

Minutes for the Lowell License Commission emergency meeting for Friday, April 15, 2016 at 12:00 noon, held in the Council Chamber, 2nd floor, City Hall, 375 Merrimack St., Lowell, MA 01852.

Present: John Descoteaux, Commissioner, Chairman, Commissioners Cliff Krieger, Terry McCarthy, and Nancy McGovern; and Deputy Superintendent Jack Webb of the Lowell Police Department, and Assistant Solicitor Elliott Veloso. Absent: Commissioner Kristen Hogan.

The Commission opened a public hearing on the allegations against the manager of record for LCRC, Inc., d/b/a Dudley's, Matthew J. McCarthy, Manager, the all alcoholic beverages restaurant licensee at 19 Merrimack Street, to wit:

- (a) for illegal drug activity in his personal conduct that has been cause for arrest and incarceration;
- (b) for illegal purchase of alcohol beverages for the licensed premises from a source other than in compliance with Massachusetts General Law Chapter 138, sections 18, 19, 19B, 19C;
- (c) for diluting bottles of alcohol beverages in violation of section 23;
- (d) for violation of City of Lowell License Commission Regulation 1.15 Manager, to wit: the manager shall have total responsibility for the proper operation of the licensed premises, whether present or not;
- (e) for violation of City of Lowell License Commission Regulation 1.16 Manager's Responsibilities, to wit: the Manager shall ensure that there shall be no disorder, indecency, prostitution, lewdness, illegal gambling, misconduct, or any other disturbance permitted on the licensed premises, and in any parking lot provided by the licensee for use by its patrons.

The following individuals were present: Matthew Murphy, Jason Downs, Atty. Michael Zaim, and Atty. Marc Middleton.

Elliott Veloso, Asst. City Solicitor, addressed the Commission to outline the matter before the Commission at the emergency hearing: whether Matthew McCarthy could continue to serve as manager of record for the licensee LCRC, Inc., d/b/a Dudley's. Asst. Solicitor Veloso stated that on April 14, 2016, the Law Department received an application from Matthew Murphy, a corporate officer, director, and shareholder for LCRC, Inc. to replace Matthew McCarthy as manager of record for Dudley's. Asst.

Solicitor Veloso stated that the application also indicated that Mr. McCarthy had resigned as manager of record for Dudley's and was barred from entry onto the premises. Asst. Solicitor Veloso stated that a review conducted by Deputy Superintendent Jack Webb indicates that Michael McCarthy can no longer serve as manager of record for LCRC, Inc. due to his criminal convictions.

Chairman Descoteaux recognized Atty. Michael Zaim. Atty. Zaim, speaking as legal counsel for Matthew Murphy, a corporate officer, director, and shareholder for LCRC, Inc.. Atty. Zaim stated that his client did not disagree with the Lowell Police Department's findings. Atty. Zaim stated that a [LCRC, Inc.] corporate vote of two of the three corporate directors for LCRC, Inc. voted for the appointment of Matthew Murphy as manager of record, that Matthew McCarthy resigned as manager of record, that a no trespass order would be issued to bar Mr. McCarthy from access to the property, copies to be provided to the Police Dept., Law Dept., and the Commission. Atty. Zaim stated that the application for the manager change would be before the Commission on April 28<sup>th</sup>. Attorney Zaim noted the allegations of misconduct presented by Jason Downs.

Chairman Descoteaux recognized Atty. Marc Middleton as legal counsel for Jason Downs. Attorney Middleton stated that he has not received a copy of the application for change in manager, and that his client believes that Mr. Murphy is not qualified or experienced to be manager of record for Dudley's. Atty. Middleton stated that there are disputes between the owners and that Mr. McCarthy and Mr. Murphy have forced Mr. Downs out of the business. Atty. Middleton noted that negotiations between the owners were not productive.

Chairman Descoteaux stated that A.B.C.C. guideline require that a reasonable amount of time be allowed for a new manager of record to be approved. Chairman Descoteaux noted that an application for a change of manager has been presented to the Commission which would be reviewed at the next meeting in two weeks.

Asst. Solicitor Veloso stated that the only matter before the License Commission was the the allegation of misconduct against Matthew McCarthy and his resignation. Chairman Descoteaux inquired that, given the dispute between Mr. Murphy and Mr. Downs, whether the establishment could be safely managed in the

interim period prior to the next meeting. Asst. Solicitor Veloso stated that as owners of the establishment Mr. Murphy and Mr. Downs would be the persons responsible in the event there are issues at the establishment prior to the next License Commission meeting. Asst. Solicitor Veloso noted that the disputes between the owners were an internal business issue, and that the City's role is to insure the safe and legal operation of the establishment. Asst. Solicitor Veloso noted that the open meeting law prevents consideration of the manager application, but the Commission could consider the accusations of illegal operation of Dudley's. Asst. Solicitor Veloso stated notice from Fire Department that a detail was not paid [by LCRC, Inc.], and that all outstanding taxes must be paid for the application to be approved. Asst. Solicitor Veloso stated that the License Commission was entitled to documentation from the establishment showing proof of the legal purchase of alcohol for the past couple of months, and that the Commission could order police details.

Attorney Middleton stated his client was afraid to go into the establishment due to threats by the other owners, and stated that there have been numerous text messages. Attorney Zaim stated that Mr. Downs has not been part of the business since April 2015 and questioned why Mr. Downs never went to the Police Department before with his allegations.

Chairman Descoteaux asked if Mr. Murphy was an active member. Atty. Zaim stated Mr. Murphy has been active from the get-go, has complete control, and has not been before the License Commission before. Atty. Zaim stated that the issues the Commission raised could be addressed in two weeks and moving forward.

Chairman Descoteaux stated from a safety point of view he was not opposed to Mr. Murphy serving as interim manager until the next public hearing. Asst. Solicitor Veloso stated that Mr. Murphy and Mr. Downs, as 33% owners, are both responsible for the business for public safety.

Commissioner Krieger stated Mr. McCarthy disqualified himself as officer, but inquired whether Mr. McCarthy was authorized to assign voting rights by proxy to Mr. Murphy. Atty. Zaim addressed Commissioner Krieger and cited that the proxy vote was valid. Commissioner Krieger questioned whether

the law supported Mr. McCarthy's capacity to do so. Atty. Zaim stated that that it was a valid board's decision.

Chairman Descoteaux asked Attorney Middleton if he wished to comment. Atty. Middleton stated that his client took the position that the proxy vote should not be allowed, citing Mr. Downs allegations.

Chairman Descoteaux questioned Asst. Solicitor Veloso whether the proxy vote issue mattered for purposes of the emergency meeting. Asst. Solicitor Veloso noted that both parties could present evidence of Mr. Murphy's qualifications to be a manager of records at the next Commission meeting, as the only matter before the Commission was McCarthy's capacity to be manager, which was redetermined moot by his resignation.

Chairman Descoteaux stated the application for change of manager will be for hearing at the next meeting; and gave Mr. Murphy responsibility for the two week interim period. Asst. Solicitor Veloso stated responsibility on both members and that whatever internal disputes were between the owners could not interfere with the safe operation of the establishment.

Chairman Descoteaux asked Atty. Middleton if he wished to present any final statements. Attorney Middleton stated that his client was forced out of the business, and stated it would be unfair for Mr. Murphy to be manager as it would be more of the same thing.

Chairman Descoteaux made the motion to place the complaint against Matthew McCarthy as manager of record for LCRC, Inc. on file, seconded by Commissioner McCarthy, so voted.

Chairman Descoteaux made the motion to have Mr. Murphy and Mr. Downs as interim managers for LCRC, Inc., seconded by Commissioner Krieger, so voted.

Commissioner Krieger stated he contends that because Mr. Downs is not there at the establishment that he should not be held responsible in the event of misconduct. Chairman Descoteaux recommended that a police detail be requested by Mr. Murphy.

The Commission voted to adjourn the meeting at 12:30 p.m. on a motion by Commissioner Krieger, second by Commissioner McCarthy.

Respectfully submitted by Ryan Wynn, Executive Secretary, present at meeting.