

TENNESSEE ALCOHOLIC BEVERAGE COMMISSION

Minutes
January 18, 2007
1:00 p.m.

ADDENDUM

1. LIQUOR-BY-THE-DRINK

KNOXVILLE RESTAURANT ENTERTAINMENT GROUP d/b/a MICHAEL'S RESTAURANT

Stockholders: Michelle Cassimus and James Fitzgerald

Before the Commission is a review of an Order of Summary Suspension issued on January 12, 2007 by the staff of the Tennessee Alcoholic Beverage Commission of the on-premise consumption liquor license held by Knoxville Restaurant Entertainment Group. The informal hearing of this review has been scheduled pursuant to T.C.A. §4-5-320. The sole issue before the Commission is whether the public health, safety, or welfare imperatively required emergency action by the agency.

The staff's position and rationale behind the Order of Summary Suspension was based upon the history of regulatory violations at the establishment—including but not limited to sales of alcoholic beverages to minors; the sale of alcoholic beverages to a minor in May, 2006, which ultimately resulted in the death of the minor in an automobile collision; the sale of alcoholic beverages to a minor on December 28, 2006; the summary suspension of the beer permit by the Knoxville Beer Board; the sale of alcoholic beverages to a visibly intoxicated person on December 31, 2006; and a review of the evidence considered by the Knoxville Beer Board when they considered the summary suspension of the beer permit, which included numerous DUI arrests in 2005 and 2006 wherein the defendants indicated they had been drinking in this establishment prior to arrest.

Discussion/Action Taken:

Eric Georgeson, President of Knoxville Restaurant Entertainment Group, Inc., d/b/a Michael's Restaurant was represented by Joseph J. Levitt, Jr. and James A. H. Bell. Director Elks stated that on January 12, 2007, the staff of the Tennessee Alcoholic Beverage Commission took extraordinary steps by summarily suspending the on-premise consumption liquor license held by Knoxville Restaurant Entertainment Group, d/b/a Michael's Restaurant. This action was based on several incidences over a period of time.

Director Elks stated that generally, when the agency takes action against a licensee, a due process administrative hearing is held before action can be taken, whether it is a revocation, a suspension of the license or denial of the license. With the summary suspension of a license, the staff has the authority to immediately pull that license to prohibit activity from continuing when there appears, to the staff, to be emergency circumstances that will endanger the public health, safety and welfare. In this case, the staff believed that the actions occurring at Michael's licensed premises, created a situation and an environment that indicated a threat to the public safety, health and welfare. Therefore, the staff summarily suspended the license. According to the Administrative Procedures Act (T.C.A. §4-5-320), at an informal review of the summary suspension of the license, the review is not subject to the rules of evidence, and must come before the Commission within seven (7) days. The sole issue at that informal review is whether the public health, safety and welfare imperatively required emergency action by the agency. The underlying merits of the case are not at issue.

The history of the establishment with the Tennessee Alcoholic Beverage Commission indicates that in May, 2001 there was a sale of alcoholic beverages to a minor with a fine paid. In September, 2005 there was another sale to a minor violation that resulted in a \$1500.00 fine. On December 17, 2005 there was a sale to a visibly intoxicated person violation that is still pending. On December 12, 2005 there was another sale to a visibly intoxicated person and that matter is still pending. On May 15, 2006 there was a sale to a minor, Jonathan Hatcher, who had been drinking at Michael's. Mr. Hatcher became intoxicated and was subsequently involved in a one car fatal accident. On December 28, 2006, the establishment sold alcohol beverages to another minor. On December 29, 2006, the Knoxville Beer Board summarily suspended Michael's beer permit. On December 31, 2006 there was another sale to a visibly intoxicated person.

Considering all of these actions, the staff of the Alcoholic Beverage Commission believed that management, ownership and the employees of Michael's had a blatant disregard for the statutes governing the sale of alcohol.

Deputy Chief Gus Paidousis of the Patrol Division of the Knoxville Police Department testified that he has been in that position since December 15, 2002. He stated that he primarily supervises the entire uniformed body of patrol officers in the field and their supervisors.

Deputy Chief Gus Paidousis stated that in December 2005, and in a previous meeting in 2004 he met with Mr. Georgeson and some members of his department. At these meetings, he told Mr. Georgeson that his establishment (Michael's) was being irresponsible with their beer license and stated that their DUI information indicated that a lot of people leaving Michael's were drunk and

subsequently had been arrested for drunken driving. He stated that in 2005 and 2006, Michaels' had five (5) underage purchases of alcohol. He also stated that Michael's had nine (9) over serve violations in which someone is noticeably intoxicated, and were able to order and were served an alcoholic beverage within Michael's. In DUI-related numbers, in 2004 Michael's led the list of every place in the city that his department had data on: Michael's led the list of thirty-five (35) individuals who admitted to the police officers that they had purchased alcoholic beverages at Michael's. In 2005, there were thirty-nine (39) individuals that had been arrested for drunken driving, who indicated that they had purchased alcohol at Michael's. In 2006, forty-three (43) individuals that had been arrested for drunken driving indicated that they had bought their alcohol at Michael's. Deputy Chief Paidousis stated that out of the 600 to 700 establishments that sell alcoholic beverages in Knoxville that Michael's is the single most irresponsible, outlaw, renegade business within Knoxville. He stated that even after his office had told them they were not in compliance and were in danger of losing their beer permit, they continued to be irresponsible.

Knoxville Police Officer Donnie Huskey stated that he is employed with the Knoxville Police Department as a beer inspector in the inspections unit. He stated that he has worked with the inspections unit since December 1, 2005 and has been a beer inspector since January 2, 2007. Officer Huskey stated that on December 29, 2006, Chairman Hall of the Beer Board temporarily suspended Michael's beer permit, and he was directed to confiscate their beer permit until their regular scheduled beer board meeting. At the Beer Board meeting, all nine (9) members agreed to keep the beer permit suspended until April 30, 2007 for the revocation hearing before their hearing officer. Officer Huskey testified that in December 2006, he conducted a sting operation in which he cited a waitress for the sale of alcoholic beverages to a minor. In May 2005 there was an incident at Michael's where an underage obtained alcohol and died in a car crash. Officer Huskey stated that approximately a month ago, related to the sale to a minor involving the car crash, there was an indictment handed down by the Knox County Grand Jury. TABC SA Poore, along with two troopers, served the indictment on the bartender. Officer Huskey stated that on numerous occasions he has witnessed patrons visibly intoxicated at Michael's.

Eric Michael Georgeson testified that he has a doorman on Thursday, Friday and Saturday nights at 7:00 p.m., as they are their busiest nights. He stated that they have three to four doormen at work. He stated that Michael's opens at 4:00 p.m. daily and has a happy hour from 4:00 to 8:00 p.m. He stated that the bartenders and waitresses are ultimately responsible. He stated that they have a backup system where the ID's are checked at the front door and they are checked when the patron orders a drink.

Mr. Georgeson further testified that on New Years Eve, he hired a driver to take anyone home who was visibly intoxicated and stated that his corporation paid for the rides home. His testimony indicated that doormen have taken

patrons home before in their personal vehicles, and that multiple taxis come in every night to pick patrons up. He stated that they average 30 to 40 taxis a night picking patrons up. He stated that he hired Greg Harrison as his attorney because he had been with the Alcoholic Beverage Commission, and felt that Harrison would know how an LBD establishment should be run. He stated that he followed Greg Harrison's instructions. He stated that every time someone is hired, they are trained; but he tries to have a group meeting once a month or every six weeks. He stated that the business remains open until 2:00 a.m. every night.

Mr. Georgeson stated that in his packet that he gives his waiters/waitresses and in that packet it states that they were not to sell to a minor and serve intoxicated patrons. Director Elks asked where in the packet it makes those statements, and he was not able to find the information.

Attorney Joe Levitt indicated that there was no proof that Michael's was the last establishment where people who were arrested for DUI. He further indicated that Michael's was a "fine dining establishment".

Commissioner Mathews asked Mr. Georgeson what would happen to his establishment if the TABC summarily suspended his license. Mr. Georgeson stated that financially Michael's would have to close because Michael's serves more liquor, beer and wine than food.

Upon review of the evidence presented to the Commission, the Commission did not feel that sufficient facts existed that warranted the summary suspension of the license and put the establishment out of business without due process. However, if one more significant event happened, then the license should be summarily suspended.

Commissioner Mathews made a motion that Michael's be allowed to continue serving alcoholic beverages with the caveat that if any of these violations continue that the Commission reconvene, rehear this matter and make a final judgment. Chairman Jones seconded the motion, and it passed with 2 ayes.

Director Elks asked Chairman Jones for a clarification of what he meant as a significant occurrence to reconvene. Chairman Jones stated that if a TABC agent or a duly appointed law enforcement officer has either by a sting or by other circumstance observes the premises a violation of sale to a minor or sale to an intoxicated person, that would ordinarily cause an action or fine by the TABC, he would consider that one case.

There being no further business the meeting was adjourned.

Carolyn U. Smith
Assistant Director

John A. Jones
Chairman