

**COLORADO SPRINGS, COLORADO
COUNCIL CHAMBERS
CITY HALL - 107 N. NEVADA AVE.
FEBRUARY 25, 2011 – 9:00 A.M.**

The Liquor and Beer Licensing Board met in special called session.

There were present: Chairman Stephens, Mr. Bursell, Mr. Clauss, Ms. Frias, Ms. Lloyd and Mr. Nemeth. Absent, Mr. Kouba. Also present, Board Legal Advisor Kenny Hodges.

SUSPENSION/REVOICATION HEARING

1. **Suspension/Revocation Hearing concerning the Tavern Liquor License issued to Telesforo H. and Lidia L. Barrera dba Wagon Wheel Night Club, 2308 East Platte Avenue.**

City Prosecuting Attorney Kyle Sauer entered his appearance on behalf of the City and stated an investigation relating to illegal transactions was conducted for several months in the establishment; that transactions occurred either in open air or the men's restroom; that some transactions occurred after the licensee was notified by the Police Department of the activity and the need to take corrective measures; that no proactive steps were taken to stop the activity; that during a search warrant, drugs were found in a crevice of the bar and a bag of cocaine was found on the floor.

Attorney Damon Cassens entered his appearance on behalf of the licensee.

At Mr. Cassens request, witnesses were sequestered.

In response to questions from Mr. Sauer:

Detective Greg Young was sworn and testified the investigation began after being contacted by a confidential informant "CI" stating cocaine sales were occurring at the establishment; that the CI was compensated for his work; that on December 2, 2010, he went to the establishment with the CI where a transaction occurred at the bar area and the CI then gave him the cocaine purchased; that a field test indicated a positive result for cocaine; that they were in the establishment approximately 10 minutes; that the three baggies weighed between .5 and .6 grams and were purchased for \$20.00 each. He stated a man by the name of "Jose" was identified as the main distributor; that the bartender walked away from the area to the opposite end of the bar. He stated on December 15, 2010, he purchased three bags at the bar from Jose; that Jose did not speak English, so they communicated by hand signals. He stated on January 6, 2011 and January 13, 2011, he purchased cocaine in the restroom. He stated on January 21, 2011, he purchased cocaine at the bar with Detective Vela and after sitting in the establishment for a while, he purchased another baggy.

In response to questions from Mr. Cassens:

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Detective Young stated the investigation began following a call from the CI; that the CI was wired and detectives were outside monitoring; that Cholo and Jose were the contacts. He described the bar area, identifying where Cholo and Jose typically sat.

In response to a question from Mr. Nemeth, Detective Young stated there are surveillance cameras in the bar.

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The Board recessed for lunch from 12:20 p.m. to 1:00 p.m.

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In response to questions from Mr. Sauer:

Detective Jeff True was sworn and testified his role in the investigation was mainly surveillance of the transactions; that on January 12, 2011, he mailed a certified letter to the licensee notifying them that illegal drug activity was being conducted on the premises.

Exhibit No. 1, a copy of the letter sent by Det. True to the licensees relating to illegal activity; Exhibit No. 2, a copy of the certified mail return receipt with the signature of the licensee; Exhibit 3, various checks signed by Telesforo Barrera; Exhibit No. 4, a photograph of the bar area; Exhibit No. 7, a photograph of the underside area of bar; Exhibit No. 8, a photograph of worn area of bar; Exhibit No. 9, a photograph of a napkin stuffed inside bar crevice and Exhibit No. 10, a photograph of cocaine found during search were submitted by Mr. Sauer.

Detective True stated he spoke with Lydia Paulino when the search warrant was served; that she called the licensee and he spoke with Lydia Barrera; that Telesforo Barrera then came to the establishment; that he acknowledged receipt of the letter, but said he didn't see any reason to address any of the allegations; that he was very calm during the search. He stated State Liquor Investigator Brian Osterhouse found several 375 ml. bottles of alcohol which are prohibited by law; that he later made a traffic stop of a patron who left the bar and appeared to be under the influence, and a small baggie of cocaine was recovered from the car seat.

Exhibit No. 12, a photograph of cocaine purchased and found at the establishment, and Exhibit No. 13, a photograph of a vial of cocaine was submitted by Mr. Sauer.

In response to questions from Mr. Cassens:

Detective True stated the licensees received the letter relating to illegal drug activity on the premises, but never contacted him about the letter; that dates or persons involved in any of the activities are not disclosed; that he has had no personal contact with the licensees.

Exhibit B, a field contact form of the Police Department was submitted by Mr. Cassens.

In response to questions from Mr. Cassens:

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Lydia Paulino was sworn and testified she is the daughter of the licensees and although she does not regularly work at the establishment, she was working on the evening of the search warrant. She identified the bar area and where various patrons were sitting. She stated when the police officers came into the establishment, the patrons and she were detained; that she spoke to Det. True and her father came to the establishment.

In response to a question from Mr. Sauer, Ms. Paulino stated when Angelita worked at the establishment, Tierso was often a patron.

In response to questions from Mr. Cassens:

Myra Guerra was sworn and testified as to the schedule she typically works at the establishment; that Mr. Barrera read the letter to her relating to illegal drug transactions occurring at the establishment.

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Ms. Frias was excused.

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In response to questions from Mr. Cassens:

Telesforo Barrera was sworn and testified he has owned the business approximately 24 years and has never received a violation or notification of any problem; that he read the letter from Detective True to the employees and patrons who were at the establishment at the time, including Angelita Prado; that after that time, a few patrons stopped coming to the business. He testified regarding the evening of the search warrant.

In response to a question from Mr. Sauer, Mr. Barrera stated he did not contact Det. True regarding the letter.

In response to questions from the Board, Mr. Barrera stated Ms. Prado did not formally quit the job; that approximately four years ago, there was a violation at the establishment for sale to a minor; that he has never noticed a worn area on the bar.

In response to questions from Mr. Cassens:

Lydia Barrera was sworn and testified she is a member of the Platte Avenue neighborhood association where the tavern is located; that for several years, police officers would come in to discuss any problems or issues; that Ms. Prado worked at the establishment approximately four years, and worked the day following the search, but did not return after that.

In response to a question from Mr. Cassens, Telesforo Barrera, Jr. was sworn and testified he has not observed any activity within the bar that appeared to be drug sales.

Mr. Sauer stated on the dates of December 2, 8, 15, 2010 and January 6, 13, 19, and 21, 2011, cocaine was purchased in the establishment at either the bar area or in the restroom;

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that although the licensee received a letter related to drug activity, from the Police Department on January 14, 2011, no action was taken; that from December 2, 2010 to January 21, 2011 Detective Young went into the establishment seven times and was able to purchase cocaine each time; that Detective True said that during the times of surveillance, patrons were seen coming and going from the establishment in short intervals of approximately two and 10 minutes which is not typical of an average patron; that small bottles of alcohol were also found in the establishment, in violation of the Liquor Code; that many transactions occurred in open air near the bar. He stated the licensee indicated he read the letter to the employees and asked them what they thought should be done; that it took two and one-half weeks before the licensee adjusted his on-site hours to address the activities at the establishment. He stated Colorado case law states while a licensee may not have to have specific knowledge of a violation, all activities on the premises are the licensee's responsibility. He cited the case of Full Moon Saloon vs. City of Loveland; that there has been testimony that more proactive steps should have been taken to stop the transactions from occurring; that it is not the Police Department's job to hold the licensee's hand and tell them how to deal with the problems they were notified of in the letter; that the licensee had actual knowledge of what was going on; that he requests the Board find the licensee guilty of all counts alleged in the Show Cause.

Mr. Cassens stated the worn area of the bar is not in the same location the detectives identified where transactions occurred; that the letter received by the Police Department did not indicate persons involved, or the dates or times of the activities, and there was no invitation for the licensee to call them relating to the activity; that what VNI wanted to do was tie the licensee into the sale and could not. He stated the field test was not verified as clean and untampered; that there was no "knowledge" or "permitted" activity by the licensee.

Mr. Hodges provided the Board a copy of criminal statute CRS 18-18-405 referenced in the hearing, for the Board's consideration.

Mr. Sauer stated the field tests are not the only thing being relied on, and Mr. Cassens had the opportunity to access the field tests of the Police Department; that the licensee has a duty to ensure the business is conducted correctly and ensure drug activities do not occur on the premises.

Chairman Stephens stated he believes the field tests were valid, in addition to the fact that people, including the confidential informant and detective requested and believed they were purchasing cocaine; that while he is unconvinced the licensees sold cocaine, they should be aware of the sales and activities of the business and are ultimately responsible. He stated he does not find evidence of Count 8, but would support Counts 1 through 7 and 9.

Mr. Nemeth stated the letter from Detective True was a courtesy, and the licensee did not call to verify the information; that testimony was provided that a process is followed to clean the kits for field testing, and he believes it was cocaine; that testimony was given that each time a signal was given to purchase cocaine, the bartender left the area; that there is a preponderance of evidence that the alleged violations occurred; that he is unconvinced of Counts 8 and 9, but finds Counts 1 through 7 relevant and proven.

Mr. Clauss stated he agrees with the other Board members; that he does not know if the licensees had firsthand knowledge, but it is naïve to not take any steps to ensure the activity

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does not occur; that since they had previously worked with the Police Department, it would seem they had an opportunity and relationship to call them for more information; that he supports Counts 1 through 7 and 9.

Mr. Bursell stated he believes Detective Young's testimony is credible; that it appears there was a close relationship between "Jose" and the bartender by drinking together and conversation, and it appears the bartender may have known of the activity; that he supports Counts 1 through 3, and 6 and 7; that Counts 4 and 5 did not occur in open air and he cannot make the leap that the bartender absolutely knew of transactions occurring in the restroom; that Count 8 is not supported and Count 9 is a minor infraction.

Ms. Lloyd stated she too believes Count 9 is a minor infraction; that the licensee seems to be sincere and it is unclear how much they knew about what was going, but there could have been a lot more done from the time the letter was received, and taken action in a variety of ways; that the licensee could have been more proactive and there was negligence on their part.

It was the consensus of the Board that the Counts of the Show Cause be considered as a group.

Motion by Clauss, second by Nemeth, that the licensee is guilty of Counts 1 through 7 and Count 9. The motion unanimously carried. Absent, Ms. Frias and Mr. Kouba.

Mr. Sauer requested the Board revoke the Tavern Liquor License of Wagon Wheel Night Club.

Mr. Cassens stated the licensee has operated the business for 24 years, and few violations have occurred in those years.

Mr. Sauer stated while this is the first time the liquor license has been involved, the Police Department's public records show from 1995 to present there have been 97 narcotic investigations at the establishment.

Mr. Clauss stated he supports revocation; that he believes this activity has been going on longer than December, 2010, and he does not believe the licensee has been unaware of this activity.

Chairman Stephens stated it appears Mr. Barrera demonstrated a nonchalant attitude when Detective True questioned him about the letter, and when Mr. Barrera testified today his demeanor gave the impression that it was not that big of a deal; that he supports revocation.

Mr. Nemeth stated while he is hesitant about revocation, he will support it as the licensee did not take action to deal with the problems.

Mr. Bursell stated he believes revocation is appropriate.

Ms. Lloyd stated she is torn between revocation and suspension knowing this place has been in operation for 24 years; that she feels once the licensee was made aware of the problem, they neglected to resolve it.

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Motion by Clauss, second by Nemeth, that the Tavern Liquor License issued to Telesforo H. and Lidia L. Barrera dba Wagon Wheel Night Club, 2308 East Platte Avenue, be revoked. The motion unanimously carried. Absent, Ms. Frias and Mr. Kouba.

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At 5:00 p.m., motion by Nemeth, second by Clauss, that the Board adjourn.



**Cindy N. Conway, CMC
Deputy City Clerk**