

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE CITY OF ST. PAUL

In Re All Licenses Held by Drink, Inc.
d/b/a Pebble's Bar for Premises
Located at 880 East Seventh Street,
St. Paul

**FINDINGS OF FACT,
CONCLUSIONS AND
RECOMMENDATIONS**

The above-entitled matter came on for hearing before Steve M. Mihalchick, Administrative Law Judge, on August 28, 1995, at 9:30 a.m. in Room 41, St. Paul City Hall and Ramsey County Courthouse. Peter W. Warner, Assistant St. Paul City Attorney, 400 City Hall, 15 West Kellogg Boulevard, St. Paul, Minnesota 55102, appeared on behalf of the City of St. Paul (the City). Carl Dziubak, Owner, 924 East Beach, St. Paul, Minnesota 55106, and Judy Sindelar, Day Manager, appeared on behalf of Licensee Drink, Inc. The record in this matter was closed on August 28, 1995, upon adjournment of the hearing.

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 which may adopt, reject or modify the Findings of Fact, Conclusions and Recommendations contained herein. Pursuant to St. Paul Legislative Code section 310.05(c-1), after receipt of this Report, the City Council shall provide an opportunity to present oral or written argument alleging error in this Report and to present argument related to any recommended adverse action. The parties should contact the Nancy Anderson, Council Secretary, Room 310, St. Paul City Hall, to ascertain the procedure for filing such argument or appearing before the council.

STATEMENT OF ISSUE

1. Whether on January 21, 1995, a bouncer employed by Licensee assaulted three persons on the premises and whether Licensee's owner was resent and aware of the incidents and failed to stop the assaults, call police or take action to assist the victims.

2. Whether on April 9, 1995, the owner assaulted a patron in the premises for breaking a bathroom door and failed to call police for assistance in the manner.

3. Whether on April 10, 1995, the bouncer subjected a patron to race discrimination and harassment and did so in the presence of and with the involvement of the day manager.

Based upon the record herein, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. Licensee Drink, Inc. operates Pebble's Bar (the Premises) at 880 East Seventh Street on the east side of St. Paul. Carl Dziubak is the owner and in charge of day-to-day operations of the Premises. Judy Sindelar is employed as day manager of the Premises.

2. The Premises is an east side bar with working-class customers. It is sometimes a rough place and the owner spends a fair amount of time keeping order. He has also hired bouncers for that purpose.

3. James Chambers has been a bouncer at the Premises for about a year. He is a tall man, perhaps 6 feet 6 inches and wears western attire, which has earned him the nickname "Cowboy". He is a regular customer in the bar even when not working and typically locates himself on a stool near the front door, whether working or not. Chambers is 46 years old.

4. Lynda Marie Cemensky, age 43, was a girlfriend and fiancée of Chambers for about six months. They had met at the Premises, had lived together for a period and had been engaged to be married on January 20, 1995. Shortly before that day, Cemensky called the wedding off and asked him to leave. Chambers moved to an apartment above the Premises. In Cemensky's view, they remained friends. In Chambers' view, he still loves Cemensky and calling off the wedding was very difficult for him. Chambers physically abused Cemensky and that was the reason she had asked him to leave. Ex 1.

5. On Friday, January 20, 1995, Chambers called Cemensky, told her that it was going to be a rough day for him because it was their canceled wedding day and asked her to stop at the Premises that night so he could see her. That evening, Cemensky went out with two acquaintances, Linda Nelson and Dean McGuire. They went to a VFW where Cemensky and McGuire had a few beers and Nelson drank soft drinks.

6. Shortly after midnight, at about 12:15 a.m. on January 21, 1995, Cemensky, Nelson and McGuire arrived at the Premises and entered by the back door. Nelson went to the bathroom, McGuire went to the bar and Cemensky walked to the front where Chambers was leaning on his stool. Chambers saw Cemensky as she was approaching him. He stood up and angrily asked her "Where the fuck have you been all day?" or "What the hell took you so long to get here?" and pushed her or punched her in the shoulder or jaw. They then engaged in an angry discussion.

7. At some point during the discussion between Chambers and Cemensky, McGuire came over from the bar and asked Cemensky what she wanted to drink. She told him what she wanted and he went back to the bar to get it. Chambers then left Cemensky, went over to McGuire, grabbed him roughly by the neck and told him to get out of the bar.

8. Chambers then apparently returned to his argument with Cemensky. At that point, a regular patron and employee named Larry interceded in an attempt to cool Chambers down. They began to argue and Chambers pushed Larry out the front door where they continued their argument. Some of the people went outside to watch the

fight and they all came back in the front door eventually. At that point, Dzuibak, the owner, told Cemensky and her friends to get out of the bar and they decided to leave by the back door before Chambers could catch them. Just after going out the back door, Cemensky fell or slipped on some ice and cut her hand in the fall. She was sitting there holding her hand as Chambers came out the door. Nelson and McGuire were around her. Nelson told Chambers that Cemensky had been hurt and not to touch her. Chambers pushed Nelson out of the way. McGuire then said something to Chambers. Chambers, in his own words, "went off on him" and hit McGuire, a much smaller man, on the top of the head with his closed fist, which is a technique that Chambers uses with some regularity. Cemensky then pleaded with Chambers, showing him her cut hand in an effort to cool him down. She agreed to go up to his apartment to have him clean up the cut. Nelson walked home, a few blocks away, and McGuire drove Cemensky's car to Nelson's house. While up in Chambers' apartment, Chambers' temper again flared up and he assaulted her a number of times and eventually threw her out the door and pushed her down the stairs. She walked to Nelson's.

9. Nelson and Cemensky then flagged down a police officer on patrol. They reported the assault on Cemensky by Chambers as well as the assaults against McGuire and Larry and the pushing away of Nelson. Ex. 1. The officer, Mark Ficcadenti, then went to the Premises where he interviewed Chambers and Dziubak. He arrested Chambers for domestic assault, assault fifth degree, and possession of marijuana. While conducting a pat-down search of Chambers at the bar, Officer Ficcadenti found a baggy of marijuana in Chambers' pocket. Ex. 1. During the incident at the bar, Dzuibak was not aware of anything happening until he saw Cemensky and Chambers arguing. He then told Cemensky and her friends to leave. After they went out the back door, Dzuibak also went out back and just yelled at everybody there to leave the parking lot. He did not call the police.

10. On April 9, 1995, at approximately 11:30 p.m., Tammy Jackson was working as a bartender at the Premises. Her boyfriend, Douglas Miller, also known as "Buddha" was in the bar that night. Chambers and Dziubak were also present that night and there was a band playing.

11. At some point during the evening, Miller was leaving the bathroom when he hit the door, which made it slam, and broke the door. Dziubak and Chambers went to inspect the source of the noise. Dziubak, who feels that Miller has a hot temper, cautioned Miller to control his temper and accused him of breaking the door. As they left the bathroom area, Dziubak yelled to Jackson to "Control your old man." Miller objected to Dziubak's statement and told him that if he really thought he had broken the door he would return the next day and repair it for him. Dziubak told him to "Just get the fuck out of here." As Miller turned to say good-bye to Jackson, Dziubak grabbed him and physically escorted him across the bar and pushed him out the door. Ex. 2.

12. On April 13, 1995, Miller and Jackson went to the St. Paul Police Department and reported the incident. Ex. 2.

13. On Monday, April 10, 1995, Sindelar, the day manager, was bartending during the afternoon. During that afternoon, two patrons got into an argument in the bar. One of them was a black male named Rashad Khalia. They decided to go out

back with their argument. However, their argument did not escalate to a fight and they returned to the bar with a friend of Khalia's who had arrived. He was Roland Starr, who was also a black male. After some time, Khalia and Starr got into an argument and Sindelar told them they had to leave. Once outside, Starr threw his jacket on the ground and threatened to punch Sindelar. She told him he was no longer welcome in the bar. A short time later, Khalia came back into the bar and talked to Sindelar about the incident. A short while later, Starr arrived and Sindelar told him to leave because he had been barred. He refused. Sindelar then started pushing him toward the door when Starr took a swing at her. At this point, Chambers, who was at the bar, and some patrons jumped on Starr and held him down on the floor until the police arrived. During that scuffle, Starr received a cut lip. When the police did arrive, Sindelar told them that she did not want Starr arrested, but she just wanted him out of the bar and told that he was not to return.

14. That night, Starr went to St. Paul Ramsey Hospital. He reported he had been assaulted at Pebble's Bar and the police were called. He reported to the police that he was the subject of racist remarks at the Premises, that after he and Khalia had left the first time, he went back to get his jacket and that Sindelar told him to get out and called him a nigger. He reported that he continued to try to push her out of the way to get his jacket and that the bouncer then came over, accused him of hitting Sindelar, and then grabbed him and punched him in the mouth. He stated that he was held on the ground until the police arrived. Ex. 3.

15. On May 10, 1995, the Office of City Attorney sent Licensee a Notice of Complaint stating that the City had received complaints regarding the incidents of January 21, April 9, and April 10, 1995, and stating that if Licensee disputed the facts, the hearing would be set before an Administrative Law Judge. Ex. 5. Licensee requested a hearing. The Notice of Hearing was issued by the Office of the City Attorney on August 4, 1995. Ex. 6.

16. Licensee has one prior adverse action. On May 4, 1994, the City Council passed a resolution approving suspension of all licenses for the period of ten days with three days stayed for 18 months commencing on May 29, 1994. That suspension was issued for allowing a lapse in insurance coverage. Ex. 4.

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

CONCLUSIONS

1. The St. Paul City Council and the Administrative Law Judge have jurisdiction in this matter pursuant to Minn. Stat. §§ 14.55 and 340A.415 and St. Paul Legislative Code §§ 310.05 and 310.06. The Notice of Hearing issued by the City was proper and all applicable substantive and procedural requirements have been fulfilled.

2. St. Paul Legislative Code § 310.06 allows adverse action to be taken against a licensee for, among other grounds, violation of any of the provisions of the St. Paul Legislative Code or of any statute, ordinance or regulation reasonably related to the licensed activity.

3. St. Paul Legislative Code § 409.08(5) requires every licensee to be responsible for the conduct of its place of business and to maintain order and sobriety in such place of business. St. Paul Legislative Code § 310.17 makes any act of an employee on the premises or adjoining areas that violates any law a violation by the licensee.

4. The assaultive behavior by Chambers against Cemensky, McGuire and "Larry" that occurred shortly after midnight on January 21, 1995, in the bar, outside the front door of the bar and outside the back door of the bar constitutes a violation of St. Paul Legislative Code § 409.08(5) in that Licensee's employee engaged in the assaultive behavior and Licensee's owner failed to maintain order in the place of business. Dziubak makes strong attempts to control the behavior of his patrons, but in this incident, he failed to protect the safety of some of his patrons. He employed a bouncer known to have a violent temper. Moreover, when this incident began to occur, Dziubak didn't attempt to control Chambers. Instead, he told Cemensky and her friends to leave. In fact, he also told Chambers to get Cemensky and her friends out of the bar. His direction to Chambers was to take his personal problems home and out of the bar. That may well be all he can do for when patrons begin to argue, but he has a greater responsibility when his own employee is doing the assaulting.

5. The incident of April 9, 1995, also constitutes a violation of St. Paul Legislative Code § 409.08(5) in that Dziubak physically threw Miller out of the bar rather than calling the police to assist. The City's evidence submitted through the police report was not strong, but Dziubak did admit at the hearing to "helping him to leave." He then suggested that he must not have hurt him too bad because the patron wants to return to the bar as a customer.

6. The incident of April 10, 1995, does not constitute a violation of St. Paul Legislative Code § 409.08(5). Again, we have only the police report and no direct testimony of the patron who alleges he was assaulted. Moreover, the testimony of the day manager is quite believable as to what happened. This customer was put out of the bar and came back in. When told to leave, he took a swing at the day manager, a woman. Chambers and other patrons jumped on him, roughed him up a bit, and held him down on the floor until the police arrived. That was not an unreasonable response to the situation.

7. St. Paul Legislative Code. § 409.26 establishes a matrix of presumptive penalties. There is no specific provision in the matrix governing the failure to maintain order or to allow assaultive behavior. The Licensing Director recommended that the approximately average penalty of six days for second offenses be imposed for each of the violations, together with the three days suspension previously stayed by the Council.

8. A six-day suspension appears appropriate for the multiple assaultive behaviors involved in the incident of January 21, 1995. The violation of April 9, 1995, of the owner physically throwing the patron out of the bar, does not appear to be as serious. For that reason, a suspension of about four days for that violation would seem more appropriate and consistent with the lesser violations in the matrix. It is also appropriate to impose the three days suspension stayed by the Council previously on condition of no further violations.

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

RECOMMENDATION

IT IS HEREBY RECOMMENDED: that the St. Paul City Council take adverse action against the licenses held by Drink, Inc., d/b/a Pebble's Bar and impose a penalty of ten days suspension for the violations set forth above, together with the three days suspension previously stayed.

Dated this 27th of September, 1995

STEVE M. MIHALCHICK
Administrative Law Judge

Reported: Tape recorded.

NOTICE

Pursuant to Minn. Stat. § 14.62, subd. 1, the City Council is requested to serve its final decision upon each party and the Administrative Law Judge by first class mail.