

STATE OF IOWA
BEFORE THE DEPARTMENT OF COMMERCE
ALCOHOLIC BEVERAGES DIVISION

IN RE: DOCKET NO. D-2007-00076
DIA NO. 07DOCBL039

Razzco, Inc.
d/b/a Razamatazz
2301 Rocklyn Dr.
Urbandale, Iowa 503224

PROPOSED DECISION

Liquor License No. LC-33404

On or about May 7, 2007, the Iowa Department of Public Safety (DPS) filed an administrative hearing complaint against the above-captioned licensee alleging that on or about February 17, 2007, the licensee knowingly permitted occupancy beyond the maximum limit, in violation of Iowa Code sections 123.49(2)(j) and/or Urbandale City Ordinance No. 2005-26. A hearing was held before the undersigned administrative law judge on July 16, 2007 at 1:00 p.m. at the office of the Iowa Department of Commerce, Alcoholic Beverages Division, 1918 S.E. Hulsizer, Ankeny, Iowa. Assistant Attorney General John Lundquist represented DPS. Attorney Ward Rouse represented the licensee.

THE RECORD

The record includes the Hearing Complaint, the Notice of Hearing, Continuance Request, Continuance Order, the testimony of the witnesses, and the following exhibits:

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| DPS Exhibit 1: | Offense Report, Urbandale Police Department |
| DPS Exhibit 2: | Memorandum re: Razamatazz |
| DPS Exhibit 3: | Case Summary re: <u>Urbandale v. Scott Twaddle</u> , SMAC 288404 |
| DPS Exhibit 4: | Notice to Correct Hazards, Urbandale Fire Department |
| DPS Exhibit 5: | Urbandale City Ordinance No. 2005-26; 2003 International Fire Code §107.6 |
| DPS Exhibit 6: | Liquor License No. LC-33404 |

FINDINGS OF FACT

1. RAZZCO, Inc. d/b/a Razamatazz (licensee), holds Liquor License No. LC-33404 for the premises located at 2301 Rocklyn Dr. in Urbandale, Iowa. The licensed premises has a current rated occupancy of 160 persons, and an occupancy sign is posted over its front door. The rated occupancy is calculated using the net square footage of the assembly portion of the building and the occupancy load factor provided in the fire code. The licensed premises' previous occupancy rating of 125 had been increased to 160 on or about March 31, 2006, after the licensee made some interior changes allowing more of the interior square footage to be counted in the occupancy calculation. (DPS Exhibits 4-4, 4-5, 6; Testimony of Urbandale Fire Marshal Jon Rech)

2. The Urbandale Fire Department has issued Razamatazz several written notices concerning overcrowding or suspected overcrowding at the licensed premises.

a. On January 13, 2006, the Urbandale Fire Department issued Razamatazz a written Notice To Correct Hazards, after it received calls alleging overcrowding at Razamatazz. The notice warned the licensee that the Fire Department would conduct a capacity check that evening and would be making periodic capacity checks to ensure compliance. Razamatazz General Manager Scott Twaddle signed this written notice.

b. On January 29, 2006, the Urbandale Police Officers stationed at the door counted 285 people leaving Razamatazz at a time when the occupancy rating was 125. The Urbandale Fire Marshal witnessed the count. Razamatazz was issued a second Notice To Correct Hazards on January 31, 2006 and was notified that the fire department would continue to perform re-inspections on occupancy levels. Once again, General Manager Scott Twaddle signed the written notice.

c. A third Notice to Correct Hazards was issued to Razamatazz on March 1, 2006, referencing an incident of overcrowding that occurred on February 25, 2006. The notice states that a \$200 fine was payable by March 31, 2006.

(Testimony of Jon Rech; Scott Twaddle; DPS Exhibit 4)

3. The main entrance to the licensed premises is at the front of the building and has double doors. The licensed

premises also has two emergency exits, one in the rear of the building and one in the kitchen. The rear exit door is to be used only for emergencies and to exit the building at closing time.

In or around October 2006, the licensee retained a private security firm (Factor Security) to provide security services for the licensed premises. Factor Security typically posts three employees at the main entrance: one employee is responsible for checking patron identification, one maintains a count of the patrons and gives each patron a wristband, and a third employee collects the cover charge, which is typically \$10 a person. Additional security personnel are posted inside the licensed premises to monitor the patrons and the exit doors.

Scott Shamblen is employed by Factor Security and has worked at Razamatazz most weekends since October 2006. At the hearing, Scott Shamblen explained the procedure used by Factor Security to count patrons. An employee uses a clicker with a counter to count each patron when they enter the licensed premises. When the count on the clicker reaches 160, additional patrons are only to be admitted if someone leaves the premises. A separate clicker is used to keep track of the number of persons that have left the premises, and the numbers on the two clickers are not erased until the evening is over. According to Shamblen, the premises can appear over crowded if people are gathered in one area, but Scott Twaddle has instructed security to continue to admit patrons unless the clicker count is at 160. (Testimony of Scott Twaddle; Scott Shamblen)

4. Late in the evening of February 17, 2007, Urbandale Police Officer Chris Greenfield was on patrol with trainee officer Jayson Spurr when he observed a larger than typical number of cars parked in the Razamatazz area and numerous people standing in line to enter the licensed premises. When Greenfield looked in the front windows of the establishment to observe how crowded it was, he felt it was over capacity.

After obtaining permission from his supervisor to conduct a capacity check, Officer Greenfield contacted Assistant Fire Chief Denny Danford for assistance. Razamatazz employees generally require all patrons to leave the premises starting at 1:30 a.m.; all patrons are generally out of the premises by 1:40 a.m. Assistant Fire Chief Danford met

Officer Greenfield and Jayson Spurr outside the Razamatazz at approximately 1:30 a.m. on February 18, 2007. Urbandale Police Officer Matt McCarty parked his squad car across the street where he could observe the back exit of Razamatazz.

Officer Greenfield and Assistant Fire Chief Denny Danford stood at the double glass door entry located at the front of the premises and separately counted patrons as they left the premises. Scott Shamblen, who had been collecting the cover charge that evening, had gone inside to turn in the money. When Shamblen came out, he asked the officers why they were there, and they told him they were conducting a head count. Shamblen went back inside the premises to report this to his security staff.

Greenfield and Danford each kept track of the count in their heads. A few minutes after the count started, Officer McCarty called Greenfield to report that patrons were also leaving through the back door of the premises. Officer Greenfield told Officer McCarty to start counting the persons who were leaving through the back door. When Scott Shamblen was asked why people were leaving through the back door, he replied that they always use the back door. However, Shamblen also stated that he did not want anybody to get into trouble and he was doing what manager Scott Twaddle told him to do.

After all of the patrons had left the establishment, Greenfield and Danford compared their counts. Officer Greenfield recalled that their two numbers were fairly close; Danford recalled that they were the same. Officer Greenfield asked Officer McCarty for the number of patrons that he counted leaving through the back door, and then added McCarty's number to his total. Neither Greenfield nor Danford could recall their own individual counts or the count reported by Officer McCarty from the back door.

One of the officers also counted the number of employees and factored this number into the count. The combined head count was 233 persons, and this number was recorded by the officers. Based on estimates provided at hearing, there may have been as many as 10 Razamatazz employees and an additional 12 security persons working the early morning of February 18, 2007. (Testimony of Chris Greenfield; Denny Danford; Scott Twaddle; Scott Shamblen DPS Exhibits 1, 2)

5. Scott Twaddle has been the general manager of Razamatazz since early 2006. He was present at the licensed premises and was bartending on February 17-18, 2007. The Urbandale Police issued Scott Twaddle a criminal citation for Over Occupancy/Violating a Local Fire Safety Code. Twaddle pled guilty to the citation on April 11, 2007 and was fined \$500. (Testimony of Scott Twaddle; DPS Exhibit 3)

6. Overcrowding in a licensed liquor establishment raises significant public safety concerns. The combination of alcohol and crowded conditions can cause fights or violent incidents. Overcrowding can make it difficult for emergency personnel to reach an injured person. If an emergency such as a fire requires a quick evacuation of the building, overcrowding can cause a bottleneck or stampede of patrons. There have been instances in other parts of the country where patrons have died attempting to exit a crowded building. (Testimony of Chris Greenfield; Jon Rech)

CONCLUSIONS OF LAW

I. The Alleged Violation

The Hearing Complaint alleges that the licensee or an employee or agent of the licensee knowingly permitted or engaged in criminal activity on the licensed premises, i.e. knowingly permitting occupancy beyond the maximum limit, in violation of Urbandale City Ordinance 2005-26.

Iowa Code section 123.49(2)(j) (2007) provides:

2. A person or club holding a liquor control license or retail wine or beer permit under this chapter, and the person's or club's agents or employees, shall not do any of the following:

...

j. Knowingly permit or engage in any criminal activity on the premises covered by the license or permit.

Urbandale City Ordinance No. 2005-26 adopted the 2003 International Fire Code, to be enforced by the Fire Prevention Bureau of the City under the supervision of the Chief of the Fire Department (DPS Exhibit 5). The 2003 International Fire Code, section 107.6, provides, in

relevant part:

107.6 Overcrowding. Overcrowding or admittance of any person beyond the approved capacity of a building or a portion thereof shall not be allowed. The fire code official, upon finding any overcrowding conditions which constitutes a life safety hazard, shall be authorized to cause the event to be stopped until such condition or obstruction is corrected.

The preponderance of the evidence established that an employee or agent of the licensee knowingly permitted criminal activity by allowing occupancy beyond the maximum limit on or about February 18, 2007, in violation of Iowa Code section 123.49(2)(j)(2007) and Urbandale City Ordinance 2005-26. This violation was presumptively established when the general manager of Razamatazz pled guilty to a criminal citation for allowing overcrowding in violation of the city ordinance. By pleading guilty to the criminal citation, the licensee's manager admitted that he allowed overcrowding to occur. The manager now claims that he does not believe that the licensed premises was actually over capacity on February 18, 2007, but his criminal conviction speaks for itself and cannot be collaterally attacked through this administrative proceeding.

Moreover, the preponderance of the evidence in this administrative record established that the licensed premises was significantly over capacity on February 18, 2007 and that the licensee's manager and staff allowed the overcrowding to occur. General Manager Scott Twaddle and the security personnel employed by the licensee clearly knew, based on previous warnings from the Fire Department, that overcrowding had been an issue with the licensed premises in the past. A police officer familiar with the licensed premises credibly testified that the premises appeared overcrowded that evening, based both on the density of the crowd and on the number of cars in the area. A police officer and the assistant fire chief credibly testified that they conducted a head count at closing time, in conjunction with a third officer posted at the rear exit of the premises, and that their total count was 233, which was 70 persons more than the rated occupancy. Based on the officer's testimony it is likely that several patrons left through the rear door without being counted at all.

It is not entirely clear whether employees should be included in the count. The licensee is under the impression that employees should not be counted, and this issue was not addressed by the Fire Department employees in their testimony. Nevertheless, even if the total number of possible employees (22) is subtracted from the total head count of 233, the licensed premises was still approximately 50 persons over the 160 person rated occupancy. While it is possible that the officers' head count was not precise, there is little doubt that the licensed premises was over capacity by a significant margin on February 18, 2007. This was not a case of a few extra patrons slipping by security.

While the licensee's security persons used clickers to count the numbers of patrons entering and leaving the premises, this counting method was only as reliable as the individuals who conducted the count, kept track of people leaving, and made the decisions when to admit additional patrons. Scott Shamblen, the only security person who testified, was only responsible for collecting the cover charge. He was not counting patrons that evening. The observations and testimony of the police officer and the assistant fire chief was more convincing than the contrary testimony of the licensee's general manager and security person, both of whom have a significant self interest in the outcome of the hearing.

II. Sanction

Iowa Code section 123.39 (2007) provides, in relevant part:

123.39 Suspension or revocation of license or permit-civil penalty

1.a. The administrator or local authority may suspend a license or permit issued pursuant to the chapter for a period not to exceed one year, revoke the license or permit, or impose a civil penalty not to exceed one thousand dollars per violation. Before suspension, revocation, or imposition of a civil penalty, the license or permit holder shall be given written notice and an opportunity for a hearing...

...

As pointed out by the state, the Division has typically imposed a twenty-one to thirty day suspension of the liquor license for knowingly allowing illegal activity, such as gambling or indecent exposure, on the licensed premises. This was a serious violation implicating important public health, safety, and welfare concerns. If there is a fire or an emergency requiring a quick exit, overcrowding can result in a bottleneck or stampede of patrons trying to escape. This danger is exacerbated when dealing with patrons who have been consuming alcohol. The violation merits a 21-day license suspension.

ORDER

IT IS THEREFORE ORDERED, pursuant to Iowa Code section 123.39, that for knowingly allowing illegal activity on the licensed premises, i.e. knowingly permitting occupancy beyond the maximum limit, in violation of Iowa Code section 123.49(2)(j) and Urbandale City Ordinance 2005-26, Liquor License No. LC-33404 issued to Razzco, Inc. d/b/a Razamatazz, shall be suspended for a period of twenty-one (21) days. The suspension shall begin at 6:00 a.m. on Monday, October 1, 2007 and shall end at 6:00 a.m. on Monday, October 22, 2007.

IT IS FURTHER ORDERED that no alcoholic liquor, wine, or beer may be sold, dispensed or consumed on the premises during the period of suspension.

Pursuant to the administrative rules of the division, any adversely affected party may appeal a proposed decision to the Administrator of the Alcoholic Beverages Division within thirty (30) days after issuance of the proposed decision. In addition, the Administrator may initiate review of a proposed decision on the Administrator's own motion at any time within thirty (30) days following the issuance of a proposed decision. 185 IAC 10.27(1) and (2).

Requests for review shall be sent to the Administrator of the Alcoholic Beverages Division, 1918 S.E. Hulsizer, Ankeny, IA 50021. Unless otherwise ordered, each appealing party may file exceptions and briefs within thirty (30) days of the notice of appeal or order for review. Within thirty (30) days thereafter, any party may file a responsive brief. The Administrator may shorten or extend the briefing period as appropriate. The Administrator may resolve the appeal on the briefs or provide an opportunity

for oral argument. 185 IAC 10.27(6). The administrator may affirm, reverse or modify the proposed decision.

A party who is adversely affected by the proposed decision shall not be deemed to have exhausted administrative remedies unless the adversely affected party files a request for review of the proposed decision within the time provided and the Administrator has reviewed the proposed decision and has affirmed, reversed, or modified the proposed decision.

Dated this 8th day of August, 2007.



Margaret LaMarche
Administrative Law Judge
Department of Inspections and Appeals
3rd Floor, Lucas State Office Building
Des Moines, IA 50319

CC: See Attached Mailing List

Witnesses:

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