



11-7-2012

TENNESSEE ALCOHOLIC BEVERAGE
COMMISSION, Petitioner, v. NASHVILLE
CENTER STAGE, LLC, d/b/a NASHVILLE
CENTER STAGE, Respondent

Follow this and additional works at: http://trace.tennessee.edu/utk_lawopinions

This Initial Order by the Administrative Judges of the Administrative Procedures Division, Tennessee Department of State, is a public document made available by the College of Law Library, and the Tennessee Department of State, Administrative Procedures Division. For more information about this public document, please contact administrative.procedures@tn.gov

**BEFORE THE ALCOHOLIC BEVERAGE COMMISSION
OF THE STATE OF TENNESSEE**

IN THE MATTER OF:

**TENNESSEE ALCOHOLIC BEVERAGE
COMMISSION,
*Petitioner,***

v.

**NASHVILLE CENTER STAGE, LLC,
d/b/a NASHVILLE CENTER STAGE,
*Respondent.***

DOCKET NO: 33.01-117758J

INITIAL ORDER

This matter came for hearing on November 7, 2012 in Nashville, Tennessee on before Lynn M. England, Administrative Judge, assigned by the Secretary of State, Administrative Procedures Division, and sitting for the Tennessee Alcoholic Beverage Commission (TABC). The State was represented by Ginna Winfree, staff attorney, Tennessee Alcoholic Beverage Commission (TABC). Attorney George Duzane represented Nashville Center Stage.

The subject of the hearing was to consider whether the Respondent's liquor license should be suspended or revoked for violation of T.C.A. §57-4-203(b)(1)(A) Minor in Possession and/or TABC Rule 0100-01-.03(20) Minors in possession of alcohol.

After consideration of the argument of counsel and the record in this matter, it is determined that Respondent shall not be suspended or revoked. This decision is based upon the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. Respondent, Nashville Center Stage, LLC. is a limited liability corporation organized under the laws of the State of Tennessee. Respondent's principal address and licensed establishment is located at 514 Eighth Avenue South, Nashville, TN 37203—4119.

2. Respondent is an 18 and up live music venue/dance club with an on-premise consumption license.
3. Respondent has a protocol in place for checking identification of patrons before they enter the venue.
4. A security guard outside the venue checks the patron' s state ID or drivers license for date of birth, photograph and hologram. The security guard then places a red or green wrist band¹ on the right wrist each patron. A red wrist band signifies the patron is over 21 and a green wrist ban signifies the patron is under 21.
5. Respondent also has security guards placed throughout the venue to ensure that minors are not in possession of and/or consuming alcoholic beverages.
6. On January 28, 2012, Metro Police Officers Baxter and Particelli observed a server sell "test tubes" (alcohol shots) to an individual who was wearing a red wrist band. This individual then passed the alcohol to a underage patrons.
7. The officers did not believe that server was aware of what the individual was doing. The officers issued citations to two (2) underage patrons. No citation was issued to the server.
8. On February 4, 2012, Metro Police officers Smith and Particelli each observed underage individuals in possession of alcoholic beverages. They issued two (2) citations to the individuals for underage consumption. At no time did the officers observe alcohol being sold to these individuals. In fact, according to Officer Smith, the security staff would often point out underage drinkers to
9. On February 12, 2012, Metro Police officers Smith and particelli each observed an individual "pass a drink off" to an underage patron. They issued two (2) citations to the individuals for underage consumption. At no time did the officers observe alcohol being sold to these individuals.

¹ Exhibit #1.

10. On February 18, 2012, Metro Police officer Petricelli observed a 20 year old girl take a drink from her sister in law. Her sister in law had purchased the drink and passed it off to the underage girl. He issued a citation for underage consumption.

CONCLUSIONS OF LAW

1. T.C.A. § 57-3-104 *et seq.* authorizes the TABC or its authorized representative to enforce and administer the provisions of this Chapter and the rules and regulations made by it.

2. T.C.A. § 57-4-201(a)(2) provides that:

“the commission shall make regulations, not inconsistent with this chapter, for clarifying, interpreting, carrying out and enforcing the terms of this chapter, for ensuring the proper and orderly conduct of business by licensees, and for regulating all advertising of alcoholic beverages by licensees.”

3. T.C.A. § 57-4-203(b)(1) provides:

(A) Any licensee or other person who sells, furnishes, dispose of, gives, or causes to be sold, furnished, disposed of, or given, any alcoholic beverage to any person under twenty-one years of age commits a Class A misdemeanor...

(B) Any licensee engaging in business regulated hereunder or any employee thereof who sells, furnishes, disposes of, gives, or causes to be sold, furnished, disposed of, or given any beer or malt beverage...to any person under twenty-one years of age commits a Class A misdemeanor.

4. TABC Rule 0100-1-.03(20):

Minors in possession of alcohol. All on premise consumption licensees are required to insure that minors are not in possession of and/or not allowed to consume any alcoholic beverage-including malt beverages or beer-on the licensed premises.

5. Tenn. Code Ann. § 57-4-202:

The commission shall have the authority to revoke or suspend any permit granted herein for the violations of the provisions of any applicable provision of this chapter,...

ANALYSIS

1. The ABC has failed to carry its burden of proof by a preponderance of the evidence that the Respondent's alcohol consumption license should be suspended or

revoked pursuant to Tenn. Code Ann. Sec. 57-4-202 for violating the provisions of the law prohibiting the sale of alcohol to minors.

2. The ABC failed to carry its burden of proof by a preponderance of the evidence that Respondent sold alcoholic beverages to minors or allowed them to consume alcoholic beverages.

3. The proof did show that the respondent takes measures to control alcohol consumption by minors. Their security is active in its measures to control underage consumption.

4. The ABC failed to carry its proof by a preponderance of the evidence that the Respondent failed to insure that minors are not in possession of and/or allowed to consume alcoholic beverages. By checking identification of all individuals before they enter the club, issuing brightly colored armbands, having security stationed at the bar and roving throughout the premises its is evident that the Respondent is doing everything they can to insure minors are not in possession of or consuming alcoholic beverages.

Based upon the foregoing, it is hereby **ORDERED** that the no action be taken against Respondent's License No. 52580 for violation of Tenn. Code Ann. Sec. 57-4-202.

This Initial Order entered this 4 day of January, 2013

Lynn M. England
Administrative Judge

Entered and effective this 4 day of January, 2013 Stovall, Director
Administrative Procedures Division