



Licensing Board
TOWN OF WATERTOWN
ADMINISTRATION BUILDING
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Watertown, Massachusetts 02472
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BOARD MEMBERS
DONNA B. DOUCETTE
GEORGE B. NEWMAN
ROBERT J. WHITNEY

ALTERNATE MEMBER
SANDRA KASABIAN HOFFMAN

February 26, 2009

Fraternal Order of Eagles
Pequossette Aerie #1928, Inc.
44-46 Mt. Auburn Street
P. O. Box 70
Watertown, MA 02472

Re: Show Cause Hearing on Violation of G.L. Chapter 138 and Watertown
Licensing Board Rules and Regulations

NOTICE OF DECISION

On February 19, 2009, the Watertown Licensing Board held a show cause hearing on the complaint of the Watertown Police Department alleging violations of G.L. c.138 (the Liquor Control Act) and the Rules and Regulations of the Licensing Board on October 5, 2008 at your premises located at 44-46 Mt. Auburn Street licensed for all alcohol club beverage service, to wit:

1. Improper management (G.L. c.138, §23) by allowing a disorder on the licensed premises in violation of the Watertown Licensing Board Rules and Regulations Section IV.D.6 and 204 CMR 2.05, to wit: a physical confrontation between a trustee of the club, Roy Butler, and a member, John Elacqua.
2. Improper management (G.L. c.138, §23) by failure to properly respond to a medical emergency in which the patron and member victim lost consciousness and was not ambulatory.
3. Improper management (G.L. c.138, §23) by allowing a bartender to consume alcoholic beverages while in the performance of his duties.
4. Violation of Watertown Licensing Board Rules and Regulations, Section IV.A.1.b.3 by failure to notify the police of the above noted disturbances on the licensed premises.
5. Violation of the license for the premises by failure of the new manager, David Cahill, to obtain alcohol awareness training as required by conditions of the license.

Attorney Timothy McGoldrick appeared on behalf of the licensee, together with several members of the club. After hearing, the Licensing Board unanimously determined that the violations alleged in items 2, 3 and 5 occurred. The Board did not find a violation as alleged in items 1 and 4. The Licensing Board unanimously voted to impose a one-week suspension of the license for the violations found. In response to the Board's explanation of its usual practice, Attorney McGoldrick stated that the licensee would waive its right to appeal and proposed the dates of February 22 through February 28, 2009 for service of the suspension. The Licensing Board designated those dates and directed the licensee to deliver its license to the Police Department following the close of operations on Saturday, February 21, 2009.

SUBSIDIARY FINDINGS

1. Sergeant Unsworth presented evidence on behalf of the Police Department, consisting of the testimony of John Elacqua; club trustee and member Paul Donnelly [Pequosette Aerie Home Trust]; club member, manager and trustee David Cahill; club member and president Roy Butler; club member and bartender Christopher Plocharczyk, and Christine McNicholas. Sergeant Unsworth also offered, and the Board admitted, into evidence a certified copy of the death certificate for Bernard James McNicholas, deceased on October 5, 2008. The licensee offered the testimony of club member and trustee Derek Doucette.
2. The substance of the evidence presented was that Bernard J. McNicholas, a member of the club, was present at the licensed premises between approximately 5:00 and 6:00 p.m. on October 5, 2008. After being there only a short time and consuming approximately one-half of a bottle of beer, Mr. McNicholas began to experience physical distress, including an inability to stand on his own; the closing of his eyes and drooping of his head; and general unresponsiveness. The bartender on duty removed the beer bottle from the bar and gave Mr. McNicholas some orange juice to drink.
3. There was evidence that Mr. McNicholas had a history of diabetes and physical distress in connection with the use of prescription medication. There was also evidence that Mr. McNicholas had consumed a substantial amount of beer on October 5, 2008, prior to arriving at the licensed premises at the time in question.
4. There was evidence that members of the club were aware of the various conditions that could have resulted in Mr. McNicholas' medical issues on the day in question.
5. Shortly after Mr. McNicholas began to experience physical distress on the day in question, two members of the club transported him, in one of the member's vehicles, to his apartment. There was evidence that the members stayed at the apartment for a short period of time after placing Mr. McNicholas on the floor in his bedroom, and that Mr. McNicholas was snoring when the members left the apartment.

6. Mr. Butler testified that he went to Mr. McNicholas' apartment at approximately 8:30 p.m. on the day in question and found him unconscious and not breathing. Watertown police officers were dispatched to the location and Mr. McNicholas was transported to Mt. Auburn Hospital by a Watertown fire rescue vehicle. He was pronounced dead at the hospital later that evening.
7. Mr. Donnelly testified that he was acting as a bartender at the club on October 5, 2008, through a shift ending at 5:00 p.m. He testified that he consumed at least one beer while he was on duty.
8. David Cahill testified that he was voted as manager of the club in September of 2008 but had not attended an alcohol awareness training course until February 7, 2009, on which date he attended a TIPS course. He testified that he had not read the Watertown Licensing Board's Rules and Regulations. (The Board's decision approving Mr. Cahill as manager was made at its meeting of July 17, 2008, and included the condition that Mr. Cahill obtain TIPS certification within 90 days of the decision. Written notice of the Board's decision was issued on August 5, 2008.)
9. There was evidence of some form of physical confrontation at the club on the day in question between Mr. Butler and Mr. Elacqua. The Board found that this confrontation was a spontaneous occurrence, and did not find a violation as outlined in charge No. 1 above. For the same reason, the Board did not find a violation as outlined in charge No. 4 above.
10. Board Chairman Doucette stated on the record that she was not related to the club member, Derek Doucette, who testified on behalf of the licensee.

WATERTOWN LICENSING BOARD



Donna B. Doucette, Chairman

cc: Police Licensing Division
Health Department
Town Attorney