

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 1st Street, Duluth, Minnesota 55802.

The above-entitled matter came on for hearing before the Duluth Alcohol, Gambling and Tobacco Commission on April 6, 2016, in the City Council Chambers in Duluth, Minnesota. The hearing record closed on April 6, 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 1st Street, Duluth, Minnesota.
2. On September 4, 2015, Licensee was open for business and serving alcohol when the city of Duluth had not yet issued Licensee its liquor license for the period beginning September 1, 2015 as the city of Duluth had not yet received a Clearance Certificate from the State of Minnesota. Also, Licensee tendered a

check for its January 2016 quarterly liquor license fee but the check was returned as NSF. Licensee paid this fee on March 2, 2016.

3. The Commission issued its Notice of Hearing and set a hearing date of April 6, 2016. The Licensee was timely served with the Notice of Hearing.
4. Licensee admits the allegations contained in the Notice of Hearing and provides the Commission with an explanation supporting mitigating circumstances.
5. The Commission finds that this is a single violation and further finds that it is the Licensee's second 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 paid its tax liability owing to the state of Minnesota on August 31, 2015. Prior to September 4, 2015, Licensee was told by a representative from the state that his payment had been received, that the state would notify the city of Duluth, and that he was "good to go." Based upon this verbal clearance from the state, Licensee believed he could be open for business and sell alcohol. There was a delay in the government's processing of this matter and the Labor Day holiday may have been a factor in the delay. Licensee has recently hired an accounting firm to ensure timely payment of its obligations in the future.

CONCLUSIONS

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

1. Section 8-9(b)(1) of the Duluth City Code provides that violation of any law relating to the operation of a liquor establishment 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 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 second offense and the presumptive penalty for a second

offense is a \$1,000.00 civil penalty and a one day license suspension. 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 paid its tax liability owing to the state of Minnesota on August 31, 2015. Prior to September 4, 2015, Licensee was told by a representative from the state that his payment had been received, that the state would notify the city of Duluth, and that he was "good to go." Based upon this verbal clearance from the state, Licensee believed he could be open for business and sell alcohol. There was a delay in the government's processing of this matter and the Labor Day holiday may have been a factor in the delay. Licensee has recently hired an accounting firm to ensure timely payment of its obligations 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 \$500.00 and that the one-day suspension be eliminated based on mitigating circumstances set forth herein. The civil penalty shall be due and payable within 30 days of council action.

Dated: May 4, 2016

**DULUTH ALCOHOL,
GAMBLING AND
TOBACCO COMMISSION**

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