



DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL

LOUISVILLE, KY

CRAIG GREENBERG

MAYOR

BRADLEY SILVERIA

DIRECTOR

ADMINISTRATIVE ACTION NO. ENF-ABC-24-04525

IN THE MATTER OF:
LOUISVILLE METRO ALCOHOLIC BEVERAGE CONTROL (ABC)
COMPLAINANT

v.

MARKET STREET BAR AND GRILL, LLC
d/b/a THEE GENTELMAN'S CLUB
LICENSE #: LIC-ABL-24-00005:

1. **Sunday Retail Drink**
2. **NQ2 Retail Drink (12-4am)**
3. **NQ2 Retail Drink (Restaurant)**

FINAL ORDER

WHEREAS, this matter, having come before Hearing Officer Deborah Campbell Myers ("Hearing Officer") at an administrative hearing held on August 13, 2024, and the Louisville Metro Alcoholic Beverage Control, having considered the record; the Hearing Officer's October 14, 2024, Findings of Fact, Conclusions of Law, and Recommended Order ("Recommended Order"); and being otherwise sufficiently advised;

NOW, THEREFORE, pursuant to KRS 241.060 (4), KRS 241.060 (6), KRS 241.140, KRS 241.170, & LMCO § 113.24, IT IS HEREBY ORDERED THAT:

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OFFICE: (502) 574-3591



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1. The Recommended Order is **modified** to reflect the following findings of fact and conclusions of law; and
2. Both of Respondents' Alcoholic Beverage Licenses listed above are hereby **REVOKED**.

FINDINGS OF FACT

The ABC Administrator, (hereinafter "Director") has performed an independent review of the evidence in the record, the Hearing Officer's Findings of Facts, Conclusions of Law and Recommended Order, as well as Thee Gentleman's Club's filed Exceptions. Based on the independent review, the Director finds that the Hearing Officer's Findings of Fact are accurate, appropriate and supported by the record. Thus, the Director adopts, in whole, the Hearing Officer's Findings of Fact, attached hereto as **Exhibit A**, located on pages 2-5 of the Recommended Order, and incorporates those Findings of Fact by reference as if set forth fully herein.

CONCLUSIONS OF LAW

The ABC Board held a hearing on August 13, 2024, concerning an Amended Citation issued to the Respondent, Market Street Bar and Grill doing business as Thee Gentleman's Club.

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The hearing in this case was conducted pursuant to the provisions under KRS Chapter 13B. The Licensee was properly served pursuant to KRS 13B.050.

The violations at issue include violations of Kentucky Revised Statute 244.120-Premises Not to Be Disorderly, Louisville Metro Code of Ordinances 113.21- Compliance with Other Ordinances and Regulation [for the Land Development Code violation], Louisville Metro Code of Ordinances 113.22 (C)- Disorderly Premises and Louisville Metro Code of Ordinances 113.50(B)- Permitting Nude/Nearly Nude Performance on Licensed Premises, and violation of KRS 243.084 Non- Quota Type 2 License.

I. Licensee Permitting Nude/Nearly Nude Performance on Licensed Premises.

Thee Gentleman's Club violated Louisville Metro Code of Ordinances 113.50 (B) when they permitted two of their dancers to expose their bare breast to ABC Detective Cabrera. LMCO 113.50 (B) prohibits an ABC licensee, their employee or agents from permitting anyone to perform on the premises and exposing themselves.

No licensee holding a license for the sale of wine, distilled spirits or malt beverages and no employee or agent of the licensee shall permit any person to perform or appear on its licensed premises in a manner or attire as to expose to public view of the patrons of the establishment at any time the bare female breast

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below a point immediately above the top of the areola, human genitals, pubic region or buttocks, or human or simulated male genitals in a discernible, turgid state, even if completely and opaquely covered, or permit any person to employ any device or covering intended to give the appearance of or to simulate male or female genitals, pubic region, buttocks or female breast below a point immediately above the top of the areola.

Respondent argues that though the violations occurred, the violations were not permitted by Gentleman's Club. However, KRS 243.490(6) directly controverts Respondent's argument. KRS 243.490(6) holds that a license can be suspended or revoked for violations, regardless of whether the licensee knew or permitted the violation. KRS 243.490 (6) states that a revocation or suspension can be based upon the violation of "any of the laws, regulations, or ordinances referred to in this section when an agent, servant, or employee of the licensee committed the violation, **irrespective of whether the licensee knew of or permitted the violation or whether the violation was committed in disobedience of the licensee's instructions.**" In addition, though Respondent argues that protocol was in place to discourage violations from their employees, Respondent also admitted that the violations were committed by "transient" or "fly by night" employees, clearly indicating a lack of diligence on the part of Respondent concerning

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their hiring process. Therefore, no matter the interpretation of the word "permit" Respondent was in direct violation of LMCO 113.50 (B).

II. Violation of the Non-Quota Retail License.

Respondent's business operates with a Non-Quota Type 2 Retail Drink License. KRS 243.084 establishes the parameters of a Non-Quota Type 2 Retail Drink License. Gentleman's Club was issued this license based upon the premise of Respondent operating as a restaurant. Per KRS 241.010 (55), a "Restaurant" is defined as a facility where the usual and customary business is the preparation and serving of meals to consumers, that has a bona fide kitchen facility, and that receives at least fifty percent (50%) of its food and alcoholic beverage receipts from the sale of food at the premises."

The statutory definition pertaining to Respondent requires they operate under the requirement that "the usual and customary business of the location must be *preparing and serving meals to customers*." The facts establish that this is simply not the case. Based upon the testimony of Detective Cabrera, there were no servers, tables for dining, kitchen staff or food storage, and of greater relevance, Detective Cabrera stated that on both investigatory visits he was informed that Respondent did not sell food. This same scenario was present upon

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Investigator Galanos' June 13th visit. Investigator Galanos found the location without almost any of the attendant requirements to operate a business as a restaurant. Investigator Galanos testified that he received menus from Gentleman's Club. In his Scene PD report, there was a photo of a menu with the only item being a 5-inch pizza, which was consistent with his visit wherein the only food items he found were ten frozen pizzas. Later he received a PDF menu with items such as popcorn, Slim Jims, Cup o Noodles and candy bars. The "expanded menu" was provided to Investigator Galanos *after* his inspection in June, which at that point Gentleman's Club had been open for at least one month and closer to six months since it had received its NQ-2 License. In addition, when investigator Galanos received the list of employees working at Gentleman's Club, it did not include kitchen staff.

Lieutenant Hargrove testified that he searched their public Facebook page and did not see anything regarding food service. He testified that Respondent's Facebook page is full of posts that display ads with half dressed women, stripping poles and references to "Louisville newest and most exclusive nightclub." One of the posts even had their nomination for an Exotic Dancer Award for Small Club of the Year. Other than one post of a menu, nowhere on any of the multitude of Respondent's posts was food even mentioned. When explaining the purpose of the

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dancers, Mike Dickenson testified that, "It's just like a bar, a band at a bar you would hear on Broadway on Nashville. That's the best description I can come up with." However, the NQ2 license is not for a bar but for a restaurant. Elizabeth Johnson also testified that the dancers were used to attract more business. But this would be to a business that upon its opening did not sell food.

Based on their own advertisements, Gentleman's Club **primary** business operation is not preparing and serving meals to customers. Instead, they advertise themselves as a strip club. They are presenting themselves as a strip club. The advertisements of Respondent are wholly consistent with the facts found at the location by Detective Cabrera and Investigator Galanos. The lack of food, servers, dining ware, kitchen employees, or any other indicia of Respondent's operation as a restaurant juxtaposed with the overwhelming indicia of a strip club is compelling and certainly meets a preponderance of evidence standard in regard to a continuing violation of the NQ-2 License requirements.

The only actual evidence that indicated that Respondent operated as a restaurant were after the fact sales tallies. As required by KRS 241.010 (55) a restaurant is required to receive "at least fifty percent (50%) of its food and alcoholic beverage receipts from the sale of food at the

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premises.” To establish compliance, pursuant to 804 KAR 4:100 (1) Gentleman’s Club is required to maintain receipts from the sale of alcohol and food items. Despite multiple requests no such receipts have been provided in spite of 804 KAR 4:100 requiring that “All reports, invoices, and other information shall be made available at all reasonable times for inspection by authorized representatives of the Department of Revenue or the Kentucky Department of Alcohol Beverage Control, and failure to make those available shall be deemed cause for revocation of the license.”

Though required to maintain sale receipts, as of the date of the hearing, the required sales proof had not been provided. What was provided were completely unreliable pdf’s that offered no opportunity to validate the inputted information. The inadequate proof of sales and the fact that the location has no legit no legitimate commercial kitchen, no kitchen staff, no utensils or plates, and no waiters or waitresses, establishes by a preponderance of the evidence that Gentleman’s Club is in violation of their NQ-2 License.

III. Louisville Metro Code of Ordinances 113.21- Land Development Code violation.

Respondent is currently in a Commercial 3 (C3) zoning district. This district is designated restaurants and commercial businesses. A letter was sent to Respondent on January 5, 2023, that

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establishes zoning requirements. Based on the testimony from Mike Wilcher and the evidence presented, though dancing and entertainment at a bar allowable, the district is not zoned for a strip club. As the Respondent is operating as a strip club, they are in violation of the zoning requirements.

IV. Disorderly Premises.

Both LMCO 113.22(C) and KRS 244.120(D) prohibit licensed premises from being disorderly. Typically, these are cited in circumstances when the licensee, their employees or agents allow criminal activity, offensive or hazardous conduct or behavior that threatens the health and safety of others. In the case at hand, Gentleman's Club was cited because they violated the nudity ordinance.

Gentleman's Club argues that the Kentucky statute is intended to protect against hazardous conditions such as "exposed wire" or "standing water" or other conditions that pose a risk to health and safety. However, the Court of Appeals of Kentucky has indicated that statutes and local ordinances can define what constitutes a disorderly premise, and these can include regulations on nudity and adult entertainment. For instance, a city ordinance that forbids nude or nearly nude activities on premises licensed by the Alcoholic Beverage Control Board was

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upheld, indicating that such activities could render a premise disorderly under specific regulatory frameworks. *City of Louisville v. Michael A. Woods, Inc.*, 883 S.W.2d 881 (1993). There is no express language in the KRS 244.120 that prohibits the exposing of breast. However, Metro Louisville using its statutorily granted powers, enacted an ordinance to prohibit nudity in alcohol licensed premises. KRS 244.120 can be used to regulate prohibited activity in licensed premises. The two violations of LMCO 113.50 (B) represented a violation of the Disorderly Premises statute and ordinance.

FINAL ORDER

Considering the above Findings of Fact and Conclusions of Law, the Louisville Metro ABC Director finds that the Licensee has violated KRS 244.120, LMCO §113.22(C), LMCO § 113.50(B), LMCO § 113.21 and KRS 243.084.

The Director finds that the violations of KRS 244.120, LMCO §113.22(C), LMCO § 113.50(B), LMCO § 113.21 and KRS 243.084 are serious in nature. Of

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specific concern, Licensee obtained a NQ2 License under KRS 243.084, so as to sell alcohol under the auspices of operating as a restaurant. However, Licensee met none of the threshold requirements of a restaurant pursuant to KRS 241010(55). Without question, Licensee was not operating in a manner “where the usual and customary business is the preparation and serving of meals to consumers.” Clear evidence was presented by Louisville Metro to demonstrate that Licensee’s operation had little to do with the sale of food, let alone such sales being its “usual and customary business.”

It was wholly improper for Licensee to have obtained an NQ2 license when so little regard was given to the requirements of obtaining and maintaining such a license. All the facts presented indicate that Thee Gentleman’s Club did not intend to open as a restaurant. From the moment they opened, Thee Gentleman’s Club has been in willful and continuous violation of their NQ2 license. Though this violation is one of many, it is particularly egregious. The Director finds that revocation rather than

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suspension is appropriate, and therefore the Director holds that pursuant to KRS 243.490, licenses held by the Licensee are hereby revoked.

NOTICE OF RIGHT TO APPEAL

Pursuant to KRS 243.560 and KRS 13B.140, you have the right to appeal this Final Order to the Department of Alcoholic Beverage Control. If you choose to appeal you must file a written petition asking that this order be modified or set aside in whole or in part within thirty (30) days of the date reflected on the Certificate of Service attached to this Order. A copy of such petition must be served upon the Administrator in accordance with Kentucky Rules of Civil Procedure, as well as all other parties indicated in KRS 13B.140.

Effective this 29th day of October 2024.

Director Bradley T. Silveria, ABC
Administrator Louisville Metro Alcohol Beverage

CERTIFICATE OF SERVICE

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The ABC Director certifies that he electronically served copies of these Findings of Fact, Conclusions of Law and Final Order on the Licensee, Counsel of Record, and ABC Hearing Officer, Deborah Myers October 29, 2024.

CC:

**Lashae Richie, Assistant County Attorney, via e-mail:
lashae.richie@louisvilleky.gov**

**Licensee, Market Street Bar & Grill DBA Thee Gentleman's Club, via e-mail to
counsel, Eric Eaton: eric.eaton@mattrnillercrosbie.com**

ABC Hearing Officer. Deborah Myers, via e-mail:

deborah@dilbeckandmyers.com

A handwritten signature in blue ink, appearing to read "Bradley T. Silveria", is written over a horizontal line.

Director Bradley T. Silveria, ABC
Administrator Louisville Metro Alcohol Beverage

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EXHIBIT A

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LOUISVILLE METRO ALCOHOL BEVERAGE CONTROL BOARD

In the matter of:

**MARKET STREET BAR AND GRILL, LLC DBA THEE GENTLEMAN'S
CLUB ENF-ABC-24-04525**

FINDINGS OF FACT, CONCLUSIONS OF LAW AND RECOMMENDED ORDER

This matter came before the Hearing Officer on August 13, 2024, for a hearing on Louisville Metro Alcoholic Beverage Control Board ("ABC") citations issued to Market Street Bar and Grill, LLC DBA Thee Gentleman's Club ("Thee Gentleman's Club"). The hearing was conducted in conformity with the provisions of KRS Chapter 13B. As set forth in the Amended Citation, ABC presented five charges against Thee Gentleman's Club:

1. A violation of KRS 244.120- Disorderly Premises, Premises Not to Be Disorderly;
2. A violation of LMCO 113.21 -Compliance with Other Ordinances and Regulation;
3. A violation of LMCO 113.22(C)-Disorderly Premises, Premises Not to Be Disorderly;
4. A violation of LMCO 113.50(B)-Licensee Permitting Nude/Nearly Nude Performance

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on Licensed Premises; and

5. A violation of KRS 243.084 -NQ2 retail drink license requirements.

Based upon these citations, ABC sought to revoke Thee Gentleman's Club's licenses: NQ2 Retail Drink (12-4 a.m.); NQ2 Retail Drink (Restaurant); and Sunday Retail Drink.

At the hearing, the ABC was represented by Assistant County Attorney Lashae Richie and Assistant County Attorney Robbie J. Howard. The Licensee was represented by attorney Eric Eaton. ABC called as witnesses: ABC Detective Alejandro Cabrera; Louisville Metro Government Planning Supervisor Mike Wilcher; State ABC investigator Milton Galanos; and

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ABC Enforcement Lieutenant Markhel Hargrove. The Licensee called as witnesses Elizabeth Johnson, owner of Thee Gentleman's Club; and Mike Dickinson, Jama regional manager.

FINDINGS OF FACT

Thee Gentleman's Club is located at 319 E. Market Street, Louisville, Kentucky. It opened on April 29, 2024, with the above-described licenses. The above violations followed undercover visits to the licensed premises on May 1, 2024, and May 9, 2024, and a state ABC visit of June 13, 2024.

The premises are located in a Commercial 3 (C3) zoning district, which is designated for restaurants and commercial business. Licensee was provided notice of this zoning designation by letter dated January 5, 2023, from the Office of Planning and Design Services.

The premises were licensed as of January 2024, but did not open for business until April 29, 2024. ABC Detective Alejandro Cabrera was asked by Mr. Wilcher to investigate reports that Thee Gentleman's Club was operating in violation of Louisville Metro Ordinances. Det. Cabrera made undercover visits to Thee Gentleman's Club on May 1, 2024, and May 9,

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2024. During each visit, he wore a hat with a hidden camera. Video from both visits was aired during the hearing. Photographs of the interior of the premises were also produced.

Det. Cabrera did an initial inspection of premises on January 23, 2023. Photographs from that inspection were introduced, and show an entry vestibule with a payment window, where in fact a cover charge was taken from him on his May 9, 2024, visit. Other photographs show the bar area, small tables, a stage, and two hallways. One hallway, which led to an outdoor area, had recessed, semi-private areas (no doors) with bench/couch style seating. The other hallway led to small private rooms with doors. The former hall was the location of a private dance which Det. Cabrera documented on May 1, 2024.

On his visits in May 2024, Det. Cabrera noted that a dancer's pole had been installed on the stage since his initial inspection of the premises in January 2023. Det. Cabrera observed no menus, serving utensils, or set ups which one might ordinarily see in a restaurant setting, and none were visible on camera either visit. On his arrival May 1, 2024, as documented via video, he ordered a drink and attempted to order food. No food was available. He left and ate elsewhere, then returned.

Upon his return to the premises after his meal off-premises on May 1, 2024, he recorded a dancer taking the stage in a yellow costume, similar to a one-piece swimsuit with a thong

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bottom. Shortly after taking the stage, she lowered her top. "Pasties" were visible on her areolas, but her breasts were otherwise bare. Thereafter, she went to the back of the stage and returned with no "pasties" on her areolas, leaving her completely nude from the waist up. Piercings were visible in both nipples.

Based upon the time entries from the bottom of the video, she remained topless on stage for almost five minutes,

fu another portion of the May 1, 2024, video, the yellow-costumed dancer returned to talk to Det. Cabrera. She volunteered that other dances were offered where he could touch and feel her, and she told him the prices for those dances. She also discussed her knowledge of Louisville's ordinance banning nudity.

A second dancer took the stage on May 1, 2024, dressed in a two-piece black costume which consisted of a thong bottom and a low cut, cropped, short-sleeve top. She did not display her areolas on stage, but she did discuss Louisville's ban on nudity and discussed additional dance packages which were available for private dances. A private dance was arranged in the semi-private area down the hallway described above. During that private dance, she exposed her areolas to Det. Cabrera.

No dancers were recorded during the May 9, 2024, visit. However, Det. Cabrera was again

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unable to order food. He was offered pretzels, and he had a conversation with the premises manager, Danny Perry ("Troy") about future food offerings and additional equipment planned for the kitchen. Mr. Perry was also on the premises during Det. Cabrera's May 1, 2024, visit.

Mr. Galanos inspected the premises in June 2024 following an anonymous complaint that Thee Gentleman's Club was not selling food. As part of his investigation, he requested sales reports. Although the food sales records which were produced did show 50% of Thee Gentleman's Club's total sales were for food, Galanos testified he was not provided "point of sale" records, which he said are the best evidence of the breakdown of food vs. alcoholic beverage sales. He said the sales tallies he was provided were inadequate for a food audit. He requested point of sales records, but that request was pending at the time of the hearing, and to the Hearing Officer's knowledge were not produced.

Mr. Galanos also requested menus from Thee Gentleman's Club, which were introduced by Louisville Metro. One menu included only a 5-inch pizza. The other, provided after his inspection, was an expanded menu which included popcorn, Slim Jims, Cup O Noodle, and candy bars. He was provided with a list of employees which did not include kitchen staff.

Lt. Hargrove searched Licensee's public Facebook page and found no references to food

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service. The Facebook ads referred to "Louisville's newest and most exclusive nightclub." These ads included a nomination for an "Exotic Dancer Award for Small Club of the Year." Lt.

Hargrove found food was mentioned in one post of a menu.

Elizabeth Johnson is the single member of Market Street Bar and Grill DBA The Gentleman's Club. She hired Janra Management to provide management services, which includes the hiring of personnel. Janra hired the manager, Mr. Perry, who was seen on Det. Cabrera's videos but did not testify. She testified she did not know about the nudity incidents

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until Jama received the show cause orders. However, she had voluntarily closed the premises one week before the hearing.

She spent just under \$10,000.00 on work on the kitchen and purchase of kitchen equipment, which included two pizza ovens. She said that she plans to add more kitchen equipment, but the expenses associated with installation were currently cost prohibitive.

Mike Dickinson, regional manager for Jama, testified regarding Mr. Perry's training, which included review of Louisville's ordinances regarding nudity. Mr. Dickinson also described the "on-boarding" process for the dancers, described as "independent contractors." The dancers were required to sign "Daily Acknowledgement Forms" on performance days. These forms, which were introduced, verified the dancers would comply with all local ordinances. Signage was also posted in the locker room regarding Louisville's ordinance prohibiting nudity.

Mr. Dickinson described the role of dancers on the premises as "just like a bar, a band at a bar you would hear on Broadway in Nashville." Mr. Dickinson also described the two dancers seen on Det. Cabrera's videos as "fly by night entertainers[.]"

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Mr. Perry's duties included obtaining the "Daily Acknowledgment Forms," which he signed as a witness. He was also to observe the dancers' performances. He was disciplined regarding the incidents of May 1, 2024. This included additional training and a written reprimand.

CONCLUSIONS OF LAW

I. THE LICENSEE CAUSED, SUFFERED OR PERMITTED NUDE/NEARLY NUDE PERFORMANCES ON THE LICENSED PREMISES

Primarily through the use of video evidence and the testimony of Det. Cabrera, Louisville Metro ABC satisfied the preponderance of evidence required by KRS 13B.090 that Licensee's agents, servants or employees caused, suffered or permitted nude/nearly nude performances at the licensed premises, Market Street Bar & Grill DBA Thee Gentleman's Club. In doing so, the Licensee violated the following Kentucky statutes and ordinances for which it was cited herein.

Louisville Metro Code of Ordinances 113.50(B) provides as follows:

"No licensee holding a license for the sale of wine, distilled spirits or malt beverages and no employee or agent of the licensee shall permit any person to perform or appear on its licensed premises in a manner or attire as to expose to public view of the patrons of the establishment at any time the bare female breast below a point immediately above the top of the areola, human genitals, pubic region or buttocks,

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or human or simulated male genitals in a discernible, turgid state, even if completely and opaquely covered, or permit any person to employ any device or covering intended to give the appearance of or to simulate male or female genitals, pubic region, buttocks or female breast below a point immediately above the top of the areola.

KRS 243.490(6) states that a license can be suspended or revoked based upon the violation of "[a]ny of the laws, regulations, or ordinances referred to in this section when an agent, servant, or employee of the licensee committed the violation, irrespective of whether the licensee knew of or permitted the violation or whether the violation was committed in disobedience of the licensee's instructions[.]"

Licensee has argued that the dancers were independent contractors, not the agents, servants, or employees of Licensee, and that therefore Thee Gentleman's Club was not aware of or responsible for their behaviors. Licensee also cited prohibitive efforts such as posted signage regarding Louisville's nudity ordinance, and the daily acknowledgment forms regarding Louisville's ordinance which the dancers were asked to sign.

This Hearing Officer questions the label of independent contractor, rather than employee, for the dancers, but an analysis as to whether this label is properly applied by Licensee

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is unnecessary. The Licensee cannot absolve itself of responsibility for what happens under its roof by utilizing independent contractors -particularly when the Licensee's management poorly vetted the dancers before they were allowed to perform on premises, self-describing them as "transient" or "fly by night."

Further, the Licensee's efforts to prevent such behaviors on the one hand do not compare to the Licensee's otherwise open and encouraging atmosphere for the dancer's behaviors. The dances took place on a common stage area upon which the Licensee had a pole installed post ABC inspection. Dancer one almost immediately lowered her top after taking the stage, pasties in place, and then removed those, too, dancing with her breasts completely exposed for the approximate five remaining minutes she was on stage. Dancer two spoke with manager Mr.

Perry on her way to the semi-private area where she would dance for Det. Cabrera and expose her nipples.

It is simply not credible that the dancers' inappropriate behaviors were unknown to the Licensee's agents, servants, and/or employees. Licensee created an environment where the

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performances were likely to and did go over the edge of legal behavior. In particular, the semi private alcoves with benches where Det. Cabrera received his private dance would appear to encourage behaviors such as he recorded. Licensee then essentially turned a blind eye as to whether or not the line was crossed. A "see no evil" attitude cannot be taken regarding these violations in an environment created by Licensee, and same will not excuse the Licensee under the situation herein.

Therefore, the proof supports that the Licensee, in an environment developed by the Licensee, complete with a pole and semi-private dance areas, violated Louisville's prohibitions

against public nudity. As in Lewis v. Ken-Pad, Inc., 716 S.W.2d 252 (Ky. 1986), the "management knew or should have known of this activity[.]" The steps taken by Licensee to prevent these behaviors were insufficient.

II. THE LICENSEE PERMITTED DISORDERLY PREMISES

Louisville Metro ABC produced a preponderance of the evidence that the Licensee permitted disorderly premises at 319 E. Market Street by allowing the above-described

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activities to occur on May 1, 2024.

LMCO 113.22(C) provides: "Each licensed premises shall at all times be conducted in an orderly manner and no disorderly, riotous, or indecent conduct shall be allowed at any time on any licensed premises and no nuisance suffered, permitted, or maintained thereon."

KRS 244.120(1) provides a licensee "shall not cause, suffer or permit the licensed premises to be disorderly." KRS 244.120(2) provides that "acts which constitute disorderly premises consist of causing, suffering or permitting patrons, the licensee or the licensee's servants, agents, or employees to ... create[e] a hazardous or physically offensive condition by any act that serves no legitimate purpose."

The Kentucky Court of Appeals has held that local ordinances can define what constitutes a disorderly premise, and this can include regulations on nudity and adult entertainment. See City of Louisville v. Michael A. Woods, Inc., 883 S.W.2d 881 (Ky.App. 1993).

The actions of the dancers which were displayed on video are clearly of the type of behavior which KRS 244.120 were intended to prohibit. In causing, suffering, or

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permitting same on its premises, Licensee allowed same to become disorderly.

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III. THE LICENSEE OPERATED IN VIOLATION OF ITS ZONING DISTRICT

The licensed premises are located in a Commercial 3 (C3) zoning district. Commercial 3 districts are designated for restaurants and commercial businesses. Licensee received notice via a letter of January 5, 2023, which stated the zoning requirement of the Licensee's address. While dancing in and of itself is allowed, the Licensee allowed performances on May 1, 2024, which violated the local ordinance prohibiting nudity/near nudity.

LMCO 113.21 requires compliance with local zoning code. As set forth above, the May 1, 2024, dancers violated Louisville's ordinance which prohibits nudity. In causing, suffering, or permitting said performances, Licensee was also in violation of local zoning.

However, it is unnecessary for this Hearing Officer to determine whether same should be an additional basis for the recommended penalty set forth below, given the other determined violations and the pending (at time of hearing) decision of Metro Division of Planning.

IV. THE LICENSEE OPERATED IN VIOLATION OF ITS NQ2 LICENSE

Louisville Metro produced a preponderance of evidence that the Licensee was operating in violation of its NQ2 license in the months after its opening, as evidenced primarily by the

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investigations of Det. Cabrera and Investigator Galanos, as well as the social media postings.

Thee Gentleman's Club was clearly not being operated as a business whose "usual and customary business" was the preparation and serving of meals to its customers, as required by statute.

NQ2 licensees operate under KRS 243.084, which establishes the license may be issued to a Licensee operating as a restaurant. "Restaurant" is defined at KRS 241.010(55), as a "facility where the usual and customary business is the preparation and serving of meals to consumers,

that has a bona fide kitchen facility, and that receives at least fifty percent (50%) of its food and alcoholic beverage receipts from the sale of food at the premises."

It is quite clear from the evidence herein that the "usual and customary business" of Licensee was not the preparation and serving of meals to consumers. It is not a consideration that the investigative visits occurred during the first months the premises were open. If the restaurant portion of the premises was not ready, then the premises should have remained

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closed.

The Licensee's arguments regarding same strain logic. It is clear that on Det. Cabrera's visits he was unable to eat. He was offered only pretzels on his second visit. The accoutrements which would nominally accompany a visit to a restaurant were simply not present: servers, menus, flatware, and, most importantly, food. The Premises did not present or promote itself as a restaurant, violating both the letter and spirit of the governing statute.

Investigator Galanos requested, but was not provided, sales receipts to establish compliance, pursuant to 804 KAR 4:100. He was provided sales tallies, rather than point of sale records. These conclusory totals alone were insufficient to establish that the Licensee was compliant with its NQ2 requirements, especially when considered in conjunction with the information supplied by the investigations herein. 804 KAR 4:100 requires that:

"All reports, invoices, and other information shall be made available at all reasonable times for inspection by authorized representatives of the Department of Revenue or the Kentucky Department of Alcohol Beverage Control, and failure to make those available shall be deemed cause for revocation of the license." 804 KAR 4:100, Section 1 (2)

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Licensee member Ms. Johnson's testimony that the requested information was under the control of Janra and unavailable to her does not absolve this deficiency, as Janra functions as the Licensee's agent, servant, or employee.

RECOMMENDATIONS

Considering the above Findings of Fact and Conclusions of Law, The Hearing Officer recommends that the ABC Administrator find that the Licensee has violated KRS 244.120, LMCO 113.22(C), LMCO 113.S0(B), and KRS 243.084.

While this Hearing Officer finds that LMCO 113.21 was violated as well, this violation was not used as an additional basis for the recommended penalty set forth below, given the other determined violations and the pending (at time of hearing) decision of Metro Division of Planning. Same may be considered in the future, should additional violations occur.

Considering the violations of KRS 244.120, LMCO 113.22(C), LMCO 113.S0(B), and KRS 243.084, this Hearing Officer recommends the ABC Administrator impose a suspension on all licenses herein for a period of sixty (60) days or a fine of \$50 per day, for a total of \$3,000.00. The Hearing Officer recommends suspension rather than revocation

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but submits that this is a very close call.

The newly minted nature of the licenses herein cuts both ways with regard to the violations at issue herein. On the one hand, the Licensee had no prior history of violations. On the other, the Licensee is off to a very poor start in its lack of compliance with local ordinances and state law. The Hearing Officer believes that a significant suspension or fine should convey the seriousness of the violations herein, and the lack of tolerance for future Licensee actions which violate both the letter and spirit of the applicable law.

Licensee should be advised of its right to seek judicial review of the final order within thirty (30) days after the final order is mailed or delivered by personal service. See KRS 13B.140.

/s/ Deborah Campbell Myers DEBORAH
CAMPBELL MYERS ABC HEARING
OFFICER

Dated: Monday, October 14, 2024

CERTIFICATE OF SERVICE

The Hearing Officer certifies that she electronically served copies of these Findings of Fact, Conclusions of Law and Recommendations on the Licensee, Counsel of Record, and ABC Director Brad Silveria on October 14, 2024.

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