

CITY OF DULUTH
ALCOHOL, GAMBLING AND TOBACCO COMMISSION

REPORT TO THE CITY COUNCIL

IN THE MATTER OF: Martha's Daughter, LLC d/b/a Martha's Daughter, 107 East Superior Street, Duluth, MN 55802

The above-entitled matter came on for hearing before the Duluth Alcohol, Gambling and Tobacco Commission on January 2, 2019, in the City Council Chambers in Duluth, Minnesota. The hearing record closed on January 2, 2019 upon completion of the hearing.

Steven B. Hanke, Deputy City Attorney, City of Duluth, Office of the City Attorney, Room 410 City Hall, Duluth, Minnesota, 55802, appeared on behalf of the City licensing staff. Ms. Nyanyika Banda 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, Conclusion 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 107 East Superior Street, Duluth, Minnesota 55802.
2. Licensee is a Minnesota Corporation owned by Nyanyika Banda.
3. Licensee did not pay its \$100 civil penalty ordered by the City Council pursuant to Resolution 18-0717 on October 22, 2018 that was due and payable by November 21, 2018.

4. Licensee has not yet filed or remitted its June, July, and August 2018 City of Duluth Food/Beverage Tourism Tax as ordered by the City Council pursuant to Resolution 18-0717 on October 22, 2018 that was due and payable by November 21, 2018.
5. Licensee collected City of Duluth Food/Beverage Tourism Tax in the months of June, July, and August of 2018.
6. On or about December 1, 2018, Licensee was notified by the City of Duluth Treasurer's Office that it owes the City \$6,977.80 for estimated unpaid City of Duluth Food/Beverage Tourism Sales Taxes for June, July, August, September, October, and November of 2018.
7. On December 17, 2018, Licensee filed its November 2018 City of Duluth Food/Beverage Tourism Sales Tax report and remitted (paid the City) \$439.56 for November 2018. The remaining back City of Duluth Food/Beverage Tourism Sales Tax balance for the months of June 2018 through October 2018 is \$3,193.55.
8. On December 17, 2018, Licensee and the City Treasurer's Office entered into a repayment agreement in which the Licensee will pay \$500 per month until the \$3,193.55 City of Duluth Food/Beverage Tourism Sales Tax balance, plus any applicable interest and penalties, is paid in full.
9. Section 8-9 (b) of the Duluth City Code provides that "the following shall be deemed to be good cause for suspension or revocation of a liquor license:"
 - "(1) Violation of any law relating to the operation of a liquor establishment, including, but not limited to, state, federal and local laws on liquor, gambling, prostitution, health and fire safety;"
 - ...
 - "(3) The establishment has failed to pay license fees or city or state sales tax or that property taxes on the building have not been paid."
 - ...
 - "(5) The establishment is insolvent, bankrupt or otherwise financially unable to continue business;"

10. Failure to pay the \$100 civil penalty, and failure to file and pay for June, July, August, September, and October 2018 City of Duluth Food/Beverage Tourism Sales Taxes constitutes a violation of Duluth City Code Section 8-9.
11. This is the Licensee's second violation for purposes of the presumptive penalty schedule provided for in Duluth City Code section 8-9.
12. Pursuant to Duluth City Code Section 8-9, absent aggravating or mitigating circumstances, the presumptive penalty for a second offense is a \$1,000 civil penalty and a one (1) day license suspension.
13. Section 8-9(c) provides that "No portion of the payment of a civil penalty or period of suspension may be stayed or excused. All civil penalties are due and payable within 30 days of council action. The council shall determine the dates any suspension shall be served, but in no event may the suspension period commence earlier than ten days after council action."
14. Mitigating circumstances exist as follows:
 - a. Licensee paid the \$100 civil penalty at the January 3, 2018 hearing;
 - b. Licensee filed and remitted its November 2018 City of Duluth Food/Beverage Tourism Sales Tax payment on December 17, 2018;
 - c. Licensee entered into a \$500 per month repayment plan with the City of Duluth Treasurer's Office for the months of June, July, August, September, and October 2018 that will fully compensate the City by the end of July 2019;
 - d. Licensee has hired local accounting firm Serenity Accounting to manage its accounting;
 - e. The \$1,000 fine and one (1) day on-sale intoxicating liquor license suspension presumptive penalty would effectively close Licensee's business permanently due to Licensee's dire financial situation.

CONCLUSIONS

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

1. Duluth City Code Section 8-9(b)(3) provides that the following shall be deemed to be good cause for suspension or revocation of a liquor license:
 - a. violation of local liquor law relating to the operation of a liquor establishment;
 - and

- b. the establishment has failed to pay license fees or city or state sales tax.
2. Licensee violated Section 8-9(b)(1) and (3) of the Duluth City Code by failing to pay its \$100 civil penalty by November 21, 2018, and City of Duluth Food/Beverage Tourism Sales Tax for the months of June, July, August, September, and October of 2018.
3. Licensee is liable for this violation.
4. Duluth City Code Section 8-9(c) provides that absent and aggravating or mitigating circumstances, the presumptive penalty for this violation is a \$1,000 civil penalty and one (1) day licensee suspension.
5. Mitigating circumstances exist as follows:
 - a. Licensee paid the \$100 civil penalty at the January 3, 2018 hearing;
 - b. Licensee filed and remitted its November 2018 City of Duluth Food/Beverage Tourism Sales Tax payment on December 17, 2018;
 - c. Licensee entered into a \$500 per month repayment plan with the City of Duluth Treasurer's Office for the months of June, July, August, September, and October 2018 that will fully compensate the City by the end of July 2019;
 - d. Licensee has hired local accounting firm Serenity Accounting to manage its accounting;
 - e. The \$1,000 fine and one (1) day on-sale intoxicating liquor license suspension presumptive penalty would effectively close Licensee's business permanently due to Licensee's dire financial situation.

RECOMMENDATION

It is the recommendation of the Duluth Alcohol, Gambling and Tobacco Commission that the Duluth City Council find:

1. a second violation occurred;
2. impose no civil penalty due to mitigating circumstances above-described.

Dated: 1-8-2019

**CITY OF DULUTH ALCOHOL,
GAMBLING AND TOBACCO
COMMISSION**

By: Patricia Stolee
Patricia Stolee, President