

Minutes for the Lowell License Commission meeting for Thursday, May 3, 2018 at 6:00 p.m., held in the City Council Chamber, 2nd floor, City Hall, 375 Merrimack St., Lowell, MA 01852.

Present: John Descoteaux, Commissioner, Chairman, Commissioners Clifford Krieger, Terry McCarthy, Martha Howe, and Joseph Donahue; and Captain Jack Webb of the Lowell Police Department and Gary Gordon, Assistant City Solicitor.

The Commission reviewed the meeting minutes for April 12 and April 26, 2018. Commissioner Krieger made the motion, second by Commissioner McCarthy, to approve meeting minutes for April 12, 2018, upon the insertion of the following: page 6, line 21, "From further discussion it was determined that Atty. Jacobs, ignoring the report in the communication to Ms. DiSalvo, had directly asked the Police Department to forward a copy of the report, that forwarding having additional information redacted," so voted. The Commission voted to approve meeting minutes for April 26, 2018.

The Commission reviewed the applications for special one-day license to sell/dispense malt beverages and wines only, or either one:

Gregory T. Curtis for Greek Festival, Friday, May 18, 5:00 p.m. to 11:00 p.m.; Saturday, May 19, 12:00 p.m. to 11:00 p.m.; and Sunday, May 20, 2018, 12:00 p.m. to 6:00 p.m. at an enclosed outdoor area on Worthen Street adjacent to Hellenic American Academy, 41 Broadway. Gregory Curtis was present.

Suelen Feltrin of Holy Family Parish, Holy Trinity Parish, 340 High Street, Mother's Day Dinner, Saturday, May 12, 2018, 7:30 p.m. to 11:30 p.m. Suelen Feltrin was present.

Joann Gumby of Gormley's Café, 139 East Merrimack Street, Mother's Day fundraiser for ovarian cancer, Saturday, May 12, 2018, and Sunday, May 13, 2018, 10:00 a.m. to 3:00 p.m., each day. Joann Gumby was present.

Chairman Descoteaux addressed each applicant about their respective event. Mr. Curtis stated he would be present all three days of the Greek Festival. The Commission, on the motion by Commissioner

McCarthy, second by Commissioner Howe, voted to approve licenses for Gregory T. Curtis for the Greek Festival, Suelen Feltrin of Holy Family Parish, and Joann Gumby of Gormley's Café.

The Commission reviewed the application for special events permit for amplified outdoor public entertainment by Gregory T. Curtis, Holy Trinity Hellenic Orthodox Church, sound system for live music, d. j., Greek Festival, Fri., May 18, 5:00 p.m. to 11:00 p.m., Sat., May 19, 12:00 p.m. to 11:00 p.m., , Sun., May 20, 2018, 12:00 p.m. to 6:00 p.m., enclosed outdoor area on Worthen St. adjacent to Hellenic American Academy, 41 Broadway. Gregory Curtis was present. The Commission, on the motion by Commissioner Donahue, second by Commissioner Krieger, voted to approve the special events permit for amplification to Gregory T. Curtis of the Holy Trinity Hellenic Orthodox Church for the Greek Festival.

Chairman Descoteaux announced he had received a subpoena in his mail to answer questions from Attorney Travis Jacobs, legal counsel for LD Holdings, LLC, d/b/a Bar 74 Lounge & Grill. The matter was not a meeting agenda item for May 3, 2018. Chairman Descoteaux stated he is available presently to answer questions from Attorney Jacobs. Assistant City Solicitor Gordon stated that notice of hearing to LD Holdings, LLC, dated March 23, 2018, for the April 12<sup>th</sup> hearing, which had been emailed on March 23<sup>rd</sup> to Lauren DiSalvo and Attorney Jacobs, was complete and accurate as information forwarded by Captain Webb to the License Commission on March 6, 2018. A copy of the incident report for March 4, 2018 at Bar 74 Lounge & Grill that Attorney Jacobs received from the Lowell Police Department Records Bureau had additional redactions other than a date of birth and social security number of individuals named in the incident report. Chairman Descoteaux answered a number of questions from Atty. Jacobs relating to Bar 74 Lounge & Grill which included a video he had received via "Facebook Messenger." Chairman Descoteaux stated that he was advised by the City Solicitor's Office to recuse himself from the April 12<sup>th</sup> hearing for Bar 74 Lounge & Grill. Assistant Solicitor Gordon stated that

Chairman Descoteaux's conversation with the City Solicitor's Office is privileged and confidential. Commissioner Howe asked Chairman Descoteaux two questions of the video from "Facebook Messenger." Chairman Descoteaux announced he will recuse himself from meeting agenda items (#4, #5, and #6) for LD Holdings, LLC, d/b/a Bar 74 Lounge & Grill. Chairman Descoteaux left the City Council Chamber at 6:30 p.m.

Commissioner Krieger presiding, the Commission opened the hearing continued from April 12, 2018 on the allegations of misconduct as charged by William M. Taylor, Superintendent of Police, in a communication dated 3-5-2018, against restaurant licensee for all alcoholic beverages regarding incident 3-4-2018: LD Holdings, LLC, d/b/a Bar 74 Lounge & Grill, 76-78 Merrimack St., David E. Heeley, Manager, Lauren DiSalvo, Owner. The following individuals were present: Lauren DiSalvo, Attorney Travis Jacobs, legal counsel for LD Holdings, Troy Boykins, Scottie Foreman, David E. Heeley, Jr., and Lowell Police Officer Daniel J. Kingan. Atty. Jacobs waived reading of communication from Superintendent of Police. A brief explanation was given by Asst. Solicitor Gordon on the proper notification of hearing to the licensee on March 23, 2018. Atty. Jacobs acknowledged agreement when asked by Commissioner Krieger. Asst. Solicitor Gordon took the oath of Officer Kingan. Atty. Jacobs questioned Officer Kingan about his incident report. Officer Kingan stated in answer to Atty. Jacobs that he was not witness to the alleged altercation at Bar 74. Asst. Solicitor Gordon questioned Officer Kingan. Officer Kingan stated that Mr. (Scottie) Foreman was not truthful [to the Lowell police officer]. Commissioner Howe questioned Officer Kingan. Commissioner Krieger asked Captain Webb if another officer is to testify. Captain Webb stated no. Troy Boykins appeared before the Commission to answer questions. Asst. Solicitor Gordon took the oath of Mr. Boykins. Atty. Jacobs questioned Mr. Boykins. Commissioners Krieger and Donahue questioned Mr. Boykins. Mr. Boykins stated he was at Bar 74. Scottie Foreman appeared before the Commission. Asst. Solicitor Gordon took the oath of Scottie

Foreman. Atty. Jacobs questioned Mr. Foreman. Mr. Foreman was questioned by Commissioners McCarthy, Krieger, and Howe. Asst. Solicitor Gordon questioned Mr. Foreman. Commissioner Donahue questioned Mr. Foreman if Mr. Heeley was at Bar 74. Mr. Foreman stated yes, that Mr. Heeley is the manager of record. Atty. Jacobs asked Mr. Foreman if Mr. Heeley is still manager of record, to which Mr. Foreman replied in the affirmative. Commissioner Krieger called for Mr. Heeley. David Heeley of Lowell took the oath given by Asst. Solicitor Gordon. Commissioner Krieger asked Mr. Heeley if he is manager of record. Mr. Heeley stated that he has not been manager of record since November 2017. Commissioner Howe questioned Mr. Heeley about management practices, specifically was Lauren DiSalvo's husband involved. Mr. Heeley stated a mutual ownership Lauren DiSalvo and her husband Ty Andrews. Mr. Heeley stated he told Lauren DiSalvo of a new job he had in November 2017. Commissioner Howe stated she was absent for the April 12<sup>th</sup> hearing, but could hear the allegations this evening on the advice of the City Solicitor. Mr. Heeley, when asked by Commissioner Howe, did not receive a pay stub or a Form 1099 from LD Holdings. Payment was in cash. Commissioner Donahue questioned Mr. Heeley if he was present at Bar 74 on March 4<sup>th</sup>. Mr. Heeley stated he was outside Bar 74 working as security guard, and did not see a fight. Atty. Jacobs questioned Mr. Heeley about doing an inventory on February 24, 2018. Mr. Heeley stated an inventory of what would be needed for the evening. The Commission heard comments from Atty. Jacobs about the history of LD Holdings experience in Lowell since January 2017. The Commission expressed concern about the absence of a manager of record. Commissioner Donahue stated upon review of the incident report there is no eyewitness testimony presented to the License Commission. Commissioner McCarthy agreed with Commissioner Donahue. Commissioner Howe stated that the police report is credible but there is no victim statement for the Commission to consider. The Commission, on the motion by Commissioner Donahue, second by Commissioner McCarthy, voted by roll-call to dismiss the allegations of

misconduct as charged against LD Holdings, LLC, d/b/a Bar 74 Lounge & Grill, on March 4, 2018; vote: ayes Commissioners Krieger, McCarthy, Howe, and Donahue.

The Commission opened the hearing continued from April 12, 2018 on the allegation of misconduct as charged by William M. Taylor, Superintendent of Police, in a communication dated 3-7-2018, against restaurant licensee for all alcoholic beverages regarding incident 3-6-2018: LD Holdings, LLC, d/b/a Bar 74 Lounge & Grill, 76-78 Merrimack St., David E. Heeley, Manager, Lauren DiSalvo, Owner. The following individuals were present: Lauren DiSalvo, Atty. Travis Jacobs, legal counsel for LD Holdings, LLC, Sean Brine, manager of record for LD Holdings, LLC, d/b/a Revolution, and Lowell Police Detective Joseph Borodawka. Commissioner Krieger questioned Atty. Jacobs. Atty. Jacobs stated license was displayed. Sean Brine appeared before the Commission to answer questions. Asst. Solicitor Gordon took the oath of Mr. Brine. Mr. Brine identified himself as manager of record for Revolution. Detective Borodawka was sworn in by Asst. Solicitor Gordon. Detective Borodawka confirmed the information in the Superintendent's letter to the License Commission. As a follow-up to the police investigation from March 4, 2018, Detective Borodawka entered Bar 74 on March 6<sup>th</sup>. A bartender stated when asked by the police detective, that David Heeley was not present. Detective Borodawka stated that the alcohol beverages license was not on display, and the bartender could not locate the license. Attorney Jacobs stated that the license on display had been removed and was later recovered [by Sean Brine] in "lost and found" wrapped in a coat. Asst. Solicitor Gordon took the oath of Lauren DiSalvo. Commissioner Howe questioned Lauren DiSalvo. Ms. DiSalvo denied being told [by Mr. Heeley] that he was not to continue his employment as manager of record; one of his responsibilities was to check inventory every night [Bar 74] is open. Commissioner Howe states if he is there every night, there is no payroll record. Commissioner Donahue stated there is sufficient evidence that the licensee failed to display the license [Regulation 1.13], and failure to (submit) the name of a manager of

record [Regulation 1.15]. Management is lacking at Bar 74. Commissioner Howe agreed with Commissioner Donahue, there is sufficient evidence. Mr. Heeley [testimony] is credible; Ms. DiSalvo [testimony] not credible. Commissioner McCarthy stated there is no control. Commissioner Donahue cites prior violations of 2017, recommending ten (10) days suspension to serve, Commissioner Howe seconded the motion. Commissioner Krieger requested the Executive Secretary to suggest when the suspension could commence. The Secretary, noting the allowance of time to draft a letter of decision for Law Department review, and the time allowed for the licensee, upon receipt of the written notice of decision, five (5) days to file an appeal with the Alcoholic Beverages Control Commission, stated June 1<sup>st</sup>. Commissioner Krieger requested a roll-call vote on Commissioner Donahue's motion for a ten (10) days suspension to serve commencing June 1, 2018 - vote: Commissioner Krieger – yes; Commissioner McCarthy – no; Commissioner Howe – yes; and Commissioner Donahue – yes. The vote for suspension is three (3) ayes, one (1) no.

The Commission continued from April 26, 2018 the application by LD Holdings, LLC, d/b/a Bar 74 Lounge & Grill, all alcoholic beverages restaurant licensee at 76-78 Merrimack St., for change of manager to Paul F. Palladino of Lynnfield. Paul Palladino was present. Commissioner Howe asked Mr. Palladino the reason for his leaving the Elks Club. Mr. Palladino stated the Exalted Ruler has the discretion to choose an individual as Bar Manager which had been the reason for his departure. Mr. Palladino stated that he applied for manager of record with Bar 74 upon seeing an ad on-line. Atty. Jacobs submitted copies of two (2) letters from Elks Club officers who knew Mr. Palladino as an employee when he worked at the club. The Commission, on the motion by Commissioner Howe, second by Commissioner Donahue, voted by roll-call [Commissioner Krieger – yes, Commissioner McCarthy – no, Commissioner Howe – yes, and Commissioner Donahue – yes] to approve Paul Palladino as manager of record for LD Holdings, LLC, d/b/a Bar 74 Lounge & Grill.

The Commission, on the motion by Commissioner Donahue, second by Commissioner Howe, voted to adjourn the meeting at 8:45 p.m.

Respectfully submitted by Ryan Wynn, Executive Secretary, present at meeting.

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