

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE CITY OF ST. PAUL

In the Matter of All Licenses Held By
OPBM, Inc., a Minnesota corporation
d/b/a Amelia's Nite Club & Eatery,
for Premises Located at
175 5th Street East, #140, St. Paul, Minnesota.

FINDINGS OF FACT,
CONCLUSIONS,
RECOMMENDATION,
AND MEMORANDUM.

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_____ The above-entitled matter came on for hearing before Bruce D. Campbell, Administrative Law Judge, on July 12, 1995, in St. Paul. The hearing took one day, and the record closed at the end of the hearing.

Appearing on behalf of OPBM, Inc., was Joseph J. Dudley, Jr., Dudley and Smith.

Appearing on behalf of the City of St. Paul was Philip K. Miller, Assistant City Attorney.

This Report is a recommendation, not a final decision. The St. Paul City Council will make the final decision after a review of the record. The Council may accept, reject or modify the Findings of Fact, Conclusions, and Recommendations contained herein. Pursuant to § 310.05(c-1) of the St. Paul Legislative Code, the Council shall provide the licensee an opportunity to present oral or written argument alleging error in this Report, and to present argument relating to any action recommended in this Report. The licensee should contact Philip K. Miller to ascertain the procedure for presenting argument.

STATEMENT OF ISSUE

Should any adverse action be taken against the licensee for selling an alcoholic beverage to a minor?

Based upon all of the proceedings herein, the Administrative Law Judge makes the following:

FINDINGS OF FACT

Background Facts

1. OPBM, Inc. is a Minnesota corporation doing business as Amelia's Nite Club & Eatery at 175 5th Street East, #140, St. Paul, Minnesota 55101. Amelia's presently holds restaurant, entertainment, and on-sale liquor licenses from the City of St. Paul.

2. Amelia's is located on the second floor of the Galtier Plaza shopping center. Pursuant to the site plan filed in the licensing office, Amelia's liquor service area includes both the interior area, which has a seating capacity of 234, as well as an area outside the bar along an open atrium in the building. The night club's capacity, including both the inside and outside areas, is approximately 300 persons.

3. Prior to March 16, 1995, the St. Paul Police Department, license inspectors, and the Mayor's Complaint Office had received complaints that Amelia's had sold alcoholic beverages to minors. Senior License Inspector Kristina Schweinler of the Department of License, Inspections and Environmental Protection personally received telephone complaints from angry parents alleging that their minor children had been served alcoholic beverages at Amelia's and had become intoxicated.

4. Based on these complaints, Schweinler included Amelia's in a group of establishments that would be checked for compliance with regard to sales made to minors.

5. Approximately two weeks before conducting this compliance investigation, Schweinler visited Amelia's accompanied by Sgt. Per Tredal of the St. Paul Police Department. Sgt. Tredal has been a police officer for approximately 20 years; he has been assigned to the Special Investigations Unit for approximately two and one-half years. Their visit took place at about 12:30 a.m. on a Thursday night, which was promoted as "Latin Night" at Amelia's. A live band was playing, and they were either aware beforehand or learned that night that Amelia's typically charges a \$6 or \$7 cover charge when it provides live entertainment. The bar was full when they arrived.

6. During this preliminary visit, Schweinler and Sgt. Tredal observed that the band kept playing and the bartenders kept serving alcohol past the 1:00 a.m. closing time. They immediately contacted the manager, Michael Bergstrom, and told him to close the bar and stop serving alcohol. They also informed him that they had received complaints of alcohol sales to minors and warned him that they would be checking Amelia's compliance in the future.

7. On March 16, 1995, Schweinler and Sgt. Tredal conducted a series of compliance checks on different establishments about which she had received complaints about serving minors. The businesses included several convenience stores, a video store, and two or three on-sale liquor establishments. Accompanying them were two minor decoys: a 19-year-old male named Robert Loesch, who is Schweinler's son, and his girlfriend, a 16-year-old female named Catherine Caturia. Loesch had

acted as a decoy before; Caturia had not. That evening the minors visited these businesses under the supervision of Schweinler and Sgt. Tredal and attempted to purchase either cigarettes, adult videos, or alcoholic beverages, depending on the type of complaint previously received.

8. Schweinler and Sgt. Tredal instructed the minors to attempt to make the purchases. If asked for age identification, they instructed the minors to say that they did not have any. The minors were given no instructions to dress or act any particular way in attempting to make these purchases. They were given no instructions about what to do in the event someone asked them to pay a cover charge.

9. The group arrived at Amelia's at approximately 10:00 p.m. They took an elevator up to the second floor of Galtier Plaza, arriving to the west of the main entrance to the bar. The minors were told to walk east through the outside bar area toward the main entrance, while Schweinler and Sgt. Tredal walked around to observe them directly across the atrium from the main entrance.

10. That evening, a Thursday, was again Latin Night at Amelia's. The bar was busy. There was a table set up outside the main entrance, facing east, where a cashier was collecting cover charges. The table was placed so that people coming up an escalator to the second floor would stop before entering the bar. There were approximately five people waiting in line to pay the cover. Two bouncers were standing next to the table conversing with the cashier.

11. As the minor decoys approached from the west, they stopped approximately ten feet away from the table and waited in the outside bar area, expecting someone to approach them about paying the cover charge or showing identification. After about 30 seconds, one of the bouncers turned and entered the open door of the main entrance. The minor decoys entered the bar after him. There was nothing surreptitious about the way they entered the bar; they simply walked in from the outside bar area.

12. At no point before entering the bar did anyone ask them to pay the cover charge or show any age identification.

13. After walking in, the minor decoys went directly to an open spot at the bar. Robert Loesch ordered a \$3 bottle of beer; Catherine Caturia did not order anything but stood next to Loesch while he ordered. Bartender Michael Boho sold Loesch the beer without asking for age identification.

13. Immediately after purchasing the beer, the minor decoys left the bar through the main entrance, again walked past the cashier and bouncer at the outside table, and took a seat in the outside bar area. It took only a few minutes total for the minors to enter the bar, purchase the beer, and return to the outside bar area.

14. Schweinler and Sgt. Tredal observed that Loesch was holding a bottle of beer and crossed the atrium to where the minors were seated. Sgt. Tredal tasted the beverage and confirmed that it was beer.

15. Bar manager Michael Bergstrom recognized Sgt. Tredal and approached him to see why he was there. Sgt. Tredal and Schweinler told him that a bartender had just sold beer to a minor. Bergstrom called bartender Michael Boho over, and Boho verified that he had sold the beer to Loesch without asking for age identification. Boho stated that when the bar is busy the bartenders usually rely on the door people to verify the ages of customers.

Amelia's Business Practices

16. At the time of this incident Amelia's typically had three security people (bouncers) and one cashier working on evenings when there was live entertainment. One bouncer stood outside the main entrance with the cashier to check age identification; one sat inside the bar near the west doors to ensure that no one entered the bar through those doors; and one was designated as a "walker" who walked the interior of the bar but was available to the others as needed.

17. At the cashier's table there is a sign notifying customers of the cover charge. After paying, a stamp is placed on each customer's thumb so customers can exit the bar and then re-enter without paying the cover charge again. Age identification was typically checked at the cashier's table.

18. On the door to the main entrance, a large sign is posted that reads "If you are under 30 be prepared to show I.D./Dress code enforced." A smaller sign beneath this describes Amelia's ID policy.

19. A rope hanging between two metal stands is placed between the cashier's table and the door to the main entrance. It is intended to guide traffic from the cashier's table into the main entrance. The rope does not block the main entrance to people approaching from the outside bar area on the west; in other words, the main entrance is still accessible to people who do not go through the line.

20. Because there are no restrooms inside the nightclub, it is common for people to leave the bar through either the main entrance or the doors on the west side so they can use restrooms on another floor. Customers are not allowed to re-enter through the west doors, but are directed to re-enter only through the main entrance.

21. At the time of this incident, the same bouncer who was posted at the cashier's table was responsible for checking age identification for people coming through the line, as well as for checking everyone approaching from the west.

22. The "rule of thumb" followed by Amelia's personnel is that people inside the bar are not generally asked for age identification if their hands are stamped; people

sitting in the outside bar area are supposed to be carded, because they do not have to pay a cover charge to sit there and their hands are not stamped.

23. These security measures were not adequate to prevent the decoy minors from entering the bar or to prevent the sale of an alcoholic beverage to one of them inside the bar. The bouncer at the cashier's table paid no attention to them and allowed them to enter the bar unchallenged; and once inside, one of them was served alcohol even though his hand was not stamped.

24. In an incident report that he prepared some time afterward, bar manager Michael Bergstrom stated his theory that the minors "sneaked" into the bar by mingling with a group of customers that had gone through the line and paid the cover charge. In his testimony he described this theory as his "best guess" as to what had happened. No facts support this theory. Bergstrom did not personally observe the minors entering the bar, nor did any other witness testify to this version of the facts.

25. In the same incident report, Bergstrom stated that since this incident occurred, on "busier nights such as Latin night" either he or another security guard checks identification right outside the main entrance, in addition to having someone posted at the cashier's table. Bergstrom did not testify about any such remedial actions, and it is not clear from the record whether this change has been implemented or not.

Notice of Possible Adverse Action

26. By letter dated April 20, 1995, the St. Paul City Attorney's Office notified the owner of Amelia's of possible adverse action against the licenses based on the above-described sale on March 16, 1995.

27. On June 13, 1995, the City Attorney's Office served counsel for Amelia's with a Notice of Hearing, scheduled for July 6, 1995. At the request of counsel for Amelia's, the hearing was rescheduled to July 12, 1995.

28. At the hearing, the Department of Licensing, Inspections and Environmental Protection recommended that adverse action be taken against Amelia's on-sale liquor license pursuant to the matrix contained in § 409.26 of the St. Paul Legislative Code. The Department has also requested that Amelia's be assessed the costs of the hearing in this matter.

Based upon the foregoing Findings, the Administrative Law Judge makes the following:

CONCLUSIONS

1. The St. Paul City Council has jurisdiction of the subject matter of this hearing.

2. Proper notice of the hearing was timely given, and all relevant substantive and procedural requirements of law or rule have been fulfilled and, therefore, the matter is properly before the Administrative Law Judge.

3. The licensee violated § 409.08(2) of the St. Paul Legislative Code and Minn. Stat. § 340A.503, subd. 2(1) by serving an intoxicating beverage to a minor on March 16, 1995.

4. Based on these violations the St. Paul City Council is authorized to take adverse action against Amelia's licenses pursuant to § 310.06(b)(6) of the St. Paul Legislative Code.

5. It appears from the record that this is the licensee's first appearance for selling alcoholic beverages to an under-age person; the presumptive penalty pursuant to § 409.26(b) of the St. Paul Legislative Code is suspension of its liquor license for one day. In the alternative, the City Council may in its discretion impose a fine in the amount of \$2,000.00 in lieu of a suspension.

6. There exist no substantial or compelling reasons for the City Council to deviate from the presumptive penalty. The licensee's past business practices were not adequate to prevent a minor from easily purchasing an intoxicating beverage.

7. The costs of the hearing should not be assessed against the licensee.

Based upon the foregoing conclusions, the Administrative Law Judge makes the following:

RECOMMENDATION

That the St. Paul City Council impose against the licensee the presumptive penalty contained in § 409.26(b) of the St. Paul Legislative Code.

Dated this 11th day of August, 1995

s/ Bruce D. Campbell

BRUCE D. CAMPBELL
Administrative Law Judge

NOTICE

The City is respectfully requested to provide a copy of its final decision to the Administrative Law Judge by first class mail.

Reported: Tape Recorded.

MEMORANDUM

There is no real dispute about the underlying facts. The minor decoys easily entered the bar, and within minutes one of them purchased an intoxicating beverage. Although several employees of Amelia's were in a position to do so, none of them personally observed the minors entering the bar, and consequently the bar is in no position to contradict the facts as described by Sgt. Tredal, Ms. Schweinler, or the minor decoys.

The main defense raised by Amelia's is that the violation would not have occurred if the minors had followed the bar's procedures for collecting a cover charge and checking age identification. This argument is misplaced. It is the licensee's responsibility to prevent an illegal sale. The licensee cannot reasonably rely on minors to honor the security system the bar has chosen to use, particularly when the system is so easy to circumvent.

B.D.C.