STATE OF WISCONSIN CITY OF STOUGHTON DANE COUNTY

In the Matter of the Consideration
Of the Revocation of the Class B
Reserve Combination License Held by
Shakers Saloon, LLC

REPORT AND RECOMMENDATION OF THE STOUGHTON PUBLIC SAFETY COMMITTEE

Findings of Fact

The Stoughton Public Safety Committee makes the following findings of fact:

1. The City of Stoughton issued Shakers Saloon, LLC ("Shakers") a combination Class B liquor license on June 13, 2019 for the 2019-2020 licensing year. Shakers is the liquor licensee.

2. Shakers' licensed premises is the downstairs bar and banquet room inside the building at 111 Chalet Drive, Stoughton, WI 53589.

3. Dale Kittleson ("Kittleson") is Shakers' registered agent.

4. On December 18, 2019 Detective Brandon Hill of the Stoughton Police Department participated in the arrest of Kittleson for previous deliveries of cocaine. Officers arrested Kittleson while he was in the bar area of Shakers.

5. Officers searched Kittleson upon his arrest. The arrest team discovered two containers in Kittleson's possession that contained approximately one total ounce of cocaine.

6. Acting upon a duly executed search warrant, officers searched the office area of Shakers. Officers found a backpack containing a baggy that held an additional ounce of cocaine. Within another bag was approximately ½ to ¾ of an ounce of cocaine. Officers also located amphetamine in the office area.

7. Field tests confirmed that the substance in Kittleson's possession and within the office area was in fact cocaine. Field tests also confirmed the other substance in the office was amphetamine.

8. Detective Hill also searched Kittleson's truck located at Shakers. Detective Hill located a small pocket style notebook that contained numerous names, dollar amounts, weights, and fractions. Kittleson used the notebook as a ledger to track drug transactions.

9. The amounts of cocaine in Kittleson's possession and in the office area of Shakers are for selling, not personal use. Kittleson did possess cocaine on Shakers Premises with the intent to sell and/or deliver said cocaine to others.

10. Selling controlled substances results in negative externalities. Kittleson selling and possessing significant quantities of cocaine within Shakers is a public safety risk because users may attempt armed robberies of Kittleson at Shakers. Therefore, possessing more than 2 ounces of cocaine within Shakers posed a public safety risk to bar patrons. Selling controlled substances leads to other types of crimes, such as theft, as a means to support drug habits.

Conclusions of Law

The Complainant, Gregory Leck, has the burden of proving by a preponderance of evidence that Shakers violated a provision of Wis. Stat. § 125.12(1) and Stoughton Municipal Code § 14-31(1).

Count 1: Shakers Knowingly Allowed Another Person to Possess a Controlled Substance with the Intent to Deliver while on the Licensed Premises.

Pursuant to Wis. Stat. § 125.12(2)(ag)6. and Stoughton Municipal Code § 14-31(1)g., the Complainant must establish by a preponderance of evidence that:

1. Shakers is the licensee;
2. Another person was on Shakers' licensed premises;
3. That person possessed a controlled substance;
4. That person intended to deliver said controlled substance; and
5. This occurred with Shakers' knowledge.

The liquor license identifies Shakers as the licensee, and Kittleson submitted a liquor license application identifying Shakers as the licensee. Therefore, Shakers is the licensee.

Wis. Stat. § 125.02(14) defines a "person" as "a natural person, sole proprietorship, partnership, limited liability company, corporation or association or the owner of a single-owner entity that is disregarded as a separate entity under ch. 71." Kittleson is another person for purposes of Wis. Stat. § 125.12(2)(ag)6. and Stoughton Municipal Code § 14-31(1)g. because the liquor license was not issued to Kittleson, but to Shakers as a separate and distinct entity.

Kittleson possessed approximately 2.5 ounces of cocaine on Shakers' licensed premises. The bar area is listed as the licensed premises on the liquor license. Cocaine is a schedule II controlled substance pursuant to Wis. Stat. § 961.16. The large amount of cocaine in Kittleson's possession, Detective Hill's testimony that Kittleson possessed cocaine with the intent to deliver it, and the drug transaction ledger establish that Kittleson possessed cocaine with the intent to deliver it.

As the registered agent for Shakers, Kittleson imputed his knowledge to Shakers. *See State v. Beaudry*, 119 Wis. 2d 96, 349 N.W.2d 106 (Ct. App. 1984). Further, Kittleson acknowledged he was responsible for "the conduct of all business relative to alcohol beverages conducted on the premises for the corporation/organization/limited liability company" when he signed the Schedule of Appointment of Agent form. Therefore, Shakers knowingly allowed another person to possess cocaine with the intent to deliver while on Shakers' licensed premises because its registered agent possessed cocaine with the intent to deliver it.

The Public Safety Committee finds that Complainant has established all elements of Count 1 by a preponderance of the evidence. This conduct violates Wis. Stat. § 125.12(2)(ag)6. and Stoughton Municipal Code § 14-31(1)g..

Count 2: Shakers Kept or Maintained a Disorderly or Riotous, Indecent or Improper House.

Pursuant to Wis. Stat. § 125.12(2)(ag)2. and Stoughton Municipal Code § 14-31(1)b., the Complainant must establish by a preponderance of evidence that:

1. Shakers, as a licensee

2. Kept or maintained
3. A disorderly or riotous, indecent or improper house.

The liquor license and liquor license application establishes that Shakers is the licensee.

Kittleson, as the registered agent responsible for "the conduct of all business relative to alcohol beverages conducted on the premises for the corporation/organization/limited liability company," possessed approximately 2.5 ounces of cocaine on Shakers licensed premises. Kittleson possessed this significant amount of cocaine with the intent to deliver it. Detective Hill's testimony established that Kittleson likely conducted cocaine transactions at or in Shakers. It is illegal to possess cocaine with the intent to deliver it, and to deliver cocaine. It is disorderly, indecent and improper to store cocaine within a licensed establishment.

Conducting controlled substance transactions and/or storing large amounts of cocaine at Shakers created a significant safety risk to Shakers' customers and the public. Kittleson was at great risk to be a victim of an armed robbery at the licensed premises from others who may have wanted to steal his cocaine. Consequently, this put Shakers' customers in danger. Further, allowing controlled substance transactions and/or storing significant amounts of cocaine at Shakers increases the likelihood of ancillary crimes, such as theft, to occur as users support their drug addiction.

For the above reasons, the Public Safety Committee finds that Shakers kept or maintained a disorderly, indecent and improper house by allowing Kittleson to possess and

store approximately 2.5 ounces of cocaine on Shakers' licensed premises and by allowing its agent to possess with the intent to deliver cocaine while on Shakers licensed premises. The Complainant has established all elements of Count 2 by a preponderance of the evidence. Shakers' conduct violates Wis. Stat. § 125.12(2)(ag)2. and Stoughton Municipal Code § 14-31(1)b..

RECOMMENDATION TO CITY OF STOUGHTON COMMON COUNCIL

The Stoughton Public Safety Committee hereby finds Counts 1 and 2 substantiated by a preponderance of the evidence, thereby providing good cause for the City of Stoughton Common Council to revoke Shakers' combination Class B liquor license. Therefore, the Stoughton Public Safety Committee recommends that the Common Council **revoke** Shakers combination Class B liquor license.