

Findings by Committee and Recommendation

In the matter of: 2017-2018 Renewal application for Sam’s Riverbank, LLC, Sarmad Naimi as Registered Agent, (herein after referred to as the “Licensee”) “Class B” Fermented Malt Beverage and Intoxicating Liquor Licenses for the premises located at 3700 Northwestern Avenue, Racine, Wisconsin.

Findings of fact:

Based on the testimony of witnesses, arguments of counsel, and exhibits received at the hearing on October 24, 2017, the Committee hereby makes the following findings of fact:

- 1) On September 27, 2017, the Licensee received written notice informing him of the City’s intention not to renew the license and providing him with an opportunity for a hearing, consistent with the requirements of Wis. Stat. § 125.12(3). The notice specifically stated that the reasons for the intended action were based on violations under §§ 125.12(2)(ag)(1) and (2). The notice further informed the Licensee that he was entitled to a hearing in front of the Public Safety and Licensing Committee should he wish to contest the matter, *before* the Common Council takes final action on the license. (See exhibit A).
- 2) On October 2, 2017, the Licensee through his attorney did request such a hearing. On October 10, 2017, the Licensee received written notice informing him that a hearing will be scheduled in front of the Public Safety and Licensing Committee per his request. The notice further stated that he was entitled to appear by counsel at the hearing, produce witnesses and cross examine witnesses. Specifically, the Licensee was informed, “*If* the hearing is held before the committee *and* the allegation is found to be true, the license shall be [denied renewal].” (See Exhibit B). Similarly in the amended notice on October 16, 2017, the Licensee was informed, “*If* the hearing is held before the committee *and* the Common Council, after considering the committee’s report and any arguments presented by the complainant or the licensee, finds the reason for the nonrenewal to be true, or if there is no objection to a report recommending non-renewal, the license shall not be renewed for the 2017-2018 license year. (See Exhibit D).
- 3) Based on Exhibits A, B and D, we find that the Licensee was provided sufficient notice of the potential reasons for non-renewal of the licensee and was informed him of his rights to a hearing, all of which were consistent with the requirements of Wis. Stat. § 125.12(3).
- 4) Based on examination of the Agreement dated June 27, 2017 entered into by the City and the Licensee and arguments of counsel, we find that nothing in the Agreement prohibits the City from exercising any of its right to enforce any provisions of ch. 125 and certainly did not guarantee to the Licensee that he would be granted an alcohol beverage license for the

2017-2018 license year. (See Exhibit E, paragraphs 5(c) and 5(d)). In deciding whether to renew an application for an alcohol beverage license, we must examine the total number of statutory violations at the property over the past year under ch. 125, including any ongoing problems with the property despite any previous attempts by the City to avoid revocation of the license.

- 5) As to the allegation that the Licensee failed to have a qualified agent in violation of §§ 125.04(5) and (6), we find this allegation to be true based on the fact that Sarmad Naimi was and is not a resident of the State of Wisconsin and therefore does not meet the qualifications to hold a license. Testimony from Mr. Naimi himself indicates he owns a house in Michigan, lives there with his wife and children, has done so for at least 7 years, votes in Michigan, pays personal property taxes and personal income taxes in Michigan, and has a Michigan driver's license. Additionally, testimony from Agent Brian Waldherr indicates that Mr. Naimi does not own a home in Wisconsin, does not have a Wisconsin driver's license and does not pay personal property or income taxes in Wisconsin. Counsel's argument that Mr. Naimi spends approximately 7 months out of the year in Wisconsin taking care of his property because he has a significant investment in the Riverside Inn may be true, but it does not convince us that he is a resident of Wisconsin. Accordingly, we find that he does not meet the qualifications for agent under §§ 125.04(5) and (6).
- 6) As to the allegation that on April 4, 2017, there was no agent or person holding an operator's license present on the premises to supervise the sale of alcohol beverages in violation of Wis. Stat. §§125.32(2) and 125.68(2), we find this allegation to be true. Agent Waldherr testified that he inspected the licensed premises on April 4, 2017, and found that there was no one with an operator's license on premise while alcohol was being offered for sale. The Licensee was not on the licensed premises at the time and hence there was no one to supervise the sale of alcohol, in violation of the above sections. Furthermore, there was testimony from Sgt. Hanns Freidel that the Licensee was cited for failure to have an operator's license on premise, to which the Licensee has already pled no contest. By Mr. Naimi's own testimony, he even admitted that there was no one with an operator's license hired for the licensed premises for more than 10 years prior to that. Based on these factors, we find this allegation to be true.
- 7) As to the allegation that the Licensee failed to comply with the closing hour requirements in violation of Wis. Stat. §§125.32(3)(c) and 125.68(4)(c), we find this allegation to be unsubstantiated. Based on the evidence presented, we find these specific allegations to be confusing and the evidence supporting it to be unclear and as such, counsel for the City did not meet its burden here of proving to us that the allegations are true.
- 8) As to the allegation that the Licensee operated under a different trade name than what was stated in their alcohol beverage license and that they failed to notify the City of the change in fact, in violation of § 125.04(3)(h), we find this allegation to be true. Mr. Naimi's own testimony indicates that he was no longer associated with Days Inn, but continued to use that name on the application because it was pre-printed on the application for him. When Mr. Naimi's agreement with Days Inn ended, it was his responsibility to notify the City

Clerk of that change and to ensure that the application was accurate before signing and swearing to it. Based on Exhibits 1 and 2 and coupled with Mr. Naimi's testimony, we find this allegation to be true.

- 9) As to the allegation that the Licensee failed to provide a notice of change of the premises in violation of § 125.04(3)(h), we find this allegation to be true. The testimony of Dottie-Kay Bowersox revealed that the restaurant had been closed since 2011, and that the bar and lounge area had also been closed for years. Agent Waldherr testified that the bar was not open and that the lounge area was under construction. Yet up through his 2016-2017 license application, the specific licensed premises within the two story brick building is described on the application as "lounge and bar area on the ground floor, deck and outside area." Testimony from both Agent Waldherr and Mr. Naimi indicates that alcohol was not being sold from the closed bar or lounge area, but rather, from behind the counter in the lobby area, which is not part of the licensed premises. As such, we find that the Licensee violated ch. 125 by failing to notify the municipality of the change in premises.
- 10) As to the allegation that the Licensee and/or his agents were selling, storing and allowing consumption of alcoholic beverages outside of the licensed premise as particularly described in the application, in violation of §§ 125.26(1) and/or (3), we find this allegation to be true for the same reasons as described in paragraph 9 above. We note that Mr. Naimi's own testimony supports the finding that he was selling and storing beer from behind the front counter. The fact that he testified to only selling a small amount of beer, according to him, does not negate the violation of selling alcohol outside of the licensed premises.
- 11) As to the allegation that the Licensee keeps or maintains a disorderly or riotous, indecent or improper house in violation of § 125.12(2)(ag)(2), we find this allegation to be true. Sgt. Hanns Freidel testified to the sheer number of police calls at the property, the most problematic of which concern fights, disorderly conduct, and other violent offenses. The volume of calls not only exhausted police resources but were also far higher than for other comparable properties. Sgt. Freidel testified that since July 1, 2016, there have been a total of 117 calls where police have responded to the property. He further stated that for that same time period, the Doubletree hotel which also has a bar and restaurant serving alcohol, only had 23 calls. The concern for this becoming a nuisance property within the neighborhood was further highlighted by the testimony of Jay Matter, who indicates that he fears for the safety concerns of his wife and kids due to the violent nature of offenses occurring at the property. Mr. Matter testified that and Sgt. Freidel confirmed that as recently as August of 2017, there was a stabbing at the hotel. This to us highlights the ongoing problems at the property, which did not stop in June with the Agreement between the City and the Licensee.
- 12) In addition to the number of police calls to the area, the testimony of Dottie-Kay Bowersox indicates that there have been multiple health code violations at the property over an extended period of time. (See exhibit E) Although some of these violations had been abated, Ms. Bowersox indicates that there are current outstanding orders for the property.

- 13) Based on the volume and nature of police calls to the area and multiple health code violations at the premises, we find that there are substantial concerns for public health and safety for both the guests staying in the hotel and the surrounding neighbors. As such, we find that the property is being operated in such a way as to constitute a disorderly or riotous, indecent or improper house in violation of the statute.

Conclusions of law:

Based on the above findings of fact, the Committee further finds that the City has met its burden of proving that the Licensee has violated multiple provisions of Wis. Stat. § 125.12(2)(ag), which constitute grounds for nonrenewal of the license:


- a) The Licensee has violated multiple sections of ch. 125 of the Wisconsin Statutes and ch. 6 of the City of Racine Code of Ordinances, contrary to § 125.12(2)(ag)(1). These include failing to have a person with an operator's license on premise contrary to § 125.32(2) and 125.68(2), operating under a different trade name than what was stated in the alcohol beverage license and failing to notify the City of such change contrary to § 125.04(3)(h), failing to provide a notice of change in the premises contrary to § 125.04(3)(h), and selling, storing or allowing consumption of alcohol beverages outside of the licensed premise as particularly described in the application contrary to §§ 125.26(1) and (3).
- b) The Licensee keeps or maintains a disorderly or riotous, indecent or improper house, contrary to § 125.12(2)(ag)(2).
- c) The Licensee fails to meet the qualifications required under ch. 125 to hold the license, contrary to § 125.12(2)(ag)(4).

Recommendation regarding license:

In light of the above findings, the Committee hereby recommends to the Common Council that the Licensee's Class B fermented malt beverage and intoxicating liquor renewal licenses for the 2017-2018 license year be denied renewal.

Dated this 25 day of October, 2017.

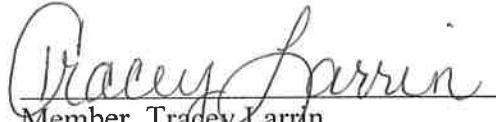
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