

ALCOHOLIC BEVERAGE CONTROL BOARD

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DAWN ZIMMER
Mayor



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

Minutes of the December 22, 2016 Alcoholic Beverage Control Board Meeting

The meeting was called to order at 6:01p.m.

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

ROLL CALL:

BOARD MEMBERS	
Chairman Robert W. Phillips	✓
Vice Chairman Michael Blumenfeld	✓
Commissioner Steven Bauman	✓ Arrived after roll call

Also Present: Suzanne Hetman, board secretary, Ben Choi, Esq., attorney for the board, and Daisy Amado, recording secretary.

Approval of the Minutes of the October 27, 2016 meeting

Move to approve the minutes.

BOARD MEMBER	Move	Second	Yes	No	Abstain	No Vote
Chairman Phillips		✓	✓			
Vice Chairman Blumenfeld	✓		✓			
Commissioner Bauman					✓	

Approval of the Minutes of the December 8, 2016 meeting

Move to approve the minutes.

BOARD MEMBER	Move	Second	Yes	No	Abstain	No Vote
Chairman Phillips					✓	
Vice Chairman Blumenfeld	✓		✓			
Commissioner Bauman		✓	✓			

HEARINGS

Continuation: Liquor License number 0905-32-103-006, Fourteenth Street Corp., d/b/a City Bistro, 58 14th Street, Case number 16-09

Thomas Jannarone, Esq. appeared before the board on behalf of licensee. Board attorney called Hoboken Special Police Officer Campoverde before the board, has been with the Hoboken Police Department for twelve months. Board attorney questioned the officer as to the evening of February 21st, 2016 at approximately 12:26am when he was dispatched to City Bistro. Special Police Officer Campoverde answered questions and said the following: pulled up patrol car and the front door was open. He walked inside looking for an employee to speak to. He observed a speaker near the entrance and front door that caused the noise. The noise was louder since there

were no other loud noises in the area from any other establishments. He spoke with Nicholas Jensen, the Manager who abated the noise immediately. He does not believe he spoke with the caller/complainant.

Thomas Jannarone, representing City Bistro then questioned Special Police Officer Campoverde. Special Police Officer stated the noise was loud in front of the bar. The front door was opened upon his arrival. SPO did not hear noise from across the street because he did not cross the street. SPO considered the noise to be a nuisance. SPO did not write a noise complaint because they always give a verbal warning first and advise to lower noise, if they come back a second time then a complaint is issued. SPO has no training in noise control, not a noise control officer, not a noise control investigator.

Board attorney called Jennifer Witt before the board and she was sworn-in. Ms. Witt resides at 51-53 14th Street on the 3rd and 4th floors. On February 21st at approximately 12:26 a.m. she made a noise complaint to City of Hoboken. Mrs. Witt stated she heard the song “Aye Aye Aye” which is “a song frequently played at sporting events” from her bed. She believes the song is Hispanic or Mexican. Mrs. Witt stated that the volume of the noise was like having the radio on in her bedroom, enough to sing along and she could not sleep. The noise also did not allow her husband or sister to sleep. She moved to the area around May 2012. Prior to this February 21st incident she has placed numerous calls for noise coming from City Bistro. Mrs. Witt said she appeared before Hoboken ABC board when she was pregnant and City Bistro was put on a two week probation. There were no official hearings with ABC board but noise complaints. She does not complain or call the police every time she hears noise. However, if it is to the point of too loud, yes she calls the police. There have been instances she did not call the police as she did not want to get out of bed. She said “in general” the situation has gotten better since February 2016 and it always improves after police show up.

Thomas Jannarone questioned Mrs. Witt. Mrs. Witt said she does not live directly across the street from City Bistro but caddy corner from it. She was asked if it was only that one song she heard that evening, Mrs. Witt said she wrote the name of the song because it’s a common song played at sporting events. She once went over to the bar when she was five months pregnant and asked for the manager but the bouncer would not allow her inside. Mr. Jannarone mentioned he did not have records of the “numerous calls” she mentioned prior to this incident. Mr. Jannarone also mentioned that back in May she complained about noise on rooftop – never noise from establishment.

Mr. Jannarone called John Avolatta, president/principal of City Bistro for seventeen years and he was sworn-in. Per Mr. Avolatta May 8th was the first noise complaint ever received. No one other than complainant complains of noise. We took plea, we just settled as to not get penalized and paid for noise remediation to solve the problem. Sound engineers came in, we moved speakers from roof. Changed all the levels on the music sound system. Managers have been instructed to play music at reasonable tones. They had professionals go through the system. Music is off on roof at 11pm. Mindful of door closed. There are calls but no tavern sheets issued. Asked if he has tried to discuss the issue with Mrs. Witt to which Mr. Avolatta said she does not want to give me her number. City Bistro has hundreds of neighbors, closer than the Witts, and none of them complain.

Ben Choi questioned Mr. Avolatta. Mr. Avolatta said he was not working on the February 21st, 2016 evening. Special Police Officer spoke to the manager on duty that evening. Mr. Avolatta said they are professionals and are mindful of the door being closed, however that night the

mechanism that holds the door fell off that is why door was ajar. It was February and cold out, we wouldn't leave the door open. May 2015 is the only noise complaint received in seventeen years. Benjamin Choi then asked if he was aware of the noise complaints made on the following dates:

- July 22, 2012
- June 14, 2014
- May 8, 2015
- June 14, 2015
- August 28, 2015
- February 21, 2016

Benjamin Choi asked the board to give him a second (spoke with Mrs. Witt). Mr. Choi then called Mrs. Witt back and reminded her she is still under oath. Mrs. Witt did not want to take Mr. Avolatta's phone number because the bouncer would not give her anyone to speak to. She was not comfortable speaking with establishment and she wanted a third party involved, such as the police department.

Thomas Jannarone stated that the complaints all come from the Witts. He also said there are three different things being alleged in one count against his client: violation of N.J.A.C. 13:2-23.6(a)2, N.J.A.C. 12:2-23.6(b), and N.J.S.A. 33:1-31(h) and Hoboken Code Sections 68-11(c), and 133-9H engaged in, allowed, permitted, or suffered the licensed premises to be conducted in such a manner as to become a nuisance in that clearly audible noise was heard from the exterior of the establishment. Mr. Jannarone went on to say that everything in this count is "and and and." He further stated that the state noise violation is not a nuisance violation. No definition – look for case law. What conduct creates a nuisance? You would need multiple guilty pleas and clearly the police officer that pulled up feet from the bar entrance saying the music was too loud is not what the law says. It was not significant or substantial noise it was simply the door was open. Mr. Jannarone went on to say that the Hoboken Noise code is unreasonable noise and it is supposed to be measured. We have no meter or decibels readings. The Special Police Officer that responded that February evening was not a noise control officer or noise control investigator and he is new on the job, has no training in this regard. Hoboken has trained officers. Not saying that the officer is not being truthful but saying officer is not trained. The three items in this complaint all in one count his client would have to be found guilty of it. Mr. Jannarone also stated the point of the phone number exchange was to show that his client is willing to do what he has to do to make things better. All along they thought Mrs. Witt was complaining of the noise coming from the roof and his client did all these remediations to the roof. Bottom line is Mrs. Witt has a problem and she is not willing to work with them. The charge is ambiguous and does not state the nature, also fails because of all the ands. The State ABC noise that is not a violation. The noise the officer described does not substantiate. Hoboken ABC charge does not violate with no noise meter. City Ordinance is the same also requires decibels readings. This is a matter of fundamental fairness for a person to close a business over a door open and neighbor bothered. No one other than the Witts are disturbed. His client will continue to try and solve as he does not want to waste his time and appear before the board nor does we want to pay his legal services.

Benjamin Choi advised the board does indeed have jurisdiction to hear noise issues. Hoboken Code Sections 68-11(c) unnecessary noise is not defined by next code of 133-9H is captioned uses number of decibel levels, however it is not necessary as the argument is factual and this board can determine. Mr. Choi disagrees with Counsel on nuisance not defined and read the City's Health Ordinance into the record. Conduct that we discussed tonight of that evening of February 21, 2016 the door was ajar, there was a speaker pointed outward with music on, the music/noise was clearly

audible and clearly a nuisance which affected a neighbor at 12:26am to the point they could not sleep. The violation did occur and needs to be abated. City appreciates the licensee took remediation. In this instance the violation did occur.

Board discussed prior violations; distances and times; decibel readings; random checks should be performed; minor or major nuisance, etc. Board voted on guilty finding on violation and if so will give penalty according to schedule.

Board members vote on Guilty or Not Guilty:

BOARD MEMBER	GUILTY	NOT GUILTY
Chairman Phillips	✓	
Vice Chairman Blumenfeld	✓	
Commissioner Bauman	✓	

Board discussion ensued as to penalty five days held in abeyance from previous; for second offense nuisance one State recommends twenty days; Hoboken 4 days with 3 held in abeyance. Board attorney advised given all in play we could treat this as first offense appealing days in fines in lieu of suspension. Board discussion treating as first offense.

Motion to two days suspension with five held in abeyance with the condition the board receives an update in three months and board will share results with Mrs. Witts.

BOARD MEMBER	Motion	Second	Yes	No	Abstain	No Vote
Chairman Phillips	✓		✓			
Vice Chairman Blumenfeld		✓	✓			
Commissioner Bauman			✓			

Liquor License number 0905-33-115-005, 340 Sinatra Drive HOQ, LLC d/b/a House of Que, 340 Sinatra Drive, Case number 16-29

Thomas Jannarone, Esq. along with Sean McGarr, owner appeared before the board. Plea was made. Board attorney advised one count of bar card violation on September 17, 2016 and per the ABC penalty schedule two days with five held in abeyance. This is the license holder’s first offense. Mr. McGarr asked the board if they could revisit the schedule as he is being given the same penalty as the case that was just heard before this one. He ensures all employees show managers bar cards every single night. This specific employee has been terminated. This is his first violation and is asking for leniency. He owns twelve restaurants and 80% of his business is on Friday and Saturdays. This is a hefty fee for his business which is only a year old. Board discussion ensued.

Move to accept plea with December 24 and 25, 2016 as closed days.

BOARD MEMBER	Move	Second	Yes	No	Abstain	No Vote
Chairman Phillips			✓			
Vice Chairman Blumenfeld	✓		✓			
Commissioner Bauman		✓	✓			

Motion to close the meeting.

BOARD MEMBER	Motion	Second	Yes	No	Abstain	No Vote
Chairman Phillips	✓		✓			
Vice Chairman Blumenfeld			✓			
Commissioner Bauman		✓	✓			

The meeting was adjourned at 7:32p.m.