

PURCHASING AND LICENSING COMMITTEE

10-0615R

AS AMENDED

RESOLUTION IN THE MATTER OF THE ON SALE INTOXICATING LIQUOR LICENSE OF PIEDMONT BOTTLE SHOP, INC. (PIEDMONT BOTTLE SHOP), 2818 PIEDMONT AVENUE.

CITY PROPOSAL:

BE IT RESOLVED, that the city council of the city of Duluth makes the following findings of fact:

(a) On September 1, 2010, the alcohol, gambling and tobacco commission held a public hearing to consider whether disciplinary action should be taken against the intoxicating liquor license of Piedmont Bottle Shop, Inc., d/b/a Piedmont Bottle Shop, 2818 Piedmont Avenue, and has submitted its report to the city council of the city of Duluth as Public Document No. _____;

(b) Pursuant to Duluth City Code Chapter 8, Section 9, clause (a), on December 20, 2010, the city council considered the records and evidence submitted;

(c) The finding of facts as set forth in Public Document No. _____ regarding any suspension, revocation and/or civil penalty relating to the on sale intoxicating liquor license of Piedmont Bottle Shop, Inc., d/b/a Piedmont Bottle Shop, 2818 Piedmont Avenue, are adopted.

BE IT FURTHER RESOLVED, that the decision of the city council regarding any suspension, revocation and/or civil penalty is as follows: that the city council impose a ~~\$500~~ \$750 civil penalty and that payment of \$250 of the penalty be stayed for a period of one year and be abated if no same or similar violations occur during that one year period, and that payment of ~~\$250~~ \$500 of the penalty be payable within 30 days of final council action.

Resolution 10-0615, as amended, was adopted upon the following vote:

Yeas: Councilors Boyle, Cuneo, Fedora, Gardner, Gauthier, Hartman and President Anderson -- 7

Nays: Councilors Fosle and Stauber -- 2

Approved December 20, 2010

Mayor

STATEMENT OF PURPOSE: The alcohol, gambling and tobacco commission (AGTC) held a hearing on September 1, 2010, regarding the liquor license of Piedmont Bottle Shop. On March 4, 2010, the police department conducted a alcohol compliance check and an employee of the licensee sold intoxicating liquor to a person under the age of 21 which is in violation of City Code and state law. Section 8-35 of city code provides that the licensee is responsible for the conduct of its place of business. This is the first offense for the licensee, and Section 8-9 provides that the presumptive penalty for a first offense is a \$500 penalty. The recommendation of the AGTC is to impose a civil penalty of \$500 with \$250 of the penalty be payable within 30 days of council action, and \$250 stayed for one year and abated if no same or similar during the year.

CITY OF DULUTH

ALCOHOL, GAMBLING AND TOBACCO COMMISSION

REPORT TO THE CITY COUNCIL

IN THE MATTER OF THE INTOXICATING LIQUOR LICENSE OF PIEDMONT BOTTLE SHOP, INC., D/B/A PIEDMONT BOTTLE SHOP, 2818 Piedmont Avenue, Duluth, Minnesota 55811.

The above-entitled matter came on for hearing before the Duluth Alcohol, Gambling and Tobacco Commission on September 1, 2010, in the City Council Chambers in Duluth, Minnesota. The hearing record closed on September 1, 2010, upon completion of the hearing.

Steven B. Hanke, Assistant City Attorney, City of Duluth, Office of the City Attorney, 410 City Hall, Duluth, Minnesota, 55802, appeared on behalf of the City licensing staff. Licensee appeared through its managing agent, Jon G. Sabick.

This Report is a recommendation, not a final decision. The Duluth City Council will make the final decision after a review of the record which may adopt, reject or modify the Findings of Fact, Conclusion and Recommendations contained herein. Pursuant to Minn.Stat. §14.61, the final decision of the Council shall not be made until this Report has been made available to the parties to the proceeding for at least ten days. An opportunity must be afforded to each party adversely affected by the Report to file exceptions and present argument to the City Council. Parties should contact the City Clerk to ascertain the procedure for filing exceptions or presenting argument.

FINDINGS OF FACT

The commission makes the following findings of fact.

1. Piedmont Bottle Shop, Inc. ("Licensee") is licensed by the City of Duluth to sell intoxicating liquor "off-sale" at a premises located at 2818 Piedmont

Avenue, Duluth, Minnesota 55811.

2. On March 4, 2010, an employee of the Licensee sold intoxicating liquor to a person under the age of 21 years old in violation of Duluth City Code Section 8-28. The employee was convicted of the offense in St. Louis County District Court on April 27, 2010.
3. The Licensee was also charged as licensee liable for an unauthorized sale, as provided in Duluth City Code Section 8-35. The Licensee was convicted of this offense in St. Louis County District Court on July 26, 2010.
4. The Commission then issued its Notice and Order for Hearing and set a hearing date of September 1, 2010.
5. This is the Licensee's first violation for purposes of the presumptive penalty schedule provided for in Duluth City Code 8-9.
7. Section 8-9(b)(1) of the Duluth Legislative Code provides that grounds for disciplinary action include the operation of a liquor establishment in violation of any law. Section 8-35 provides that every licensee shall be responsible for the conduct of the licensee's place of business and that any violation of Chapter 8 of the Duluth Legislative Code committed on the licensed premises by an employee of the licensee shall be deemed the act of the licensee as well as the employee.

CONCLUSIONS

Based upon these facts, the commission makes the following conclusions:

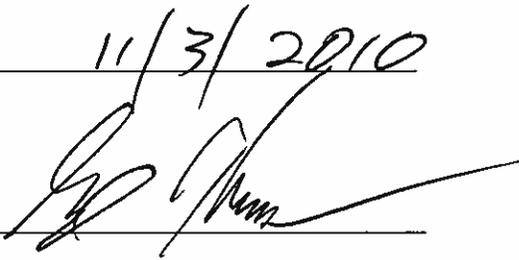
1. That the violation as alleged in the Notice of Hearing occurred.
2. That the Licensee is responsible for the violation.
3. That pursuant to Duluth City Code Section 8-9, absent aggravating or mitigating circumstances, the presumptive penalty for a first offense is a \$500.00 civil penalty.

RECOMMENDATION

It is the recommendation of the Duluth Alcohol, Gambling and Tobacco Commission that the Duluth City Council impose the following civil penalty:

1. Payment of a \$500.00 penalty within 30 days of final council action, \$250.00 of said \$500.00 penalty stayed for a period of one year and abated if the Licensee has no same or similar violations for a period of one year from the violation date of March 4, 2010.

Dated: 11/3/2010

By: 

George Hanson, President

**DULUTH ALCOHOL,
GAMBLING
AND TOBACCO
COMMISSION**

**Duluth Police Department
Main Office**

Reported Date: 03/04/2010 Time: 18:18 Case No.: 102362391
Code: 340A.503.1(a)(1) Crime: LIQUOR-RETAIL/STORE/CLUB PERMIT JUVENILE OFFENDER-UNDER
18
Class: M3001 Occurrence Date: 03/04/2010
Location: 2818 PIEDMONT AVE, 1DU, DULUTH, MN., 55811

===== NARRATIVE =====

SYNOPSIS:

On 03/04/2010 at 1815 hours, I, Officer Padden was doing alcohol compliance checks in the City of Duluth. One of the establishments we needed to check was Piedmont Liquor at 2818 Piedmont Avenue. Subsequently the clerk, STEUART did sell to an underage person and was tagged for such.

NARRATIVE:

On 03/04/2010 at 1815 hours, I, Officer Padden was doing alcohol compliance checks in the City of Duluth. My decoy was MICHAEL EDWARD VUCHETICH, dob:04/30/89 who is 20 years old. VUCHETICH was instructed to enter the liquor store, take a 6 pack of Budweiser from the cooler and attempt to purchase it. If he was asked for identification he was to present his driver's license. VUCHETICH did take a 6 pack of Budweiser from the cooler and was able to purchase it without being carded or asked for any sort of identification.

VUCHETICH then brought the 6 pack out to the vehicle where I was waiting, handed me the receipt. I then went in and spoke to the clerk later identified as GUY NICHOLAS STEUART, dob:07/26/70. I explained to STEUART that he had just sold to an underage person where STEUART indicated "I did"? I asked him for his identification and issued him a citation for sale of alcohol to a minor. I asked STEUART if he had any questions and he stated that he did not. I then explained the ticket to him and left the store. The 6 pack of Budweiser was subsequently photographed for evidence and then destroyed.

REGISTER OF ACTIONS
Case No. 69DU-VB-10-3731

State of Minnesota vs Guy Nicholas Steuart

§
§
§
§
§

Case Type: Crim/Traf Non-Mand
Date Filed: 04/21/2010
Location: - St. Louis-Duluth

PARTY INFORMATION

Defendant Steuart, Guy Nicholas
2007 Jefferson ST
Duluth, MN 55812

Male
07/28/1970

Lead Attorneys

Jurisdiction State of Minnesota
NONE

ASMUS, MARY E

CHARGE INFORMATION

Charges: Steuart, Guy Nicholas
1. Liquor-Retail/Store/Club-Permit u/21 to Consume

Statute
340A.503.1(a)(1)

Level
Misdemeanor

Date
03/04/2010

EVENTS & ORDERS OF THE COURT

| | |
|------------|--|
| 04/27/2010 | DISPOSITIONS Plea 1. Liquor-Retail/Store/Club-Permit u/21 to Consume Guilty |
| 04/27/2010 | Disposition 1. Liquor-Retail/Store/Club-Permit u/21 to Consume Convicted |
| 04/27/2010 | Payable without appearance 1. Liquor-Retail/Store/Club-Permit u/21 to Consume 03/04/2010 (MSD) 340A.503.1(a)(1) (340A5031a1) Fees - Adult: (Grand Total: \$105.00) Due 4/27/2010 Fine: \$100 Fees: (Fees Total: \$85.00) Criminal Surcharge: \$75 Law Library: \$10 Level of Sentence: Conviction Deemed a Petty Misdemeanor Pursuant to M.S. 609.13 |

FINANCIAL INFORMATION

| | | |
|------------|---|--------------------------|
| 04/21/2010 | Defendant Steuart, Guy Nicholas Total Financial Assessment Total Payments and Credits Balance Due as of 06/01/2010 | 185.00 185.00 0.00 |
| 04/21/2010 | Transaction Assessment | 185.00 |
| 04/27/2010 | Counter Payment Receipt # 69D-2010-10034 Steuart, Guy Nicholas | (185.00) |

REGISTER OF ACTIONS
CASE NO. 69DU-VB-10-6529

State of Minnesota vs **PIEDMONT BOTTLE SHOP INC**

§
§
§
§
§

Case Type: **Crim/Traf Non-Mand**
Date Filed: **06/24/2010**
Location: **- St. Louis-Duluth**

PARTY INFORMATION

Defendant **PIEDMONT BOTTLE SHOP INC**
2818 Piedmont AVE
Duluth, MN 55811

Lead Attorneys

Jurisdiction **State of Minnesota**
NONE

MARY E ASMUS
218-730-5490(H)

CHARGE INFORMATION

| Charges: PIEDMONT BOTTLE SHOP INC | Statute | Level | Date |
|---|---------|-------------------|------------|
| 1. DPD-ALCOHOL-LICENSEE LIABLE FOR UNAUTHORIZED SALES | DU8.35 | Petty Misdemeanor | 03/04/2010 |

EVENTS & ORDERS OF THE COURT

DISPOSITIONS

| | |
|------------|---|
| 07/26/2010 | Plea 1. DPD-ALCOHOL-LICENSEE LIABLE FOR UNAUTHORIZED SALES Guilty |
| 07/26/2010 | Disposition 1. DPD-ALCOHOL-LICENSEE LIABLE FOR UNAUTHORIZED SALES Convicted |
| 07/26/2010 | Payable without appearance 1. DPD-ALCOHOL-LICENSEE LIABLE FOR UNAUTHORIZED SALES 03/04/2010 (PMD) DU8.35 (ALCOHOL) |
| | Fees - Adult: (Grand Total: \$585.00) Due 7/26/2010 Fine: \$500 Fees: (Fees Total: \$85.00) Criminal Surcharge: \$75 Law Library: \$10 Level of Sentence: Convicted of a Misdemeanor |

OTHER EVENTS AND HEARINGS

| | |
|------------|-----------------------------|
| 06/24/2010 | Citation E-Filed |
| 07/06/2010 | Notice-Pay or Appear |

FINANCIAL INFORMATION

| | | |
|------------|--|----------|
| | Defendant PIEDMONT BOTTLE SHOP INC | |
| | Total Financial Assessment | 585.00 |
| | Total Payments and Credits | 585.00 |
| | Balance Due as of 07/30/2010 | 0.00 |
| 06/24/2010 | Transaction Assessment | 85.00 |
| 06/24/2010 | Transaction Assessment | 500.00 |
| 07/26/2010 | Mail Payment Receipt # 69D-2010-16363 Jon G Sabick | (585.00) |

STATE OF MINNESOTA
COUNTY OF ST. LOUIS
DISTRICT COURT

COMPLAINT

Court Number

DIVISION CO, CD

DRIVER LICENSE NUMBER STATE ICR NUMBER
 MN 10-236239

NAME - FIRST/MIDDLE/MAIDEN LAST
Piedmont Bottle Shop, Inc.

STREET ADDRESS
2818 Piedmont Ave

CITY STATE ZIP CODE
Duluth MN 55811

DATE OF BIRTH EYES HEIGHT WEIGHT SEX JUV.PAR./GUAR.

VEHICLE LICENSE PLATE STATE MAKE MODEL COLOR

DATE OF OFFENSE TIME Endanger Life or Property Hazardous Material
3-4-10 8:15 A.M. Unsafe Conditions (2 or more) Commercial Vehicle
 Accident Type: CPD Injury Fatal CPED

LOCATION & CITY (IF APPLICABLE) MILEPOST
2818 Piedmont Ave Duluth

OFFENSE DESCRIPTION NO. 1 DRIVER OWNER PASSENGER OPERATE PARK
Licenses held for Unauthorized Sale

STATUTE ORDINANCE SPEED (Over Limit) 1004
8-35 mph in zone

OFFENSE DESCRIPTION NO. 2 DRIVER OWNER PASSENGER OPERATE PARK

STATUTE ORDINANCE

OFFENSE DESCRIPTION NO. 3 DRIVER OWNER PASSENGER OPERATE PARK

STATUTE ORDINANCE

OFFENSE DESCRIPTION NO. 4 DRIVER OWNER PASSENGER OPERATE PARK

STATUTE ORDINANCE

COURT NAME AND LOCATION:

COURT ADMINISTRATOR - 100 N. 5th AVE. W. - ROOM 109
DULUTH, MN 55802 (218) 726-2484

COURT DATE COURT TIME NOTE: Refer to Back of Summons For Further Information
June 29, 2010 8:15 A.M.

The Undersigned being duly sworn, deposes and says that the person named on this complaint did commit the above offense(s).

OFFICER BADGE
Vany 375

D053606

Alcohol, Gambling, and Tobacco Hearing
September 1, 2010
Piedmont Bottle Shop, Inc, 2818 Piedmont Avenue

- Hanson: All right. Hearing to decide. What disciplinary action should be taken, if any, regarding the off sale intoxicating liquor of Piedmont Bottle Shop.
- Peterson: President Hanson, before we get going can we run through again the clarity of this process so we're all clear on what the process is for this.
- Hanson: Counselor, would you run through that for us?
- Lutterman: Yes. Thank you. In Administrative Hearings such as this both parties have a right to present information to this body. The body certainly has a right to question any witnesses that are called to testify in this matter. The parties has a right to cross examine each other's witnesses. At the close of the evidence, when both parties have had a full opportunity, for example, a witness is cross examined, then the other party has a right then to, once they've presented their case and the other side has completed their case, there's what we call a rebuttal phase and then the parties are able to recall witnesses or a new witness based solely on the information that was presented by the other party's side. The ideal of these hearings is as each side has opportunity to present evidence and then go back and forth from side to side, the issues narrow. You don't get to and if it's your second time that you're presenting evidence in what's called your rebuttal case, you don't get to present new information that you should have presented the first time. You can only present information and response to what the other side has presented. Because it's an Administrative Hearing and you are basically the fact finders, you have a right to ask questions of any witness. Once every side has had all of their witnesses testify, then the evidentiary phase of the hearing closes. No more evidence after that point is introduced. That point, the body goes into it's discussion phase and at some point during the discussion phase, if someone wants to call the question and make a motion, they can call the question. If a member of the body calls the question, there can be no further debate until there's a vote on the that motion. If that motion fails, debate may continue. If that motion passes, debate ceases and now someone has to present a motion on what they want to do about this matter. That motion should include some kind of a statement as to the findings for the motion. Say you want to find that a violation occurred and you want to suggest the penalty, then you need to, in the motion, indicate what is the basis for your motion. That motion needs a second and then that motion is open for debate. And, then again, there can be the call of the question and you go back and forth like that until some action of the body has occurred. But it's important that evidentiary phase that one side gets an opportunity to complete their case. They rest. The other side then has an opportunity to present their case. They rest. Then if the first side says okay, based upon what you presented I've got an additional piece of information, you structure it that way so that both sides aren't basically presenting evidence at the same time cause once both sides start presenting evidence at the same time

without any order, you kinda lose control of the situation. That's typically how Administrative Hearings go.

Hanson: Okay. So we will start with Counselor Hanke.

Hanke: Thank you, Commissioners. This matter is regarding an alleged violation of Piedmont Bottle Shop. Piedmont Bottle Shop is located at 2818 Piedmont Avenue in Duluth, Minnesota. Piedmont Bottle Shop is licensed by the City of Duluth to sell intoxicating liquor off sale at that location. On March 4th of this year, one of the employees of the licensee sold intoxicating liquor to a person under the age of 21 years old. This is in violation of Duluth City Code Section 8-28. That employee was convicted of the offense on April 27th of this year. The licensee was also cited as licensee's liability for the offense in violation of Duluth City Code Section 8-35. The licensee was subsequently convicted on July 26th of this year. Under the presumptive penalty, the guidelines of Duluth City Code Section 8-9, this would be the licensee's first violation. Just to need to add into the record that this isn't the first violation by the licensee but for purposes of presumptive penalty it is. The licensee has two prior violations in 2008 and in 2006, this Commission found that the licensee did commit similar violations selling to an underage individual in 2008 and in 2006 and so it is the City Administration's recommendation that the presumptive penalty be of \$500.00 be applied.

Hanson: Any further comments there, Counselor?

Hanke: No additional comment.

Hanson: Your name is?

Sabick: John Sabick.

Hanson: Would you like to present your side of the case here?

Sabick: Well, I've got two employees that work for me. I keep my employees to a minimum to avoid problems like this and additional problems. My son, being one of them, and this particular person being the other. The last time I appeared before the Commission, my son was the guilty party. I believe that was in 2008. This time, the other employee got, Guy Stewart, who has worked for me probably for about ten years off and on, was guilty of the offense. Again, I tell both my employees to card everybody that comes in that store. It's frustrating for me as licensee that this is occurring and other than telling them to card everybody, I cannot be there all the time. I tell them that if there's gonna be a fine that they're gonna pay it. I take it very serious and I said that the last time. Believe me, I don't want to have to here and do this. I'm home in bed when this is occurring. So, this is just very frustrating.

Hanson: Do you have your employees keep an incident log like if they deny a sale to somebody, do they make a note of it or?

Sabick: They don't. No.

Hanson: Have your employees attended the classes?

Sabick: They did it on line.

Hanson: Do you offer any type of incentives or anything for refusing to serve a sale to underage people?

Sabick: I don't. I did say that I do tell them that if there's gonna be reoccurring fines, they're gonna pay them. In fact, my fine through the City, I believe was \$585.00.

Hanson: That's what it says here.

Sabick: Yeah and Guy did pay that.

Hanson: I would think that that would be a pretty good disincentive to serving underage people.

Sabick: The other thing that's frustrating, I'm fined \$585.00 and I'm gonna be fined here. I believe his court fine was \$165.00 and I gotta believe the person committing the offense, should be a bigger penalty for them rather the licensee. I don't know what else I can do other than tell them "You card everybody" and I'm tired of this. I've been in business 20 years now.

Hanson: I guess what I'm looking for here is if there's anything that would cause us to treat your situation as mitigating circumstances or anything that would encourage us to be a little more lenient than the pretty much standard by the book penalty. I want you to tell me everything, anything.

Sabick: I understand and you know, I was very angry about this, both with him and with the system. I don't know what more I can do.

Hanson: I have a couple of suggestions that just might help. So, it seems like you have some pretty good disincentives for screwing up but sometimes if you include some positive things, it will make an employee more interested and pay more attention like a log or something to do besides dusting bottles or whatever.

Donahue: The guy, Stewart, who did commit this offense, he did spend time in Iraq and Guy doesn't need this job. He also has a full time job currently in Duluth and this is kind of a social time for him. He enjoys doing it. So, he doesn't need the money and he doesn't need the job and he's generally very good about carding people. In fact, he's turned away people that I know were old enough. I think John can probably attest to the fact. I know John from Piedmont Heights and we card constantly and how this slipped by him is puzzling.

Hanson: I'd card John. I wouldn't card me but I'd card John.

Donahue: Well, I was actually carded at a bar in Brainerd so it made me feel pretty good.

Hanson: Well, it's probably what you almost have to do these days. Card everybody.

Sabick: Yeah.

Hanson: Commissioner Peterson.

Peterson: Mr. Sabick, what I'm not hearing you say is that you are contesting this charge against your employee. What I'm hearing you say is that he sold to underage, an underage person.

Sabick: He did. He's guilty as charged. He did, in fact.

Peterson: Okay. Thank you.

Hanson: Are you ready to rest your case there?

Sabick: I am. I am.

Hanson: Counselor.

Hanke: Commissioners, I don't have anything further to add. I just note for the record that the licensee has admitted his guilt in violating the relevant Duluth City Code.

Hanson: Any questions from Board members? Go ahead. Commissioner Donahue.

Donahue: I've seen Guy turn away kids coming in to buy a bottle of pop. I just want to be on record as saying, his dad's a retired police officer. I know the business they run and if they've been busted in the past, that's fine, but they run a tight ship up there so. It's part of doing business but I just know the business they run up there. I know Guy and I just wanted to say you're doing a good job up there.

Sabick: Thank you, John.

Donahue: You're doing a good job up there.

Hanson: I'm looking for a motion. Some kind of action proposal here.

Lutterman: The fine is a \$500.00 fine. That is the presumptive first time penalty offense. If you find mitigating factors exist, you can deviate from the first time penalty of \$500.00 or if you find aggravating factors, you can impose a more severe penalty than the presumed first time offense of \$500.00. But, the presumed first time offense is \$500.00. The code doesn't provide for a stay. This body over time has developed that practice but it is not correct to say that that's required by the Code.

Hanson: Commissioner Hammack, go head.

Hammack: I'd like to deviate from the \$500.00 fine. Stay \$250.00 of it with no same or similar for one year. Paid 30 days after City Council approval.

Hanson: All right do we have a motion from Commissioner Hammack. I need a second.

Donahue: Second.

Hanson: A motion's been made and seconded. Any discussion? All in favor say "Aye".

Hanson: Opposed?

Peterson: Aye.

Hanson: Motion passes 4-1. The council is the body that has the final decision if you want to go to the city council meeting.

Sabick: Okay.

Hanson: And, if you have remarks regarding the way penalties are allocated out or whatever, that would be the body to deal.

Sabick: Right. I understand.

Hanson: Good luck to you sir.