

## ALCOHOLIC BEVERAGE CONTROL BOARD

City Hall, 94 Washington Street  
Hoboken, New Jersey 07030  
Tel: 201-420-2396 Fax: 201-420-5644

DAWN ZIMMER  
Mayor



Robert W. Phillips, Chairman  
Michael Blumenfeld, Vice Chairman  
Steven Bauman, Commissioner

### Minutes of the October 23, 2014 Alcoholic Beverage Control Board Meeting

The meeting was called to order at 6:07 p.m.

The Open Public Meeting Act statement was read by Suzanne Hetman, Board Secretary.

**ROLL CALL:** Chairman Robert Phillips – present  
Vice-Chairman Michael Blumenfeld – present  
Commissioner Steven Bauman – absent

Also Present: Suzanne Hetman, Board Secretary; Alysia Proko, Attorney for the Board; and  
Daisy Amado, Recording Secretary  
(Jon Tooke, Director of Public Safety was absent)

**APPROVAL OF MINUTES:** Move to approve the minutes of the September 11, 2014 meeting was made by Vice Chairman Blumenfeld, seconded by Chairman Phillips and approved by both members during roll call.

Board Attorney asked to interrupt the meeting before the first hearing to advise the board that their penalty schedule has no penalty for failure to have a bar card. She further advised the board that they need to make a determination and they can charge with State statute or consider whether we want to refer to the ordinance. Discussion arose among the board and Board Attorney in connection to: first offense 0 days and 1 held in abeyance; second offense 1 day and 3 held in abeyance; and third offense 2 days and 5 in abeyance.

**Motion to add penalty** to schedule pursuant to N.J.A.C. 13:2-14.12 made by Chairman Phillips and seconded by Vice Chairman Blumenfeld and approved by both members during roll call.

#### **HEARINGS**

1. **Liquor License #0905-33-016-014, Falinason, Inc., d/b/a Tilted Kilt, 800 Jackson Street, Case No. 14-9**

Kimberly Glatt, Esq. appeared before the board on behalf of the Tilted Kilt. Board Attorney advised this is a written count one without violation of employee list and asked Ms. Glatt if she has any objections to which she replied no. Ms. Glatt agreed to plea on penalty schedule, zero days and one held in abeyance.

**Move to accept plea of non-vault** was made Vice Chairman Blumenfeld and seconded by Chairman Phillips and approved by both of the board during roll call vote.

**2. Liquor License #0905-33-055-003, Helmer's Inc., d/b/a Helmers Restaurant, 1036 Washington Street, Case No. 14-10**

Robert Williams attorney for Helmers appeared before the board. Board Attorney advised that she had additional conversations with the police and she does not have probable cause and is seeking to dismiss for lack of probable cause as they actually closed the bar.

**Motion to dismiss** was made by Chairman Phillips and seconded by Vice Chairman Blumenfeld and approved by both members of the board during roll call vote.

**3. Liquor License #0905-33-066-006, Hoboken Loft Lounge, d/b/a Pilsner Haus Biergarten/Kolo Klub, 1422 Grand Street, Case No. 14-11**

Robert Williams, attorney, appeared on behalf of the licensee. Board Attorney advised our plea for a Nuisance 1 is inaccurate and advised the board they may require an amendment. Discussion ensued among the board: first 2 days with 5 in abeyance, could actually be a typo. Board Attorney advised the board they should make a general decision and be consistent; if you do not make a ruling every time licensee goes to the State, the State will contact the board. She further advised the board they can think about it and if so then we need to carry over a few cases on for tonight. Mr. Williams asked whether the two day suspension has to be two consecutive days the board responded yes – calendar day is calendar day. Board Attorney advised April 27<sup>th</sup> was a Sunday so your first day will be a Sunday. Mr. Williams asked if they could take the appeal. Board advised first we need to change N.J.A.C. 13:2-23.6(a) 3 second violation from 2 to 4 days.

**Motion to change second violation** from 2 days to 4 days served and 3 held in abeyance.

Board Attorney interrupted and advised that they should give anyone who pleas the right to seek a monetary penalty in lieu of suspension.

**Motion made** by Chairman Phillips and seconded by Vice Chairman Blumenfeld and approved by both members of the board during roll call vote.

Move to resume the hearing made by Blumenfeld.

Mr. Williams asked: 'if we amend our plea to non-vault and enter a plea of non-vault first offense as this establishment has been open for three years with a perfect record. Occupancy in certain areas was over occupied, but we changed the format as people go from one room to another. We went back to the regular hand held clickers the problem was the maximum was 231 we had 365 got citation we paid it. We have a good record. You recommend two day closure, 2 +5, held 7 days in abeyance; we have had no problems and already paid fine to Fire Department.' Board responded that overcrowding is a very serious offense. Attorney entered a plea of non-vault.

**Motion to accept the plea** was made by Chairman Phillips and seconded by Vice Chairman Blumenfeld and approved by both members during roll call vote.

Board Attorney asked if we could hear the Victory Tavern next.

4. (Out of Agenda Order) **Liquor License #0905-33-015-010, Victory Tavern LLC, d/b/a The Hotel Victor Bar & Grill, 77 Hudson Street, Case No. 14-13**

Board attorney requesting adjournment on this matter and asked Ms. Glatt, partner/attorney, if she was available on December 11<sup>th</sup>.

**Move to adjourn this matter to the December 11<sup>th</sup> meeting** was made by Vice Chairman Blumenfeld seconded by Chairman Phillips and approved by both members of the board during roll call.

Break called. Back in session at 6:50pm.

Board Attorney advised that Ms. Glatt would like to plea tonight. Board Attorney stated this is bar code first offense which results in 0 days and 1 held in abeyance. Ms. Glatt plead non vault. At this time Vice Chairman Blumenfeld asked to recluse himself; Ms. Glatt asked why; Vice Chairman Blumenfeld stated he knows one of the owners.

**Motion to accept the plea** was made by Chairman Phillips; he also seconded his own motion and voted yes during roll call vote.

5. **Liquor License #0905-33-135-008, Black Bear Hoboken LLC, d/b/a Wicked Wolf, 120 Sinatra Drive, Case No. 14-12**

Gregory Vella, attorney, appeared before the board and stated he arrived late due to traffic and asked if he could speak to the prosecutor in an effort to attempt to resolve this.

Break taken – off the record. Back on the record at 6:56pm.

Gregory Vella on behalf of the license holder appeared before the board. Board Attorney advised this matter occurred on 5/31/14 a Nuisance 2 for a fight between an employee and a patron where police and ambulance were called and medical treatment was necessary for a third person.

Gregory Vella stated that in fifteen years they have never been before the board. There was no substantial police involvement and everything his client did was appropriate. Patron waits for a bouncer. Bouncer is there to protect patrons walking by and pushes patron out the door, there were no fights and no punches. There was no fight. The patron was irate. The patron fell back and hit a girl which was his girlfriend. What is a bar supposed to do when someone gets violent and aggressive? We have it on video and we will show you the video.

Board Attorney: City calls its first witness, Officer David Olivera, Hoboken Police Department Badge number 163 and he was sworn in. Police Officer stated that he and his partner did not see the event take place when they arrived on the scene, they did see that a female was hurt. Police Officer Olivera further stated he and his partner called an ambulance to the scene, female was taken to Hoboken University Medical Center.

Mr. Vella cross examined Police Officer Olivera. He asked whether he filed a police report – officer responded no, did a Tavern Report. Asked if they saw a ruckus other than some arguing, officer responded no.

City called second witness, Raphael Gustella and he was sworn in. Mr. Gustella stated they were there for a birthday party and the lights went on and patrons were asked to leave. ‘We had a great time. As we were walking out there were two bouncers by the door, one had the door open and my girlfriend was in front of me walking and he basically stopped me to give a comment about her backside. I didn’t say anything; he did it a second time. I had about five people we were with that were still inside. I went back to go to restroom and when I came back out the bouncer was gone. At this point, I asked the other bouncer how can you do this and he told me I gotta go. I walk into the vestibule and he tells me you can’t do that you have to get out. I said I’m a police officer and he told me don’t you ever raise your hands up and he pushed me and I fell on my girlfriend and he went inside. The original bouncer came outside and was apologizing over and over. I called the police as she was getting a knot on her head. Ambulance came and said she needed...’

Mr. Vella objected – hearsay.

Board Attorney and Mr. Vella engaged in a discussion about administrative process and Board Attorney asked if Mr. Vella prefer she have a continuous hearing with more witnesses. Board said they would like to hear with EMT said.

Mr. Gustella continued, “EMT recommended she be taken to hospital, the knot was getting larger. They asked me if it was ok if they leave while you talk to the officer I said yes.”

Board Attorney asked did you file a complaint. Mr. Gustella responded “we did not. I don’t know I spoke to the manager the next day and he sounded genuine and he said it was uncalled for how his employee was. Mr. Porcello, I guess he felt bad about me being a police officer and I stepped out. I did speak to a lawyer about this.”

Mr. Vella cross-examined Mr. Gustella and asked where are you a police officer? Response: Fairfield. How many drinks did you have? I don’t know. Were you intoxicated? No. What did you drink? Couple shots. Beers, shots any other hard liquor? No, just beer and a shot or two. Mr. Vella went on to say, he was a little confused, “you went to front door, your girlfriend left?” Mr. Gustella responded, “she was about eight feet in front of me.” Mr. Vella asked what color was the bouncer? Mr. Gustella responded “he was dark skinned. He put his body in front of me to make comments about her backside. The lights went on, we walked out together.” Mr. Vella asked, you went to the bathroom, how far was that from entrance. Mr. Gustella responded “about 30 feet.” Mr. Vella asked “were you driving that night?” Board attorney objected – irrelevant. Mr. Vella continued, “why did you leave to go to the bathroom?” Mr. Gustella responded “I had to urinate.” Mr. Vella asked “was your girlfriend outside, inside?” Mr. Gustella responded “possibly by the door. The darker skinned gentleman had left. I spoke to other bouncer to see if I could see a manager.” Mr. Vella: “how long did you wait?” Mr. Gustella “seconds.” Mr. Vella: “at that point did you lose your temper?” Mr. Gustella: ‘it got to a point he disregarded anything that happened.’ Mr. Vella asked “so your hands never got above your chest?” Mr. Gustella responded “I talk like that. I didn’t want to but I said I’m a Fairview Police Officer.” Mr. Vella asked “did you pull out a badge?” Board attorney said ask and answer three times. Mr. Vella submitted Exhibit I1 into evidence, owner testify as custodian, for identification purposes only.

Mr. Vella showed a video to the board from his iPad.

Once the video was shown, Mr. Vella asked Mr. Gustella “do you believe your behavior was appropriate as an off duty police officer at a bar? Yes or No?” Mr. Gustella replied, ‘yes after being disrespected” Mr. Vella stated he had no further questions.

City called and swore in next witness, Ms. Stephanie Kohler. Board attorney asked if she could explain what happened that night. Ms. Kohler stated “Bouncer shoved my boyfriend, I was standing right behind him and I fell back smacked my head on the concrete. Bunch of people helped me get up. Instantly a lump grew. My boyfriend he was like oh my God are you ok. There were a bunch of people with me and he called the Hoboken Police Department then the ambulance came.” Board attorney asked “did you go to hospital?” Ms. Kohler responded, “yes I was given a cat scan.” Board attorney asked, if her boyfriend was Raphael Gustella and Ms. Kohler responded yes. Board attorney then asked if she had any recollection about any comments made about her behind and Mr. Vella objected – stating irrelevant, nuisance charge. Board attorney replied that this is relevant as it is important to know who started this. Ms. Kohler responded “we were leaving the bar one door to vestibule another door I walked in front and there was a black bouncer who said you have to go but she can stay talking to my boyfriend.” Board attorney asked if it was closing time, Ms. Kohler replied “yes everyone was leaving. I stepped outside the door. My boyfriend went to the bathroom. The first bouncer was disrespectful and was like yeah get out of here.” Board attorney asked did you personally see the push? Ms. Kohler responded “yes, his hands never touched the bouncer. The bouncer grabbed him by the face and mushed him.”

Ms. Kohler was cross examined by Mr. Vella. Mr. Vella asked what color shirt did she have on. Ms. Kohler responded “I believe I was wearing all black.” Mr. Vella: “you went outside, your boyfriend went to the bathroom. How many drinks did your boyfriend have?” Mr. Kohler responded “I don’t know. I had two beers, I’m not a shot person.” Mr. Vella asked “what did you do between the time period your boyfriend went to the bathroom.” Ms. Kohler responded she waited for him. Mr. Vella: “you stood right outside the door and waited for him. When the shove occurred was the door shut or open?” Ms. Kohler responded “I don’t remember. They were glass doors you can see right in.”

Mr. Vella showed the board a second video. Mr. Vella stated he had no further questions.

Board attorney advised the City had no further witnesses. Mr. Vella asked that his client testify “real quick,” Mr. Todd Kosakowski was sworn in. Mr. Vella asked how long has he been the owner. Mr. Kosakowski replied five years. Mr. Vella asked do you own any other bars. Mr. Kosakowski replied 14 locations, 21 years as an owner. Mr. Vella then asked in all the years you owned it have there been any charges of nuisances or noise... Board Attorney responded that the City knows that there are no charges. Mr. Vella asked Mr. Kosakowski if he has seen the video. Mr. Kosakowski responded that “the General Manager showed it to me on DVR. There are security cameras. Two videos one inside vestibule one outside.” Mr. Vella asked, “in your experience you have seen what occurred, the situation there was yelling and screaming.” Board Attorney objected – hypothetical question. Mr. Kosakowski replied “in our establishments there are always instructions to never strike a patron unless you are at risk of bodily injury they can push. That’s normally what these guys abide by. Mr. Vella stated to the board “if someone is not leaving if they have to push them if they are refusing to leave. Standard policy is to have guys go immediately back inside to prevent the situation from escalating.” Mr. Vella had no further questions.

Board Attorney cross examined Mr. Kosakowski, she asked if their standard policy is in writing? Mr. Kosakowski replied “yes we have an employee handbook.” Board Attorney asked is no punching or striking in the handbook. Mr. Kosakowski replied “I would say that is not in the handbook.” Board Attorney asked “push someone out the door then immediately go inside is that your policy?” Board Attorney asked if handbook says to call the police. Mr. Kosakowski replied yes. Board Attorney asked “did they?” Mr. Kosakowski replied “I do not have knowledge...” Mr. Vella objected. Board Attorney asked do they call before or after they push someone. Mr. Kosakowski replied “I think the reality is if someone’s hands are in your face..” Board Attorney interrupted and said “in reality don’t you have more than one person? The standard procedure is to call the police department?” Mr. Kosakowski replied yes. Board Attorney asked did you check if they did? Mr. Kosakowski replied no. Board Attorney rests.

Mr. Vella stated “the summation issue is whether my client allowed a fight. Whether an employee made a bad comment to this woman – and if so we apologize. What is clear is that an individual who was drinking beer and shots didn’t like a comment to his girlfriend and he got irate and his girlfriend fell down. This would not have occurred if he had just left the establishment. We heard the officer’s testimony he came to the scene and called an ambulance. Nothing occurred other than the push. The license holder has to close down operations that is not fair. One second of pushing to stop a man from yelling and screaming. Yes a woman fell. What standards are you going to put out there. Someone gets drunk at a bar and they have to close? The question becomes what is the standard you impose shutting a bar down. Ambulance had to come that was it. Bad precedent if drunk patron yells and screams and gets pushed and establishment gets closed. Client should not have to lose license because this person stayed by entrance.”

Board Attorney stated “all statements substantiate that police had to intervene. This is a Nuisance 2 – brawl. Public Safety intervention and medical assistance was called. Woman had to go to the hospital and have procedure. Bouncer was rude and made a disrespectful comment. Patron was pushed and mugged in the face by an employee of the bar and fell onto his girlfriend. Did they call the police, no he did. Did they call the ambulance? No.” She asks the Board that this bar be given substantial penalty. Nothing further.

Board members ask if they may ask questions. Discuss charge of Nuisance 1. Board discusses looking at tape the bouncer was over aggressive in terms of the push. Culpability on both parts. The board asks for the statute on exactly what we are charging license holder with. Gregory Vella asks if the board would like written legal analysis; Board Attorney objects.

N.J.A.C. 13:2-23.6 shown to the board. Discussion amongst the board members. Per Chairman Phillips, find guilty of Nuisance 1 and innocent of Nuisance 2. Board further discusses this was an overreaction member of the public; there was not a brawl; dismiss Nuisance 2.

**Ruling made by Chairman Phillips not guilty of Nuisance 2 and guilty of Nuisance 1. Penalty 2 days suspension of license and 5 days held in abeyance and seconded by Vice Chairman Blumenfeld.**

Gregory Vella stated it is only appropriate to close down at the same time incident occurred 5/31. (Everyone looks at their calendars) – Board Attorney: 5/30/15-5/31/15.

Both members vote yes during roll call.

**CLOSED SESSION**

**Motion to go into closed session** was made by Vice Chairman Blumenfeld and seconded by Chairman Phillips.

Board Attorney discussed ongoing litigation with the board concerning: Landico Realty and Room 84. She advised the board they should not discuss these matters with anyone.

**Motion to close the meeting** was made by Chairman Phillips and seconded by Vice Chairman Blumenfeld and approved by both members of the board during roll call vote.

The meeting was adjourned at 8:08 p.m.