STATE OF WISCONSIN CITY OF STOUGHTON DANE COUNTY

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

RESPONSE AND OBJECTION TO THE REPORT AND RECOMMENDATION OF THE STOUGHTON PUBLIC SAFETY COMMITTEE

Shakers Saloon, LLC ("Shakers"), by and through its undersigned attorney, hereby submits the following response and objection to the proposed report and recommendation of the Stoughton Public Safety Committee as submitted and drafted by the attorney for Complainant Chief Gregory Leck. Shakers reserves the right to supplement and amend this response and objection based on the evidence entered at the hearing schedule for February 13, 2020 at 6:00 p.m. at 321 South 4th Street in Stoughton.

Findings of Fact

Shakers submits the following additional findings of fact:

1. Shakers owner, Steve Meyer, has no knowledge of his co-owner, Dale Kittleson, being involved with delivering drugs. Meyer has never observed Kittleson delivering or selling drugs at Shakers.

2. Meyer has disabilities and is a veteran of the Unites States Marine Corps.

3. No Shakers employees have ever observed Kittleson delivering or selling any controlled substances at Shakers.

4. There is no direct evidence that Kittleson ever delivered drugs to anyone while on the premises at Shakers.

5. Shakers has not been cited for any violations of any city ordinance since it opened for business in October 2019.

6. Shakers has not received any complaints from the city of the Stoughton Police Department since it opened for business.

7. There have been no fights at Shakers since it opened for business.

8. There have been crimes committed against Shakers, such as armed robbery since it opened its doors.

9. Shakers has security cameras covering all public areas of the premises; Shakers also checks all bags and individuals at the door during peak hours.

10. Shakers signed a five-year lease on or about August 11, 2019.

11. The controlled buys which formed the probable cause for Kittleson's arrest occurred in July 2019.

12. One of the bags in the office area of Shakers that was searched was in Kittleson's possession during one of those controlled buys.

13. Outside of what was allegedly found in Kittleson's bags that were in the office, no controlled substances were found in the office itself, including the office safe and lockbox.

14. The bags in the office were searched immediately after Kittleson's arrest and prior to the execution of the search warrant

15. Shakers is willing to remove Kittleson as the agent on the liquor license pursuant to section 125.04(6)(b) of the Wisconsin Statutes with a successor agent that meets the qualifications required under section 125.06(5).

Argument

Complainant Leck requests that the Public Safety Committee recommend to the full Stoughton City Council that the city revoke Shakers' Class B license based on two different theories based in the Wisconsin Statutes and the Stoughton City Ordinances. It the Complainant's burden to offer enough evidence to justify this drastic remedy. Here Complainant fails.

Count I: Shakers did not knowingly allow another person to possess, with intent to deliver, a controlled substance.

First, Complainant attempts to twist the plain meaning of the law with respect to "another person" to justify his request for revocation under section 125.12(2)(ag)6. and S.M.C. § 14-31(1)g. Two elements of this justification require that (1) another person was on the licensed premises with intent to deliver a controlled substance and (2) that it occurred with Shakers' knowledge. It has been long-standing precedent in Wisconsin and the United States – in fact over 100 years – that corporate entities can only act through their officers or agents. See Crown Castle USA, Inc. v. Orion Const. Grp., LLC, 2012 WI 29, ¶21, 339 Wis. 2d 252, 811 N.W.22 332. (citing Nakoosa-Edwards Paper Co. v. News Pub. Co., 174 Wis. 107, 119, 182 N.W. 919 (1921); and Wilson v. United States, 221 U.S. 361, 377, S. Ct. 538 (1911)). This is because the corporation, by itself, cannot act without the affirmative steps of those in charge to carry out the business of the entity.

Here, the Complainant wants to impute knowledge onto Shakers through its agent, Kittleson, while at the same time claiming that Shakers and Kittleson are two distinct individuals so that it can try and shoehorn a legal rationale for its request for revocation.

Kittleson and Shakers cannot share a brain on the one hand and then claim they are distinct individuals on the other hand.

If Kittleson's knowledge and actions are imputed to Shakers then Shakers did not allow "another person" to possess, with the intent to distribute, a controlled substance at the premises. To state otherwise would lead to an absurd interpretation of section 125.12(2)(ag)6. of the Wisconsin Statutes given a corporation can only act through its agents. See State v. Matthews, 2019 WI App 44, ¶17, 388 Wis. 2d 335, 933 N.W.2d 152 (statutory interpretation and application should avoid absurd results).

If Complainant wants to treat Kittleson as "another person" distinct from Shakers, then there will need to be evidence that Shakers other agents and employees allowed Kittleson to operate freely to deliver controlled substances on the licensed premises. The Complainant offers no such evidence. In fact, Shakers co-owner Steve Meyer specifically testified that he knew nothing about Kittleson's alleged drug activity and that he never observed transactions of controlled substances on the premises or that there was any evidence of illicit activity. Shakers' bartenders testify to the same.

Count II: Shakers did not keep or maintain a riotous or disorderly, indecent or improper house.

As for Complainant's second basis for the requested revocation that Shakers "keeps or maintains a riotous or disorderly, indecent or improper house" the evidence falls short. Wis. Stat. § 125.12(2)(ag)2.; S.M.C. § 14-31(1)b. First, section 125.12(2)(ag)5. allows for the revocation of a license based on a conviction relating to controlled substances. Thus it would be redundant for the interpretation of "keeps or maintains a riotous or disorderly, indecent or improper" relating to the delivery of controlled substances. Rather, it is more

likely aimed at establishments that are habitually prone to violence (riotous and disorderly) or prostitution (indecent or improper) on the premises. Moreover, "keep or maintain" are words of a continuing or persistent condition. A single arrest does not meet the burden of proof that an "indecent or improper house" was kept or maintained.

Additionally, assuming, for the sake of the argument, that the facts alleged against Kittleson are true (although he is presumed innocent until proven otherwise), there is absolutely zero evidence that any controlled substances were delivered at the licensed premises or that any transactions of controlled substances otherwise happened on the licensed premises. Other than what was allegedly found on Kittleson's person and belongings, there were no drugs or drug paraphernalia such as scales, bags, ledgers, or any other evidence indicating that Shakers was a base of operations or "front" for delivering or distributing controlled substances.

By his own admission, Complainants facts are nothing more than speculation. In his proposed report and recommendation, Complainant states that "Kittleson *likely* conducted cocaine transactions at or in Shakers." (Proposed Report, p. 5) (emphasis added). Complainant also states that "storing significant amounts of cocaine at Shakers increases *the likelihood* of ancillary crimes, such as theft…" (Id.) (emphasis added). As already stated above, there is no evidence of transactions occurring at or in Shakers – none. Moreover, there is no evidence that Shakers' presence in the last few months has increased any ancillary crimes. Moreover, Shakers has security measures in place to serve the interest of public safety.

Basing a heavy penalty like revocation on nothing but speculation on the potential likelihood that it might cause crime would come perilously close to violating the due process

property interest of Shakers. See City of Kenosha, Wis. v. Bruno, 412 U.S. 507, 511, 93 S.Ct. 2222 (1973) (balance municipality's right to manage licenses with the due process rights of the owners' occupations and investments). Building an inference upon inference is nothing but speculation. Home Savings Bank v. Gertenbach, 270 Wis. 386, 404, 71 N.W.2d 347 (1955). Speculation cannot meet the burden of a lesser "substantial evidence" standard, much less a preponderance of the evidence standard. AllEnergy Corp. v. Trempealeau Cty. Env't & Land Use Comm., 2017 WI 52 ¶¶75-76, 375 Wis. 2d 329, 895 N.W.2d 368.

Given the speculative nature of the facts presented by Complainant, he has not met his burden that Shakers kept of maintained a "riotous or disorderly, indecent or improper house."

Shakers' Property Interest

Here, Complainant asks you to strip Shakers of its Class B license based on evidence that 1) the only alleged controlled substances were found on Kittleson's person or in easily transportable bags belonging to him; 2) no evidence was found of controlled substances of paraphernalia in the office area that would suggest any controlled substances were being sold out of Shakers; 3) Shakers' other co-owner and employees had no knowledge or observations of any illegal activities. "An owner has 'a substantial property interest in retention of this liquor license,' since revocation can cause the loss of both income and investments in the physical property." Nowell v. City of Wausau, 2012 WI App 100, ¶12, 344 Wis.2d 269, 823 N.W.2d 373 (quoting Manos v. City of Green Bay, 372 F.Supp 40, 48-49 (E.D.Wis. 1974) (overturned on other grounds).

Revoking Shakers' license would substantially interfere in the investment of its co-owner Steve Meyer, a disabled veteran, through no fault of his own. Shakers invested over

$10,000 for this license and is only six months into a five-year lease. Additionally, the improvement with respect to security cameras, alcohol, interior improvements and other issues would be lost.

Finally, there are concerns about whether Kittleson's rights were violated during his arrest and the search of the premises. Obviously, it is not the City's job to determine this. However, Kittleson is presumed innocent until proven guilty. If Kittleson is convicted the law allows the city to further consider revocation, suspension, or non-renewal. See Wis. Stat. §§ 125.04(5)(b), 125.12(2)(ag)5. Moreover, Shakers Saloon would then have a way to forcibly buy out Kittleson's interest. Wis. Stat. § 183.0402(1)(b). In other words, based on the evidence that calls for the Council to speculate, this action is premature. Shakers is willing to remove Kittleson as the agent of the license and work with the City Council to set reasonable public safety benchmarks to assuage any concerns it may have.

Conclusion

For the above-stated reasons, the Council should not revoke Shakers Saloon, LLC's Class B Reserve Combination License.

DATED: February 13, 2020

KRAMER, ELKINS & WATT, LLC
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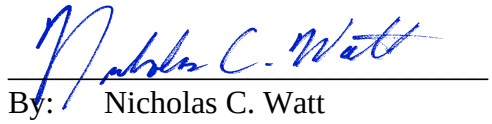

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