

New Hampshire Liquor Commission

Robert J. Hart Building, 50 Storrs Street, Concord, NH 03301



Joseph W. Mollica
Chairman

**Nicole Brassard
Jordan**
Deputy Commissioner

Decision and Order

Petition in the Matter of

Cheers & Beers, LLC
1055 Elm Street
Manchester, NH 03101

HEARING DATE: November 10, 2021
LICENSE #: 1623603
LICENSE TYPE #: Beverage, Wine, Liquor
DOCKET #: 2021-Liq-0021

AUTHORITY: RSA 178:2, 179:20, 179:27,
179:51, 179:50, 179:56, III(c),
179:57, 541-A:30, III, RSA 541-
A:31-36, RSA 179:57
Liq 200 seq., et al., 603.02,
603.03

STATE PROSECUTOR: Lt. Danielle Ellston
Division of Enforcement & Licensing

STATE PETITIONER: Sgt. Benjamin Williams
Division of Enforcement & Licensing

LICENSEE: Mr. Alan Simons

REPRESENTATIVE: Attorney Mark Sisti, Esq.

OTHERS PRESENT: Sgt. Ashley Holmes, Nancy Couture, Investigative Paralegal,
Investigators Jacob Hardwick & Kris Mosgrober, Div. of
Enforcement & Licensing (observing), Taylor Snow, General
Manager and witness for Cheers & Beers, LLC.

HISTORY:

Pursuant to a letter dated September 26, 2021 from Lt. Danielle Ellston of the Division of Enforcement & Licensing, Licensee Alan Simons of Cheers & Beers, LLC., was put on notice that Chairman Joseph Mollica of the New Hampshire Liquor Commission issued a 24-hour emergency suspension of the liquor license pursuant to RSA 179:56, III(c). The suspension was due to a patron being shot with a firearm inside the licensed premises by another patron on September 25, 2021. An investigation into the shooting by Sgt. Benjamin Williams of the Division of Enforcement & Licensing led to Administrative Notices of Agency Action for violations of RSA 178:2, 179:20, 179:27, 179:50 and 179:51. By letter dated September 27, 2021 from Chairman Joseph Mollica, Licensee Alan Simons was notified liquor license #1623603 was immediately suspended pursuant to RSA 541-A:30, III, and a hearing was scheduled to be held on October 8, 2021 at 10:00 A.M. Docket Number 2021-Liq-0021 was assigned and is referenced within this justification.

The licensee waived service in-hand/certified mail pursuant to Liq 205.04 and 205.12 and accepted service via electronic mail. In order to allow time to obtain counsel and prepare for the hearing, the licensee requested a continuance and waived his right to a hearing within 10-days. A new hearing date was scheduled to be held on November 5, 2021 at 10:00 A.M. On November 4, 2021, the Division of Enforcement filed an assented motion to continue due to the State Prosecutor not being able to appear at the commission because she exhibited symptoms consistent with the Corona virus. The request was granted and the hearing was rescheduled to be held on November 10, 2021 at 1:30 P.M. A pre-hearing invitation and notice of hearing was served on counsel for the licensee, Mark Sisti, Esq.

Mr. Joseph S. Plaia, Chief Hearings Officer, conducted the Hearing at the New Hampshire Liquor Commission, 50 Storrs Street, Concord, NH, as designee on behalf of Chairman Joseph W. Mollica, New Hampshire Liquor Commission.

OPENING REMARKS:

Everyone present was informed of the following either on the record or in the Notice of Hearing:

- The Notice of Hearing was referenced advising an adjudicatory hearing would be conducted in accord with RSA 541-A:30, III and Administrative Rule Liq 205.12 Notice and Conduct of Hearings including, but not limited to: that the petition and all supporting documents shall be available for review.
- That the hearing is recorded.
- The opportunity for each participant to present testimony at the hearing, explaining that persons shall give an oath or affirmation

and state their name and for the record; Liq 205.06 Appearance before the Commission.

- That either party if discontent with the decision would have an opportunity to appeal for a rehearing, referencing RSA 541:3.

PROCEDURAL INQUIRY:

After receiving notice that the respondent may have an attorney present to represent him, Mr. Alan Simons appeared with Attorney Mark Sisti, Esq.

OFFICIAL NOTICE:

- The Scope of Hearing and published authority within the Notice of Hearing issued to the Respondent.
- The respondent acknowledged receipt of the Division of Enforcement's file, witness list and exhibits.
- The State acknowledged receipt of the licensee's 's witness list and exhibits.

EXHIBITS:

Petitioner

Exhibit #01 AN #6436 for a violation of RSA 179:51 (stipulated);

Exhibit #02 ANs 6438, 6439, 6440, and 6441 for violations of RSA 179:20, RSA 179:27179:50 and 178:2, (stipulated);

Exhibit #03 Emergency Suspension Letter dated September 26, 2021 (not stipulated);

Exhibit #04 Immediate Suspension Letter dated September 27, 2021 (not stipulated);

Exhibit #05 Form LTS-3R-ON – MTS Designation, (not stipulated).

Respondent

Exhibit #1 Updated Protocols for Cheers & Beers executed on November 3, 2021;

Exhibit #2 M.T.S. Certificate for Manager Taylor Snow;

Exhibit #3 M.T.S. Certificate for Owner Alan Simons.

SYNOPSIS OF TESTIMONY:

The parties met for the pre-hearing conference without the presence of the Chief Hearings Officer. Following the pre-hearing, the licensee admitted to each of the alleged violations and stipulated to admit into evidence exhibits 1 & 2, the Administrative Notices of Agency Action against Cheers & Beers, LLC. The parties advised the only matter in dispute was consideration of penalties.

By way of proffer, Lt. Ellston stated that on September 25, 2021, a fight between patrons occurred on the premises of Cheers & Beers. Security escorted one of the patrons from the premises, who immediately returned and fired a weapon at the other patron, striking and injuring him. The Division of Enforcement was notified by the Manchester Police Department of the shooting. During the investigation into the shooting, a violation of RSA 179:51, Sgt. Williams observed additional violations consisting of allowing employees to consume alcoholic beverages contrary to RSA 179:20, allowing patrons to self-serve liquor from liquor bottles contrary to RSA 179:27, allowing patrons to smoke inside the licensed premises contrary to RSA 179:50, and management failing to attend a management training seminar within 45 days of the issuance of a license contrary to RSA 178:2. Lt. Ellston further stated the licensee had been issued his license on August 11, 2021 and the incident occurred on September 25, 2021, only a month and a half later. Finally, Lt. Ellston reported the food to beverage sales ratio was a concern as there was only \$3,796 in food sales compared to \$115,535 in sales of alcohol during that time. Another concern of Lt. Ellston's is that the manager at the time of the incident, Mr. Edwin Pares is a convicted felon, and is listed as an owner on the new business plan submitted by the licensee.

By way of proffer, Attorney Sisti stated that when the incident occurred a Mr. Edwin Pares was the general manager at the time of the incident, and since, Ms. Taylor Snow has been promoted from bartender to general manager. He stated Ms. Snow responded immediately to the incident, providing first aid to the victim until medical personnel arrived. Attorney Sisti stated that Mr. Pares is no longer a manager and does not work for the business.

Mr. Simons testified this was a new career for him and had no previous restaurant experience. He further testified he promoted Ms. Snow to the General Manager position because she has over 15 years of experience in the industry, and would be hiring all new security, and enlist the assistance of off-duty Manchester Police Officers as security as well. He further testified that they were implementing new policies across the board including but not limited to vaping, physical

altercations, staffing, bottle service and a no tolerance policy for employee drinking.

Ms. Snow testified that she had over 15 years of experience in the service industry and was previously a manager at Veano's in Concord, NH. She testified that she would educate Mr. Simons on how to run an establishment in the service industry, will assist in implementing the new policies and correct issues that led to the incident in question. She stated the area where the incident occurred was near the entrance and was set up like a VIP lounge, and she planned to change that to more tables for food service so it had more of a restaurant feel, was adding door dash among other things to correct the issue of food to beverage sales ratio and had already let several employees go. She testified she hired a new head of security and new security personnel, servers and is implementing a new menu. She further testified on the night of the incident, they were understaffed as some employees called out at the last minute. In the future, if the establishment is short staffed they will limit the number of patrons to ensure a safe environment.

Attorney Sisti, Mr. Simons and Ms. Snow all stated that Mr. Pares is now only an investor, comes to the establishment as a patron and has no duties, does not work in, or make decisions regarding the licensed establishment.

LEGAL ANALYSIS:

In gathering findings of fact, the following is considered:

Pursuant to Revised Statutes Annotated Title XIII ALCOHOLIC BEVERAGES, Chapter 175 through and including Chapter 180 (as applicable) along with New Hampshire Code of Administrative Rules, Liq. 100 through and including Liq. 500 (et seq.) defines and controls fact-finding, formulation of a Conclusion of Law, and Disposition.

RELEVANT STATUTES

178:2 Licenses Authorized; Training Required. –

I. The commission may issue licenses to individuals, partnerships, limited liability companies and partnerships, or corporations but not to unincorporated associations, on applications duly made therefor for the manufacture, warehousing, sale, offer for sale, or solicitation of orders for sale of liquor or beverages and for retail sales of tobacco products or e-cigarettes within the state, subject to the limitations and restrictions imposed by this title. The commission shall keep a full record of all applications for licenses, of all recommendations for and remonstrances against the granting of licenses, and of the action taken on such applications.

II. Notwithstanding any other provision of law, the commission shall require all persons who hold a retail license under the provisions of this chapter to attend a

training program within 45 calendar days of the issuance of the license. These provisions shall not apply to any person who holds a retail license on the effective date of this paragraph. The commission shall provide the training program without additional fees or cost to the licensee. The commission shall adopt rules, pursuant to RSA 541-A, relative to the administration of the training program.

III. The commission shall develop and provide a training program which shall include, but not be limited to, information on state law, alcohol sales practices, criminal and civil liability, and management practices which are intended to reduce access to alcohol by persons under the age of 21 and overservice of alcohol to patrons.

IV. (a) Within 45 days of the issuance of a retail license, the training program shall be attended by:

(1) The proprietor of a sole proprietorship or a manager designated by the proprietor to attend in lieu of the proprietor.

(2) All partners in a partnership or a manager designated by the partners to attend in lieu of the partners.

(3) An officer of a corporation or a management representative designated by the corporation to attend in lieu of an officer.

(4) A member of a limited liability company or a manager designated by the limited liability company to attend in lieu of a member.

(b) Prior to the effective date of a one-day license, the training program shall be attended by a management representative of the applicant. If 2 or more one-day licenses are issued to the same applicant during any 12-month period, the management representative of the applicant shall be required to attend the training program only once during that 12-month period.

V. The commission may suspend, pursuant to RSA 541-A:30, III, the license of any person who holds a license under the provisions of this chapter for failure to comply with the requirements of paragraph IV. The license shall not be reissued until the required training is completed.

179:20 Employee Restrictions. –

I. No person, except a citizen of the United States or legal resident alien, shall be employed to sell or deliver any liquor or beverage.

II. No on-premises or off-premises licensee shall consume beverage or liquor while working. No employee, as defined in RSA 275:4, II, shall consume beverage or liquor while working. For the purposes of this paragraph the term "employee" shall not include "dancer" as defined by RSA 179:19, I(a) or "entertainer" as defined by RSA 179:19, I(b).

179:50 Unlawful Purpose. –

No licensee shall use, or allow to be used, his or her premises for any purpose contrary to law.

179:51 Lighting and Conduct Requirements for On-Premises Licensees. –

Holders of on-premises licenses shall conduct their premises in an orderly manner at all times, and the premises shall be well lighted.

179:57 Suspension or Revocation; Administrative Fines. –

I. The commission shall cause frequent inspections to be made of all the premises with respect to which any license has been issued under the provisions of this title. If any licensee violates any of the provisions of law or any of the rules of the commission adopted under this title or fails to superintend in person or through a manager approved by the commission the business for which the license was issued or allows the premises with respect to which the license was issued to be used for any unlawful purposes or knowingly designates to be in charge of the premises any person who has been convicted of a felony, unless the person has been approved by the commission pursuant to RSA 179:23, V, or otherwise fails to carry out in good faith the purposes of this title or if the premises are regularly the site of violence the license of such licensee may be suspended or revoked after notice and hearing, in accordance with RSA 541-A:31-36. Notwithstanding any other provisions of this chapter, the commission after the appropriate hearing may impose a fine of a specific sum, which shall not be less than \$100 nor more than \$5,000 for any one offense. Such a fine may be imposed instead of, or in addition to, any suspension or revocation of a license by the commission.

I-a. Notwithstanding any other provision of law, the commission may accept at any time, a petition from the governing body of a city or town who has voted to accept the provisions of RSA 663:5, I(b), (c) and (d), to revoke a license to sell alcoholic beverages held by a licensee who is located within that community. Any petition filed under this paragraph shall state with particularity all relevant facts and circumstances that sustain the opinion of the petitioner to revoke a license. A licensee against whom a petition is filed shall be entitled to a public hearing before any decision by the commission. All proceedings conducted in conjunction with this paragraph shall conform to the requirements of RSA 541-A.

II. Appeals from a decision of the commission shall be in accordance with RSA 541.

III. The commission shall, upon notification by the commissioner of the department of revenue administration of a tobacco tax violation, suspend or revoke any tobacco license issued under RSA 178. Any challenge to such suspension or revocation shall be made to the commissioner of the department of revenue administration.

541-A:30 Agency Action Against Licensees.

I. If a timely and sufficient application has been made in accordance with agency rules for renewal of a license for any activity of a continuing nature that does not automatically expire by law, the existing license shall not expire until the agency has taken final action upon the application for renewal. If the agency's final action is unfavorable, the license shall not expire until the last day for seeking judicial review of the agency's action, or a later date fixed by the reviewing court.

II. An agency shall not revoke, suspend, modify, annul, withdraw, or amend a license unless the agency first gives notice to the licensee of the facts or conduct upon which the agency intends to base its action, and gives the licensee an opportunity, through an adjudicative proceeding, to show compliance with all lawful requirements for the retention of the license.

III. If the agency finds that public health, safety or welfare requires emergency action and incorporates a finding to that effect in its order, immediate suspension of a license may be ordered pending an adjudicative proceeding. The agency shall commence this adjudicative proceeding not later than 10 working days after the date of the agency order suspending the license. A record of the proceeding shall be made by a certified shorthand court reporter provided by the agency. Unless expressly waived by the licensee, agency failure to commence an adjudicative

proceeding within 10 working days shall mean that the suspension order is automatically vacated. The agency shall not again suspend the license for the same conduct which formed the basis of the vacated suspension without granting the licensee prior notice and an opportunity for an adjudicative proceeding.

RSA 541-A:31 Availability of Adjudicative Proceeding; Contested Cases; Notice, Hearing and Record.

I. An agency shall commence an adjudicative proceeding if a matter has reached a stage at which it is considered a contested case or, if the matter is one for which a provision of law requires a hearing only upon the request of a party, upon the request of a party.

II. An agency may commence an adjudicative proceeding at any time with respect to a matter within the agency's jurisdiction.

III. In a contested case, all parties shall be afforded an opportunity for an adjudicative proceeding after reasonable notice. The notice shall include:

- (a) A statement of the time, place, and nature of the hearing.
- (b) A statement of the legal authority under which the hearing is to be held.
- (c) A reference to the particular sections of the statutes and rules involved.
- (d) A short and plain statement of the issues involved. Upon request an agency shall, when possible, furnish a more detailed statement of the issues within a reasonable time.

(e) A statement that each party has the right to have an attorney present to represent the party at the party's expense.

(f) For proceedings before an agency responsible for occupational licensing as provided in paragraph

VII-a, a statement that each party has the right to have the agency provide a certified shorthand court reporter at the party's expense and that any such request be submitted in writing at least 10 days prior to the proceeding.

IV. Opportunity shall be afforded all parties to respond and present evidence and argument on all issues involved.

V. (a) Unless precluded by law, informal disposition may be made of any contested case, at any time prior to the entry of a final decision or order, by stipulation, agreed settlement, consent order or default.

(b) In order to facilitate proceedings and encourage informal disposition, the presiding officer may, upon motion of any party, or upon the presiding officer's own motion, schedule one or more informal prehearing conferences prior to beginning formal proceedings. The presiding officer shall provide notice to all parties prior to holding any prehearing conference.

(c) Prehearing conferences may include, but are not limited to, consideration of any one or more of the following:

- (1) Offers of settlement.
- (2) Simplification of the issues.
- (3) Stipulations or admissions as to issues of fact or proof, by consent of the parties.
- (4) Limitations on the number of witnesses.
- (5) Changes to standard procedures desired during the hearing, by consent of the parties.
- (6) Consolidation of examination of witnesses by the parties.
- (7) Any other matters which aid in the disposition of the proceeding.

(d) The presiding officer shall issue and serve upon all parties a prehearing order incorporating the matters determined at the prehearing conference.

VI. The record in a contested case shall include all of the following that are applicable in that case:

- (a) Any prehearing order.
- (b) All pleadings, motions, objections, and rulings.
- (c) Evidence received or considered.
- (d) A statement of matters officially noticed.
- (e) Proposed findings and exceptions.
- (f) Any decision, opinion, or report by the officer presiding at the hearing.
- (g) The tape recording or stenographic notes or symbols prepared for the presiding officer at the hearing, together with any transcript of all or part of the hearing considered before final disposition of the proceeding.
- (h) Staff memoranda or data submitted to the presiding officer, except memoranda or data prepared and submitted by agency legal counsel or personal assistants and not inconsistent with RSA 541-A:36.
- (i) Matters placed on the record after an ex parte communication.

VII. The entirety of all oral proceedings shall be recorded verbatim by the agency. Upon the request of any party or upon the agency's own initiative, such record shall be transcribed by the agency if the requesting party or agency shall pay all reasonable costs for such transcription. If a transcript is not provided within 60 days of a request by a person who is a respondent party in a disciplinary hearing before an agency responsible for occupational licensing, the proceeding shall be dismissed with prejudice. Any party may record an oral proceeding, have a transcription made at the party's expense, or both, but only the transcription made by the agency from its verbatim record shall be the official transcript of the proceeding.

VII-a. At the request of a party in any oral proceeding involving disciplinary action before an agency responsible for occupational licensing except for an emergency action under RSA 541-A:30, III, the record of the proceeding shall be made by a certified shorthand court reporter provided by the agency at the requesting party's expense. A request shall be submitted to the agency in writing at least 10 days prior to the day of the proceeding.

VIII. Findings of fact shall be based exclusively on the evidence and on matters officially noticed in accordance with RSA 541-A:33, V.

Selected Administrative Rules

Liq 206.02 Commission Consideration.

(a) The commission shall hear and/or view any testimony or evidence offered by the prosecuting investigator, the licensee, and by all witnesses.

(b) The commission, when hearing testimony or evidence regarding a violation of a statute or an administrative rule, shall consider any aggravating factor or mitigating factor which is offered in any defense or prosecution, as required by RSA 179:56 III (a) in determining any administrative action or penalty.

(c) Aggravating factors for violations as defined by Liq 601.03(x), shall include:

- (1) The failure to train employees in liquor education classes;
- (2) The failure to have adequately trained managers;
- (3) The failure to take advantage of education classes offered by the bureau of enforcement;
- (4) The failure to have any training with regard to RSA Title XIII requirements for an employee;
- (5) The failure to request identification of a person who appears younger than age 21 before sale of alcoholic beverage;

- (6) Service of more than 4 drinks in an hour, or 6 drinks total, to a person who becomes intoxicated;
- (7) The failure to detect poor quality identification documents as being false;
- (8) The reckless serving of alcohol to a person under age 16 years;
- (9) Serving a minor who is legally intoxicated;
- (10) Failure to monitor the quantity of alcohol served to a patron;
- (11) The active encouragement of intoxicated patrons to consume more alcohol;
- (12) The service of alcohol to a patron that is so continuous and excessive that it creates a risk of death by alcohol poisoning;
- (13) Actively assisting by a person of a patron into a motor vehicle when the patron is so intoxicated as to need assistance, when he knows or should have known that the intoxicated person will operate the motor vehicle;
- (14) The failure to properly manage the premises, such as allowing over crowding, unaccompanied minors in lounges, standees to drink, lack of effort to clear aisles, or areas of ingress or egress and blocked fire exits;
- (15) The failure to take corrective action on previously cited violations;
- (16) A culpable mental state, as defined by RSA 626:2, II, General Principles, of the New Hampshire Criminal Code shall be an aggravating factor when "purposefully" or "knowingly" is proved;
- (17) A violation of RSA 179:5 when it conforms to the provisions of RSA 507-F:4, II, III, & IV or RSA 507-F:5, III;
- (18) Negligent or reckless service of alcoholic beverages pursuant to RSA 507-F:4 and RSA 507-F:5; and
- (19) Any factor which increases the hazard to public safety and which is due to the sale or consumption of alcoholic beverages.

(d) Mitigating factors for violations as defined by Liq 601.03 (x) shall include but not be limited to:

- (1) The licensee having no record of like violations;
- (2) The licensee having no record of any violation;
- (3) The licensee admitting to problems detected and taking steps to rectify the situation;
- (4) The documented attendance of the licensee's personnel at a commission sponsored educational program as provided by RSA 507-F:6, III & VI;
- (5) Implementing training for managers to make them aware of the liquor laws and rules;
- (6) Maintaining an adequate number of trained employees to supervise the sale and consumption of alcoholic beverages on the premises to assure compliance with the liquor laws and rules;
- (7) The licensee has requested a liquor education program, not yet conducted, when the problem occurred;
- (8) A new employee with instruction from management, but not having attended a liquor education program;
- (9) Established management policies of ensuring persons of questionable age are checked as to age before service of alcohol;
- (10) Training for those checking IDs in the detection of false or altered documents;
- (11) Publicizing responsible service of alcohol;
- (12) Encouraging patrons not to drink too much;
- (13) Encouraging patrons to consume non-alcoholic beverages or food;
- (14) Encouraging patrons to use alternate forms of transportation;
- (15) The display of any correct form of identification in any sale or attempted purchases of alcoholic beverages as outlined by RSA 179:7 and RSA 179:8;
- (16) The physical appearance of any person, and the prudent application of reasonableness to an estimation of age as required by RSA 179:7 and RSA 179:8;

- (17) Service of alcoholic beverage for a violation of RSA 179:5 shall be considered mitigating if RSA 507-F:4, V, VI, and VII apply; and
- (18) Responsible business practices pursuant to RSA 507-F:6.
- (19) Service of only one drink to a person who becomes intoxicated.

(e) The commission or presiding officer shall decide each case after the hearing is closed by a preponderance of the evidence.

Liq 603.02 Penalties After Commission Hearings.

After hearing all evidence regarding a violation and considering all aggravating and mitigating factors presented, the commission shall:

(a) Determine, based on the preponderance of evidence presented at hearing, whether the violation alleged in the report of violation occurred; and:

(1) If the violation was not proven, order the licensee record cleared of the allegation and all records of the charge removed from the licensee file; or

(2) If the violation was proven:

- a. Consider the aggravating and mitigating factors presented;
- b. Consider the licensee's record of past violations;
- c. Consider the danger posed to public health and safety by the violation; and
- d. Consider any adverse impact of the licensee's business as operated on the community; and

(b) Impose an appropriate penalty considering all circumstances, subject to the limitations of RSA 179:57, I.

LEGAL ANALYSIS ~ DISCUSSION:

After carefully considering the exhibits, testimony presented, Findings of Fact are issued (Infra).

FINDINGS OF FACT:

1. A hearing was held on November 10, 2021 at approximately 1:30 P.M. on the Order of Suspension by Chairman of the New Hampshire Liquor Commission, Joseph W. Mollica, and conducted pursuant to RSA 541-A:30, III; and Administrative Rule, Liq 205.06-12 at the Headquarters of the New Hampshire Liquor Commission, 50 Storrs Street, Concord, NH.

2. Specifically, it has been stipulated the licensee failed to conduct the premise in an orderly fashion in that an altercation led to a patron being shot by another patron with a firearm contrary to RSA 179:51, that employees consumed alcoholic beverages while working contrary to RSA 179:20, that patrons were allowed to self-serve themselves liquor from bottle service bottles contrary to RSA 179:27, that patrons were permitted to smoke (vape) inside the premise contrary to RSA 179:50, and that management/ownership failed to complete the required

management training seminar within 4 days of the issuance of a license contrary to RSA 178:2. .

3. The respondent was provided with the Emergency Notice of Suspension and received it via email waiving their right to in-person or service by certified mail. The notice informed the respondent his license was suspended pursuant to RSA 541-A:30, III and the hearing would be conducted in accordance with Liq 205.11.

5. Since the licensing of the establishment, multiple violations occurred within a short period of time and there is justified concern regarding the licensee being able to comply with the laws of Title XIII and the Rules of the New Hampshire Liquor Commission. Further, the alcohol to food sales ratio is extremely disproportionate.

I recommend that the following Conclusion of Law be approved based upon the Findings of Fact listed within this report.

Respectfully,

Joseph S. Plaia
Chief Hearing Officer

CONCLUSION OF LAW:

The Petitioner has presented **sufficient proof** to sustain Chairman Mollica's suspension pursuant to RSA 541-A:30, III.

DISCUSSION - DISPOSITION:

The Petitioner alleges that Cheers & Beers License# 1623603 has produced an atmosphere that is detrimental to the health and safety of the public as a result of the investigation into the shooting that occurred inside the premise on September 25, 2021. The investigation revealed, and the licensee has stipulated to the following violations: failing to maintain an orderly premise contrary to RSA 179:51, allowing employees to consume alcoholic beverages contrary to RSA 179:20, allowing patrons to self-serve liquor from liquor bottles contrary to RSA 179:27, allowing patrons to smoke inside the licensed premises contrary to RSA 179:50, and management failing to attend a

management training seminar within 45 days of the issuance of a license contrary to RSA 178:2.

The licensee admits to having a lack of experience in the service industry, and acknowledges the policies in place at the time of the incident were inadequate. As a result, the licensee has replaced the general manager with Ms. Snow, who has over 15-years of experience in the service industry, has hired a new chief of security, new security staff, has terminated employees responsible for the consuming of alcohol violations, and has updated its policies and business plan to address the Division of Enforcement's concerns.

It is also concerning that there was conflicting information presented during the hearing regarding the status of Mr. Edwin Pares' involvement in the licensed establishment. Lt. Ellston proffered that Mr. Pares is a convicted felon, and no request for a felon waiver was submitted to the Division of Enforcement & Licensing. Although Mr. Simons and Ms. Snow testified he is now only an investor, is no longer a manager, and will not be involved with the operations of the licensed establishment going forward, he is listed as an owner on licensee's exhibit "A" with a date of November 3, 2021. It is further unclear whether or not Mr. Pares' felony conviction is merely possession or if it was for distribution of controlled substances. Whether or not Mr. Pares is involved with the business, he is listed as an owner on the business plan, and has money invested in the licensed establishment. This needs to be clarified so the licensee, Mr. Pares and the Division of Enforcement are aware of his status and whether or not he could be eligible for a felon waiver in the future.

The Division of Enforcement recommends license revocation. Liq. 603.02 is relevant to the Division's request, as generally it states if the violation was proven, and in consideration of the danger posed to public health and safety by the violation, the commission shall impose an appropriate penalty considering all circumstances, subject to the limitations of RSA 179:57, I. See generally N.H.Liq.R. 603.02. 179:57 provides that . . ." If any licensee violates any of the provisions of law or any of the rules of the commission adopted under this title or fails to superintend in person or through a manager approved by the commission the business for which the license was issued or allows the premises with respect to which the license was issued to be used for any unlawful purposes or knowingly designates to be in charge of the premises any person who has been convicted of a felony, unless the person has been approved by the commission pursuant to RSA 179:23, V, or otherwise fails to carry out in good faith the purposes of this title

or if the premises are regularly the site of violence the license of such licensee may be suspended or revoked after notice and hearing, in accordance with RSA 541-A:31-36. Notwithstanding any other provisions of this chapter, the commission after the appropriate hearing may impose a fine of a specific sum, which shall not be less than \$100 nor more than \$5,000 for any one offense. Such a fine may be imposed instead of, or in addition to, any suspension or revocation of a license by the commission." See N.H.Rev.Stat.Ann. 179:57, I.

In the past, the commission has revoked licenses in which the danger posed to public health and safety was evident, however in those cases there was also a finding those premises were regularly the site of violence, and some of those included circumstances involving firearms. When this hearings officer has imposed such a penalty, evidence was presented showing multiple incidents and calls for service over a period of time. Although that penalty is available and may be appropriate, given the isolation of one incident and the plan proposed by the licensee going forward, I am going to grant an opportunity for Cheers & Beers to retain their license.

Penalty

Pursuant to the authority granted by RSA 179:57 license #1623603 is hereby revoked. However, the revocation shall be held in abeyance for a period of one year on the following conditions and limitations:

1. The licensee's hours of service of alcoholic beverages shall be reduced to no later than 11:00 P.M. for a period of thirty days to allow the licensee adequate time to implement their new policies, new menu, their partnership with "door dash" and adequately train employees.
2. At the end of the 30-day period, the licensee shall provide the Division of Enforcement & Licensing proof of sales documentation showing the food to beverage sales ratio is either 50%/50% or that food sales are projected to reach \$75,000 annually. Following the initial 30 days, the licensee shall provide this documentation quarterly.
3. All employees selling or serving alcoholic beverages shall complete TEAM training within 45 days, and future employees shall complete TEAM training within 45 days of their start date during the one-year period. It shall be the licensee's responsibility to notify the Division of enforcement of new employees required to take this training and proof of its completion.

4. All employees with front of house management responsibilities shall complete MTS training within 45 days and all future employees with front of house management responsibilities shall complete MTS training within 45 days if their start date during the one-year period. It shall be the licensee's responsibility to notify the Division of enforcement of new employees required to take this training and proof of its completion.
5. Mr. Edwin Pares shall not be an owner, manager or have any responsibilities in the operation of the licensed establishment unless and until it can be shown he is eligible for a felon waiver and receives one from the Division of Enforcement & Licensing, or until his record is annulled. For the time being, his status is limited to a silent investor, as represented by Attorney Sisti, Mr. Simons and Ms. Snow. The licensee shall provide proof of the business arrangement between he and Mr. Pares to the Division of Enforcement & Licensing within 30 days. Should no such proof exist, Mr. Simons shall provide an affidavit confirming Mr. Pares has no controlling ownership interest and no management/person in charge responsibilities for the licensed establishment.
6. The licensee shall not commit any like violations during the one-year period, including but not limited to RSAs 178:2, 179:20, 179:27, 179: 50, 179:51, 179:5, 178:3 and 178:21.
7. The licensee shall comply with the Updated Management Protocols submitted as Licensee Exhibit "A" (copy attached).
8. Failure to comply with any of the limitations and conditions of this decision and order during this one-year period will result in the hours of sale and service of beverages and liquor to be reduced to 10:00pm immediately upon written notification from the Division, and will remain in effect until such case is adjudicated. If such violation is proved by the Division of Enforcement, after a hearing the imposition of a fine of a minimum of \$2,000, not to exceed \$5,000, and immediate license revocation will be imposed.

So Ordered this 18th day of November 2021



Joseph S. Plaia, Chief Hearings Officer



NEW HAMPSHIRE

Liquor Commission

APPEAL FROM ADMINISTRATIVE HEARING:

Please be advised of your right to appeal the decision of the Liquor Commission pursuant to RSA Chapter 541. 541:3 Motion for Rehearing.

"WITHIN 30 DAYS AFTER ANY ORDER OR DECISION HAS BEEN MADE BY THE COMMISSION, ANY PARTY TO THE ACTION OR PROCEEDING BEFORE THE COMMISSION, OR ANY PERSON DIRECTLY AFFECTED THEREBY, MAY APPLY FOR A REHEARING IN RESPECT TO ANY MATTER DETERMINED IN THE ACTION OR PROCEEDING, OR COVERED OR INCLUDED IN THE ORDER, SPECIFYING IN THE MOTION ALL GROUNDS FOR REHEARING, AND THE COMMISSION MAY GRANT SUCH REHEARING IF IN ITS OPINION GOOD REASON FOR THE REHEARING IS STATED IN THE MOTION."

I certify that a copy of the Report of the Hearings Officer has been forwarded to the below named via certified mail as applicable:

Date: November 19, 2021

Wendy Olcott

CC:

Chief Mark Armaganian
Division of Enforcement & Licensing

Mark Sisti, Esq.

Sisti Law Offices
Via email: info@sistilawoffices.com
dwilliams@sistilawoffices.com