on June 15, 2019.

Ms. Price asked Mr. Thornton to present his motion to dismiss due to entrapment. Mr. Thornton read the reports of the informants and stated again that when the owner denied the sale it should have ended. When the girl stated that she understood that he could not sell and asked where else they may go, Mr. Thornton contended that this was out of the bounds of the operation. He added that although they did not lie about their age they still lied. The sole reason they continued the conversation was to get an alcoholic beverage.

Chairman Eigenbrode asked Mr. Thornton to explain how, if Mr. Patel had denied the sale, the girls purchased the alcohol from him. He added that if the next underage person that tries to

purchase alcohol from him, who is not an informant, and conducts a conversation with Mr. Patel, will he sell to them? Chairman Eigenbrode asked how Mr. Thornton could say the girls had lied? How did anyone present know whether or not she had a bad day, maybe she really did?

Ms. Price gave insight to the Board that there are two elements to an affirmative defense for entrapment. The mental state of the person committing the offense and the action of the government official to induce the offense. Did Mr. Patel act on his own accord or did the government act so intrusively as to alter Mr. Patel's mental state to cause him to commit the offense.

Chairman Eigenbrode argued that the informant stated that she understood that he could not sell and asked where else they may go. There was no coercion. Mr. Thornton replied that it is not necessary to reach the offense of entrapment, the actions of the girls showed the operation lacked integrity.

Mr. Plutschak stated that it is not the Inspectors job to save the client. He asked the Board if they were ready to vote.

Motion: Mr. Loukides motioned to deny the motion to dismiss.

Second: Mr. Plutschak seconded the motion.

In Favor: The motion was unanimously approved (3-0).

Ms. Price explained that they would now consider the charges. Mr. Thornton asked to question Mr. Bharat Patel.

Mr. Bharat Patel testified that he was trying to close the store when they walked in. She told him she was 21. He did not know how he convinced himself to sell to her. He has never done such a thing in the 10 years he has worked there. He was upset that he let down his family. They close the store between 10 and 11 PM during the week.

Mr. Thornton had no more evidence but stated that he would like to speak at mitigation.

DELIBERATION

The Board voted first whether or not there was a violation.

Motion: Mr. Plutschak stated that the evidence and testimony were consistent that there was a violation of MD Code §6-304 and C.C. BLC Rule & Regulation No. 2.26, specifically selling to an underaged person, on June 15, 2019.

Second: Mr. Loukides seconded the motion.

In Favor: The motion was unanimously approved (3-0).

Motion: Mr. Loukides motioned to find them in violation of C.C. BLC Rule & Regulation No. 2.01(a), specifically, for failure to present a valid Alcohol Awareness Certificate to the Inspector upon request.

Second: Mr. Plutschak seconded the motion.

In Favor: The motion was unanimously approved (3-0).

Motion: Mr. Plutschak motioned to find them in violation of MD Code §15-1902(a)(2) and C.C. BLC Rule & Regulations No. 2.01(c) for failing to present a log book upon request.

Second: Mr. Loukides seconded the motion.

In Favor: The motion was unanimously approved (3-0).

Motion: Mr. Loukides motioned to find them in violation of C.C. BLC Rule & Regulation No. 2.17(b) for failure to provide employee records upon request.

Second: Mr. Plutschak seconded the motion.

In Favor: The motion was unanimously approved (3-0).

Motion: Mr. Plutschak motioned to find them in violation of C.C. BLC Rule & Regulations No. 2.36 for failure to have alcoholic beverage transactions available upon request.

Second: Mr. Loukides seconded the motion.

In Favor: The motion was unanimously approved (3-0).

MITIGATION

Mr. Thornton stated that they were in violation of charges 2-5, not because they did not have the required paperwork, but the law states they must also be able to present the paperwork at the request of the authority.

Mr. Thornton explained that Mr. Patel testified that his mind was elsewhere when he committed this violation. The records show that he has never been accused of this violation in the nine years that he has worked at Wetcher Whistle. He also provided evidence that he has never sold cigarettes to an underage person. Mr. Patel is upset with himself and probably wouldn't do this again in the future. He asked that the Board take all of that into consideration while in mitigation.

Mr. Plutschak explained that selling to an underage person is a most serious offense. He commended Mr. Patel for denying the sale twice but the fact is he did finally sell to the informant. Because there was no prior offense therefore, he would not consider suspending their license.

Motion: Mr. Loukides motioned to fine the establishment \$1000 as a penalty for violating MD Code §6-304 and C.C. BLC Rule & Regulation No. 2.26, specifically selling to an underage person, on June 15, 2019.

Second: Mr. Plutshack seconded the motion.

In Favor: The motion was unanimously approved (3-0).

Motion: Mr. Plutschak motioned to fine them \$500 as a penalty for a second violation of MD Code §15-1902(a)(2) and C.C. BLC Rule & Regulations No. 2.01(c) for failing to present a log book upon request.

Second: Mr. Loukides seconded the motion.

In Favor: The motion was unanimously approved (3-0).

- Motion:** Mr. Plutschak motioned to charge them an additional \$500 as a penalty for violating C.C. BLC Rule & Regulation No. 2.17(b), specifically, failure to provide employee records upon request.
- Second:** Mr. Loukides seconded the motion.
- In Favor:** The motion was unanimously approved (3-0).

Mr. Plutschak stated that the Board could have charged them a steeper fine; but because the documents were available when the Inspector returned the Board kept the fines to a minimum. The Board also agreed to mitigate the remaining two charges together as first offense items.

- Motion:** Mr. Plutschak motioned to issue them a letter of reprimand for their violations of C.C. BLC Rule & Regulation No. 2.01(a), specifically, failure to present a valid Alcohol Awareness Certificate to the Inspector upon request and C.C. BLC Rule & Regulations No. 2.36 for failure to have alcoholic beverage transactions available upon request.
- Second:** Mr. Loukides seconded the motion.
- In Favor:** The motion was unanimously approved (3-0).

Mr. Plutschak explained to Mr. Patel that they have a total of \$2000 in fines and two letters of reprimand. There is also a \$50 administrative fee. This is all due within thirty days of today. The checks should be made out to the County Commissioners of Caroline County and delivered to the C.C. Planning & Codes office. He advised them that if they did not pay the charges within 30 days the Alcohol Inspector may confiscate their license unless they appeal the decision to the Circuit Court.

Choptank River Yacht Club – 10287 River Landing Rd., Denton, MD

Chairman Eigenbrode and Mr. Mann recused themselves from the hearing because they are members of the Yacht Club.

The representatives of the Yacht Club agreed to move forward with the remaining two members.

Acting Chairman Loukides swore in:

David Whaley, 24522 Choptank Blvd., Denton, MD
Dorsey Lee Wooters, Jr., 25530 Hignutt Rd., Denton, MD (Mr. Wooters informed the Board that he was incorrectly titled as a Sr. in the summons document).

Ms. Dadds explained that there is a third license holder, David Wood, that replied in a letter that he had a scheduled vacation this week and would be out of town. He followed up with a second letter allowing Mr. Whaley and Mr. Wooters to represent him and waived his rights to an appeal.

- Motion:** Mr. Plutschak motioned to excuse Mr. Woods from today's proceedings.
- Second:** Mr. Loukides seconded the motion.
- In Favor:** The motion was unanimously approved (2-0).

Ms. Dadds read the summons' into the record. The license holders were summoned to appear before the Board for the following alleged violations:

CHARGE NO. 1 C.C. BLC Rule & Regulation No. 2.15, specifically, an alcoholic beverage was taken outside of the licensed premise.

CHARGE NO. 2 C.C. BLC Rule & Regulations No. 2.29, specifically, licensee failed to remove litter, trash, cans, bottles, etc. from outside of the establishment and the parking lot.

Ms. Dadds read the exhibits into the record:

Exhibit 1 –David Whaley's Summons

Exhibit 2 – Dorsey Lee Wooter's Summons

Exhibit 3 – David Wood's Summons

Exhibit 4 – David Wood's Request to be Excused and Waiver Letter

Exhibit 5 – Compliance Inspection Report – June 15, 2019

Exhibit 6 – Pictures of signs erected around the property

Inspector Moore read the Inspection Report into the record.

Mr. Whaley stated that they cannot negate the charges but have since ordered and hung several signs around the property to warn guests that no open alcoholic containers are allowed beyond that point. He explained that they are unique in that people rent their boat slips, who are also members, that may buy alcohol from other locations and walk them from their car to their boat.

Inspector Moore assured them that he does take all of that into consideration and he understands the difficulty they face. Unfortunately, in this case a citizen complained about the violation and he is required to follow up.

Ms. Price explained that there are two different scenarios here, one is an open container violation that is charged to an individual as opposed to the Inspectors knowledge that the container came from inside the establishment.

Mr. Whaley thinks a reeducation for the Club and its members is needed. Mr. Wooters recalled they had a Catfish Tournament the night of the inspection. He hopes the signs will resolve the issue or (he said in jest) they will have to use shock collars.

Mr. Plutschak asked if they still distributed newsletters to their members. Mr. Whaley replied that they communicate by email now and notices will be sent out to the members.

Acting Chairman Loukides asked how they intend to deal with the discarded containers. Mr. Whaley asked what time the inspection took place. Inspector Moore answered it was early evening and they were rather busy. Mr. Whaley explained that their practice is for staff to inspect the property for discarded trash after they close at night.

Acting Chairman Loukides felt that they have responded well to the first charge by arranging the signs around the property. Mr. Plutschak stated they were very large and noticeable. The trash is what concerns Mr. Loukides the most as he has witnessed this himself on past visits.

Inspector Moore stated that according to his follow up inspection it was visible that something had improved.

Motion: Mr. Plutschak made a motion that evidence and testimony supported that a violation occurred of the C.C. BLC Rule & Regulation No. 2.15, specifically, an alcoholic beverage was taken outside of the licensed premise.

Second: Mr. Loukides seconded the motion.

In Favor: The motion was unanimously approved (2-0).

Motion: Mr. Plutschak made a motion that evidence and testimony supported that a violation occurred of the C.C. BLC Rule & Regulations No. 2.29, specifically, licensee failed to remove litter, trash, cans, bottles, etc. from outside of the establishment and the parking lot.

Second: Mr. Loukides seconded the motion.

In Favor: The motion was unanimously approved (2-0).

Mr. Plutschak stated that because this is a second violation since the initial warning letter of March 6, 2019, he was not in favor of issuing a letter of reprimand for the violation of C.C. BLC Rule & Regulation No. 2.29.

Motion: Mr. Loukides made a motion to issue a letter of reprimand for the violation of C.C. BLC Rule & Regulations No. 2.15 and a \$100 fine for the violation of C.C. BLC Rule & Regulations No. 2.29

Second: Mr. Plutschak seconded the motion.

In Favor: The motion was unanimously approved (2-0).

Mr. Plutschak reminded them that they are to pay the fine and administrative fee, totaling \$150, within 30 days of the hearing.

Chairman Eigenbrode and Mr. Mann returned to the table to continue the meeting.

CONSET AGENDA

The consent agenda included the minutes of the June 2019 and July 2019 hearings.

Motion: Mr. Plutschak motioned to approve the consent agenda.

Second: Mr. Loukides seconded the motion.

In Favor: The motion was unanimously approved (3-0).

Chairman Eigenbrode left the meeting at 11:31 AM.

TEMPORARY LICENSE APPLICATIONS, Cont.

Friends of Jeff Ghrist – September 14, 2019

Ms. Dadds presented the application for Jefferson Ghrist whose request was delayed for the two show cause hearings as he had to leave for another scheduled appointment.

The Friends of Jeff Ghrist are planning a fund raiser at the McNinch's residence in Denton on Eilerslie Court on September 14 from 4-9 PM. They are charging \$40 a ticket and expect 50 people to attend. Beer and Wine will be served and there will be music. Beth Brewster will be available as the Alcohol Awareness Certified person. Mr. Mann noted that a site plan is normally included in such requests. Ms. Dadds stated that it is a residence and they intend to use the interior and the yard for the event. Mr. Loukides asked if there have been other such events there. Ms. Price has been to a few, but they were not serving alcohol.

Motion: Mr. Plutschak motioned to approve the application.

Second: Mr. Mann seconded the motion.

In Favor: The motion was unanimously approved (3-0).

NEW BUSINESS

Denton Liquors/J.R. in Denton, LLC – Request to remove license holder

Ms. Dadds explained that Rajesh Gadani who owned 99% interest in J R in Denton, LLC, Denton Liquors has agreed to sell his interest to the 1% owner Jayesh Korat. Mr. Korat is already the resident license holder so this will not pose a problem with the requirements of the license. Mr. Gadani states his health and life situation has changed and he desires to let this responsibility go.

Ms. Price is not familiar with the document provided titled "Informal Action of J R in Denton LLC" but did note that both signatures were at the bottom of the agreement. The agreement is between Gadani and Korat whereas Gadani is selling his entire interest in the LLC to Korat and Korat will now be the sole owner of J R in Denton LLC. Ms. Dadds added that they should make it a condition that the updated lease agreement is turned in to staff.

Motion: Mr. Mann motioned to approve the transfer of Denton Liquors on the condition that the updated lease agreement is submitted.

Second: Mr. Plutschak seconded the motion.

In Favor: The motion was unanimously approved (3-0).

INSPECTORS REPORT

Inspector Moore informed the Board of his progress this month. He was provided a tablet with an inspection app to use during his routine inspections that he has had to become familiar with, as well as the new LAMA software that the Department has recently initiated.


DISCUSSION

Mr. Plutschak would like staff to research the guidelines of an Informant to have written out and kept on file. Ms. Price will suggest Affidavit language for the informants to sign.

Ms. Dadds asked if the Board would consider making it protocol that they see the public hearing material at the meeting for the first time as occurred here. Mr. Mann stated that he was very uncomfortable trying to make sense of the case without any previous study.

Mr. Plutschak asked for confirmation that they are allowed to see the information in advance, but they were not allowed to talk about it to each other or anyone else until the hearing. Ms. Price agreed that he was correct. Ms. Price added that it will be stated in the updated Rules of Procedure that a member must announce on the record prior to a case being heard, if there were any discrepancies that may have occurred.

There being nothing further to discuss Chairman Loukides adjourned the meeting at 11:43 am.


Minutes prepared by: Melanie Smith