

Re: Cheerleaders Sports Bar & Grill, Inc.
d.b.a.: Cheerleader's Sports Bar & Grill
Premises: 46 Washington Street
City/Town: Haverhill, MA 01830
Heard: March 11, 2009

DECISION

This was an appeal from the action of the licensing board of the City of Haverhill for suspending the license of Cheerleaders Sports Bar & Grill, Inc. for a period of one (1) day.

Facts

On Thursday, February 5, 2009, the Haverhill License Commission held a show cause hearing and determined that there was significant cause to find that the Cheerleaders Sports Bar & Grill over-served a customer. The Haverhill License Commission found that the licensee did over-serve and suspended their license for a day.

Present before the Commission for the hearing, representing the City was, Joseph Edwards, Chairman of the Haverhill License Commission, and Attorney William Boland representing the licensee, Cheerleaders Sports Bar & Grill.

Mr. Edwards testified that in considering the suspension, the City relied solely on the evidence placed before them, which was the Police report. Attorney Boland did not dispute this and filed a pre-hearing memorandum on his client's behalf outlining his client's position.

Issue

Was there any evidence presented to the Commission to uphold the suspension that the City of Haverhill imposed upon Cheerleader's Sports Bar & Grill, Inc.?

Discussion

Upon first impression when receiving the reports of the Haverhill Police, one would ask if there was sufficient evidence as to whether Cheerleaders Bar & Grill over-served a patron on August 20, 2008. According to Officer Bingham's report (since the City did not present any officers from Haverhill and the Commission relied solely on the Police reports) he and Officer Bailey were dispatched to Cheerleader's Bar & Grill on a report of a man bleeding profusely. When they arrived they noticed a patron lying outside the establishment bleeding profusely. The officers learned that there was a fight in the bathroom of the establishment and that a patron (victim) got hit with a beer bottle. After obtaining this information, officers, according to the report, entered the establishment and made observations of its interior area. According to Officer Bingham's report, he observed large

amounts of blood on the floor leading from the bathroom to the exit and a large amount of blood on the bathroom floor. He also observed a broken Heineken bottle on the floor of the bathroom.

Officer Andrews subsequently went to Holy Family Hospital where the victim was being treated and spoke with him. He informed the officer that he did not know who hit him or what happened other than being hit in the face.

At the scene, Officer Bingham was informed that a patron told the bouncers about a fight and he and other patrons went to break it up but they did not witness anything. The officer interviewed another patron and he identified the assailant. He stated he saw the two individuals "having problems" and then go into the bathroom. He also stated the assailant had a Heineken earlier in the night but never stated he was intoxicated. He stated that he had taken a photograph with him and would take it to the police station.

At no point did any of the individuals interviewed mention the assailant was intoxicated. There was never any mention of a bartender over-serving this individual. Neither the officer who wrote the report nor the other officer questioned anyone at the scene about over-service that night. Also, there was never any follow-up investigation as to whether there was any over-service that night of any individuals in the establishment on August 30, 2008.

Because the City is relying solely on the police reports for its case in support of its suspension, it is impossible to look beyond the police report and assume anything but what was presented at the hearing. In relying solely on the report, it is clear that there is insufficient evidence that a patron was over-served.

Counsel for Cheerleaders Sports Bar & Grill, Inc. stated at the hearing that there was no evidence to support that the patron was over-served.

Conclusion

Both sides presented their case to the Commission.

The City only presented the Police Report and it was clear from its reading that there was insufficient evidence to determine over-service of a patron. Specifically, the report is lacking in evidentiary proof of intoxication of the patron, and is lacking to sustain a burden of proof to show that the licensee violated any type of offense. The City did not present evidence that the bartender over-served the patron. There was never any follow-up investigation done that could have aided the Commission in its understanding as to whether there was a violation. Although there was mention of some type of photographic identification, there was never any affirmative identification made by the victim of his assailant. Furthermore, there was no evidence presented that the patron (assailant) was over-served at Cheerleader's Sports Bar & Grill.

For all the aforementioned reasons, the Commission disapproves the action of the Local Board in finding a violation and, therefore, disapproves the 1-day suspension. The Commission remands the matter back to the Local Board with the recommendation that no penalty be imposed.

ALCOHOLIC BEVERAGES CONTROL COMMISSION

Susan Corcoran, Commissioner _____

I, the undersigned, hereby certify that I have reviewed the hearing record and concur with the above decision.

Robert H. Cronin, Commissioner _____

Dated in Boston, Massachusetts this 15th day of April 2009.

You have the right to appeal this decision to the Superior Courts under the provisions of Chapter 30A of the Massachusetts General Laws within thirty days of receipt of this decision.

cc: Local Licensing Board
William Boland Esq.
File