

CITY OF DULUTH  
ALCOHOL, GAMBLING AND TOBACCO COMMISSION

\*\*\*\*\*

**REPORT TO THE CITY COUNCIL**

\*\*\*\*\*

**IN THE MATTER OF: HOSPITALITY ASSOCIATES OF DULUTH, LLC, d/b/a Aces on First**, 113 West 1<sup>st</sup> Street, Duluth, Minnesota 55802.

The above-entitled matter came on for hearing before the Duluth Alcohol, Gambling and Tobacco Commission on March 2, 2016, in the City Council Chambers in Duluth, Minnesota. The hearing record closed on March 2, 2016 upon completion of the hearing.

Terri L. Lehr, Assistant City Attorney, City of Duluth, Office of the City Attorney, 410 City Hall, Duluth, Minnesota, 55802, appeared on behalf of the City licensing staff. Nick Patronas, Owner and authorized agent, appeared on behalf of Licensee.

This Report is a recommendation, not a final decision. The Duluth City Council will make the final decision after a review of the record which may adopt, reject or modify the Findings of Fact, Conclusions and Recommendations contained herein. Pursuant to Minn.Stat. §14.61, the final decision of the Council shall not be made until this Report has been made available to the parties to the proceeding for at least ten days. An opportunity must be afforded to each party adversely affected by the Report to file exceptions and present argument to the City Council. Parties should contact the City Clerk to ascertain the procedure for filing exceptions or presenting argument.

**FINDINGS OF FACT**

The Commission makes the following findings of fact.

1. Licensee is licensed by the City of Duluth to sell intoxicating liquor “on-sale” at the premises located at 113 West 1<sup>st</sup> Street, Duluth, Minnesota.
2. Licensee has failed to timely file state sales tax returns and has failed to timely pay state sales taxes. As a result, Licensee was listed on the Minnesota Department of Revenue tax delinquent liquor posting for the following time periods in 2015: January 2015 through February 2015 (two months); June 2015

through September 8, 2015 (over three months); and November 2015 through and continuing to March 2, 2016 (four months).

3. The Commission issued its Notice of and Order for Hearing and set a hearing date of March 2, 2016. The Licensee was timely served with the Notice of and Order for Hearing.
4. Licensee admits the allegations contained in the Notice of Hearing and provides the Commission with an explanation supporting mitigating circumstances.
5. This is the Licensee's first violation for purposes of the presumptive penalty schedule provided for in Duluth City Code §8-9. Mitigating circumstances include the following: Licensee experienced a challenging year including major health issues requiring several hospitalizations and a divorce. Licensee has paid the outstanding sales taxes and was removed from the Department of Revenue tax delinquent liquor posting on March 2, 2016. Licensee has recently hired an accounting firm to ensure timely filings and payments in the future.

### **CONCLUSIONS**

Based upon these facts, the Commission makes the following conclusions:

1. Section 8-9(b)(3) of the Duluth City Code provides that failure to pay city or state sales taxes shall be deemed to be good cause for disciplinary action up to and including imposition of a civil penalty, license suspension or license revocation.
2. That the violation as alleged in the Notice of and Order for Hearing has occurred and the Commission concludes that it is a single violation.
3. That good cause exists to impose discipline upon the Licensee as a result of the violation.
4. That the violation is a first offense and the presumptive penalty for a first offense is a \$500.00 civil penalty. However, mitigating circumstances exist in this case as follows: Licensee experienced a challenging year including major health issues requiring several hospitalizations and a divorce. Licensee has paid the outstanding sales taxes and was removed from the Department of Revenue tax delinquent liquor posting on March 2, 2016. Licensee has recently hired an accounting firm to ensure timely filings and payments in the future.

**RECOMMENDATION**

It is the recommendation of the Duluth Alcohol, Gambling and Tobacco Commission that the Duluth City Council impose a civil penalty as follows:

1. That the Licensee pay a reduced civil penalty of \$250.00 based on mitigating circumstances set forth herein. The civil penalty shall be due and payable within 30 days of council action.

Dated: 4/6/16

**DULUTH ALCOHOL,  
GAMBLING  
AND TOBACCO COMMISSION**

By: Jeffery P. Rosenthal, Jr.  
Jeffery Rosenthal, President