

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 October 3, 2018, in the City Council Chambers in Duluth, Minnesota. The hearing record closed on October 3, 2018 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 and has not yet filed or remitted its June, July, and August 2018 City of Duluth Food/Beverage Tourism Tax.
4. Licensee collected City of Duluth Food/Beverage Tourism Tax in the months of

June, July, and August of 2018.

5. As of October 3, 2018, the total amount unpaid and past due City Food/Beverage Tourism Tax by Licensee for June, July, and August of 2018 is approximately \$4,713.69. Since the tax depends on actual sales, and Licensee has not yet reported sales, said \$4,713.69 is estimated based on an average of Licensee's past monthly Food/Beverage Tourism Tax filings.
6. This is the Licensee's first violation for purposes of the presumptive penalty schedule provided for in Duluth City Code section 8-9.
7. Mitigating circumstances exist as follows:
 - a. Licensee is a small business that has been open less than one year;
 - b. Failure to pay City of Duluth Food/Beverage Tourism Tax was caused in part by Licensee's past accounting practices. Licensee has changed accounts and accounting practices; and
 - c. The \$500 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: the establishment has failed to pay license fees or city or state sales tax.
2. Licensee violated Section 8-9(b)(3) of the Duluth City Code by failing to pay City Food/Beverage Tourism Tax for the months of June, July, and August 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 \$500 civil penalty.
5. Mitigating circumstances exist as follows:
 - a. Licensee is a small business that has been open less than one year;
 - b. Licensee's failure to pay City of Duluth Food/Beverage Tourism Tax was caused in part by Licensee's past accounting practices. Licensee has changed accounts and accounting practices; and

- c. The \$500 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 impose a civil penalty as follows:

1. Payment of a \$100 penalty; and
2. Pursuant to Duluth City Code Section 8-9(c), the civil penalty is due and payable within 30 days of council action.

In addition, the licensee will need to pay City of Duluth Food/Beverage taxes due for the period June, July, and August of 2018, in the estimated amount of \$4,713.69, or make payment arrangements with the City.

Dated: 10-5-2018

**CITY OF DULUTH ALCOHOL,
GAMBLING**

**AND TOBACCO
COMMISSION**

By: Patricia Stolee
Patricia Stolee, President