

Case Numbers 6396-5-30-15
6396-8-2-15

Hearing Date: September 15, 2015

Cahoot's Inc.
d/b/a Cahoot's
1047 Bardstown Road
Louisville, KY 40204

HEARING OFFICER'S FINDINGS AND RECOMMENDATIONS

Case Number 6396-5-30-15

The hearing addressed two separate cases in the first of which the department moved to revoke a 36 day suspension of license which was probated for two years on condition 2 uniformed security persons with arrest powers (one at the back and one at the front) from 10:30 p.m. to 4:00 a.m. Friday and Saturday nights; additionally one uniformed security officer with arrest powers at the front door 10:30 p.m. to 4:00 a.m. Sunday through Thursday.

DeWayne Fields, Administrative Assistant for the Department testified to an agreed disposition of charges of Violations off KRS 244.120 and LMCO 113.22 (E) on July 14, 2015, (Exhibit 1). Compliance with this order was to be accomplished by July 21, 2015 per the order of R.T. Watkins, Chief ABC Investigator signed on July 16, 2015, (exhibit 2).

A motion to revoke was filed by Lawrence E. Osterhage, attorney for the administrator and mailed to Respondent's Counsel on July 31, 2015 by regular and certified mail.

Sergeant Donald Stokes of the Louisville Metro Police Department is assigned to the 5th Division. He had been made aware of Cahoots agreement to provide uniformed security from 10:30 p.m. to 4:00 a.m. While on routine patrol on July 21, 22, and 23,

2015 Sgt. Stokes went by Cahoot's during the time period covered by the agreement. He did not see any uniformed Security with arrest powers on any of the above occasions.

Marcia Cain the owner of Cahoot's admitted that there were no uniformed security persons with arrest powers working at Cahoot's on July 21, 22, 23 or 24. Her testimony was to the effect that she contacted several officers to obtain security and some police officers said they would come but did not. None of those officers were identified.

Marcia Cain did not call the Shively police department, the Jeffersontown police department, the Jefferson County Sheriff or the Jefferson County Corrections department to inquire about hiring off duty officers.

Danielle Smith a Louisville Metro ABC officer delivered the motion to revoke to Cahoots on July 24th at 2300 hours, handing it to Steven Barhman, the Manager. When Officer Smith delivered the motion there were no uniform Security personal at Cahoots.

Marcia Cain testified that there were uniformed Security every night after July 24th. She mentioned officer Grider and Detective Thompson, stating that a friend got in touch with officer Grider. On cross examination Ms. Cain admitted she had no payroll records to verify how many of who constituted the uniform Security with arrest powers after July 24th. She paid these persons in cash and had no records.

Officer Robert Grider is a Louisville Metro Police Officer who works off duty at several establishments one of which is Cahoot's. Although he worked outside security at Cahoot's he could not recall when he started but stated he had worked continuously since August, although he did not state when in August he first worked at Cahoot's. Officer Grider worked with different officers and could recall Detective Tyson and a Vanessa from the Sheriff's department.

Officer Grider kept the crowd controlled within the area of the front door of Cahoot's. He acknowledged that there were 2 officers in front and he was not aware of any officers in the back of Cahoot's. He was also aware of internal security at Cahoot's but could not say how many or who they were.

Jamar Goins has worked Security for various clubs for 15 years and has about 15 clients. He worked at cahoots, but can not recall when he started. He is not a police officer with arrest powers. Mr. Goins was working at Cahoot's on August 16th and saw a fight which he said was down the block. He acknowledged that there was an altercation between two women and one of them threw a drink. He observed this from his position outside. It was Jamar Goins' testimony that there were Uniform Security in front of Cahoot's but none in the back.

Case Number 6396-8-2-15

This case charges that on August 2, 2015 Cahoot's was in violation of KRS 244.120 (2) (F) which defines as acts constituting disorderly premises, " When the Licensee's servants, agents, or employees engage in criminal activity that would constitute a capital offense, felony or misdemeanor."

Officer Danielle Smith was at Cahoot's on August 2, 2015 at 3:00 a.m. for a routine inspection. There was a large crowd in and outside of cahoots. Officer Smith detected the smell of Marijuana with which she was familiar from more than 50 experiences with other officers. Officer Smith called Officer Daniel Embry to assist her at Cahoot's. He arrived at approximately 3:10 a.m. and also observed a large crowd and smelled Marijuana and saw smoke. Officer Embry spent 3 years in the narcotics unit and was familiar with the smell of Marijuana.

Officer Embry made contact with Kevin Snook a bartender at Cahoot's, patted him down and found pills one of which he believed was a Schedule 2 controlled substance. He also found a suspected controlled substance on Bartender Jonathan Schaffer. Officer Embry stated that although he smelled marijuana he did not see anyone smoking and

issued no citations to anyone for possession. Officer Embry acknowledged that he did not give a Miranda admonition to Mr. Snook. Mr. Snook was charged with a felony and Mr. Schaffer with a misdemeanor. There was no evidence of a disposition of the charges against either of the bartenders.

Marcia Cain testified that she did not allow Marijuana in Cahoot's and knows what it smells like but smelled none in her business on August 2nd. She acknowledged that Kevin Snook was helping out on that occasion but she had no idea he had methamphetamine on him or she would not have allowed him in.

CONCLUSIONS OF LAW AND RECOMMENDATION

The Hearing Officer has reviewed the documentary and testimonial evidence presented at the hearing and based on that evidence has made the above findings of fact and now states conclusions of law and recommendations.

It is the conclusion of the hearing officer that Marcia Cain and Cahoot's violated the terms of the Plea Agreement entered into on July 14th, 2015 and the order of July 16, 2015. Cahoot's attorney argued that it was a technical violation. The evidence does not support such a conclusion. It was acknowledged by Marcia Cain that there was no compliance with the agreement and order from July 21 to July 24. There was no evidence of compliance through the end of July and evidence of some incomplete compliance at some time in August. Cahoot's kept no records to show who was providing front and back uniform security at any time let alone after some date in August when Officer Grider acknowledged he worked there.

Mr. Goin was not uniformed security with arrest powers. He as well as Officer Grider testified that there was no uniformed security at the back of Cahoot's during any of the period covered by the plea agreement.

It is the recommendation of the hearing officer with regard to Case 6396-5-30-15, that the motion to revoke be granted and Cahoot's License be revoked for 36 days for violation of the agreed upon plea agreement and the order of the Department.

With regard to case 6396-8-2-15 the hearing officer concludes that the evidence does not support a violation of KRS 244.120 (f). That charge hinges on whether Kevin Snook and Jonathan Schaffer, employees of Cahoots were in possession of controlled substances on August 2, 2015. Although charged there was no evidence of a conviction of either bartender and there was evidence that there had not been a final order in at least one of the cases, the one charging a felony.

The hearing officer notes that there was no allegation of a violation of LMCO 113.22(E) on August 2, 2015. That ordinance prohibits the use of controlled substances on the licensed premises. The evidence of Marijuana use at Cahoot's on Aug 2, 2015 would have supported a conclusion that the metro ordinance was violated.

Any party aggrieved by the findings and recommendations above shall submit exceptions to the hearing officer's findings and recommendations within 15 days of the issuance of the findings and recommendations.

Respectfully submitted,

Edmund P. Karem
Edmund P. Karem, Hearing Officer

Date: 10-8-15