

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

DEPARTMENT OF BUSINESS )  
AND PROFESSIONAL REGULATION, )  
DIVISION OF ALCOHOLIC BEVERAGES )  
AND TOBACCO, )  
 )  
Petitioner, )  
 )  
vs. ) Case No. 98-3701  
 )  
JIMMY K. BOYD d/b/a GET A WAY )  
BAR & LOUNGE )  
 )  
Respondent, )  
\_\_\_\_\_ )

RECOMMENDED ORDER

Pursuant to notice, a formal hearing was held in this case on August 25, 1998, at West Palm Beach, Florida, before Claude B. Arrington, a duly designated Administrative Law Judge of the Division of Administrative Hearings.

APPEARANCES

For Petitioner: Miguel Oxamendi, Esquire  
Department of Business and  
Professional Regulation  
1940 North Monroe Street  
Tallahassee, Florida 32399-1007

For Respondent: J. Steven Reynolds, Esquire  
1803 Australian Avenue South, Suite A  
Post Office Box 15782  
West Palm Beach, Florida 33416

STATEMENT OF THE ISSUES

Whether Respondent's alcoholic beverage license number 60-05660, series 2COP, should be disciplined based on the

alleged violations of the alcoholic beverage laws set forth in the Notice to Show Cause dated August 14, 1998.

PRELIMINARY STATEMENT

On August 14, 1998, Petitioner served Respondent with an Emergency Order of Suspension, which suspended Respondent's alcoholic beverage license, and a Notice To Show Cause, which underpins this proceeding. The Notice to Show Cause<sup>1</sup> alleged certain facts pertaining to drug sales at the premises. Based on those facts, Petitioner alleged in eleven separate counts three distinct violations of the beverage laws. Counts 1 through 9 charged Respondent with permitting patrons to unlawfully possess, sell or deliver controlled substances on the licensed premises, in violation of Section 561.29(1)(a), Florida Statutes. Count 10 charged Respondent with maintaining a place used for keeping or selling controlled substances in violation of Section 561.29(1)(a), Florida Statutes. Count 11 charged Respondent with maintaining a nuisance on the licensed premises in violation of Section 561.29(1)(c), Florida Statutes. The Respondent requested a formal hearing under Section 120.57(1), Florida Statutes, the matter was referred to the Division of Administrative Hearings, and this proceeding followed.

A formal evidentiary hearing was held on August 25, 1998. At the formal hearing, Petitioner presented the testimony of Kent Stanton, Jennifer DeGidio, Beth R. Fisch, and Respondent. Mr. Stanton and Ms. DeGidio are special agents employed by Petitioner who conducted an undercover investigation of Respondent's business. Ms. Fisch is a forensic chemist employed

by the Palm Beach County Sheriff's Office. Petitioner offered five exhibits, each of which were accepted into evidence. Without objection, Petitioner retained custody of its Exhibit 5, which consisted of the cocaine that was purchased by the Petitioner's undercover agents. In addition to his testimony during Petitioner's case, Respondent testified on his own behalf and presented the testimony of Scott Lyons, Kathy Harris, Ellie Reardon, Shannon Dowding, Charles Acquotta, and Paul Conlogue. Mr. Lyons is a patron of Respondent's business who was accused of dealing drugs on the premises. Ms. Harris, Ms. Reardon, and Ms. Dowding are employed by Respondent's business as bartenders. In addition, Ms. Reardon is Respondent's girlfriend and the manager of Respondent's business. Mr. Acquotta and Mr. Conlogue are patrons of Respondent's business. Respondent offered no exhibits.

The parties stipulated that the substances purchased by the two undercover agents were kept in a proper chain of custody; that the substances were appropriately analyzed and found to be cocaine; and that cocaine is a controlled substance.

No transcript of the proceedings has been filed. Petitioner and Respondent filed proposed recommended orders, which have been duly considered by the undersigned in the preparation of this Recommended Order.

#### FINDINGS OF FACT

1. Respondent Jimmy Karl Boyd is the holder of alcoholic

beverage license number 60-05660, series 2COP, for a licensed premises known as Get A Way Bar & Lounge, located at 2517 North Military Trail, West Palm Beach, Palm Beach County, Florida.

2. At all times pertinent to this proceeding, Ellie Reardon was the girlfriend of the Respondent and the manager of the premises. Shannon Dowding, who is Ms. Reardon's daughter, and Kathy Harris were also bartenders at the establishment.

3. Petitioner initiated an investigation of the licensed premises based on a complaint from Jim Falsia, a deputy with the Palm Beach Sheriff's Office, that persons were dealing in stolen property and drugs on the premises.<sup>2</sup>

4. Kent Stanton and Jennifer DeGidio, special agents employed by Petitioner, conducted the undercover investigation of Respondent's business in cooperation with the Palm Beach County Sheriff's Office. Before they entered the subject premises for the first time, Agents Stanton and DeGidio were given certain information, including identifying information pertaining to two suspected drug dealers named William Howell and Scott Lyons.

5. As part of their investigation, Agents Stanton and DeGidio entered the subject premises during late afternoon or early evening on the following dates: June 18, 19, 23, and 26; July 1, 15, 21, 23, 29, and 31; and August 4, 6, and 12, 1998. After each of these visits, the undercover agents returned to their office where they recorded their recollection of what had transpired.

6. At all times, the two agents entered the premises together. One or the other agent always wore a listening device that was monitored by backup law enforcement officers.

7. Agents Stanton and DeGidio purchased quantities of cocaine inside the subject premises on the following dates: June 19; July 1, 15, 21, 23, 29, and 31; and August 6 and 12, 1998.

#### THE PREMISES

8. The premises are located in a commercial area that backs up to an area of low income housing.

9. The premises consist of a parking area and a rectangular shaped building with approximately 2,000 square feet. The building has three doors.

10. There is no lighting other than that provided by the open doors. The evidence established that there was adequate light in the premises to observe the events pertinent to this proceeding.

11. There is a long bar with a mirror on the wall that the patrons face. The bartender on duty is usually stationed behind the bar in the vicinity of the cash register, which is behind the bar toward the eastern end of the bar.

12. There is a telephone at the eastern end of the bar that patrons are free to use.

13. The door at the westerly end of the premises is off a hallway in the vicinity of the men's room. This hallway is not visible from where the bartender is usually stationed and is not otherwise monitored.

14. There are four televisions that could be set on

different stations. One or more television was usually on. There is a juke box. At the times pertinent to this proceeding, the bar was cooled by two four-foot fans and an 18-inch fan because the central air conditioning system was broken. There were coolers behind the bar. Although the premises was noisy, the evidence established that the noise did not prevent ordinary conversation.

JUNE 18, 1998

15. The first time the undercover agents entered the subject premises was Thursday, June 18, 1998. They observed Respondent, Ellie Reardon, and two patrons drinking beer and engaging in conversation. The agents only engaged in small talk on that occasion.

16. No drugs were purchased by the undercover agents on this date.

JUNE 19, 1998

17. On Friday, June 19, 1998, the two undercover agents entered the premises and made contact with Respondent, Ms. Reardon, and two patrons known to the agents only as "Rick" and "Gabe." Agent DeGidio asked Rick if he knew where she could "get something to party with." Rick replied, grass (slang for marijuana) or powder (slang for cocaine). When Agent DeGidio responded powder, Rick introduced her to another patron, William Howell, and requested Howell to provide cocaine to Agent DeGidio. Howell asked Agent DeGidio what she wanted, and Agent DeGidio



replied an "eight bail," which is slang for 3.5 grams of cocaine. No employee of the Respondent was in a position to hear those conversations. After Howell related the price, Agent DeGidio returned to the bar area to Agent Stanton and asked him for money. Agent Stanton openly handed Agent DeGidio approximately \$160.00. Ms. Reardon was in a position to observe this transfer of money. Agent DeGidio returned to Howell and gave him \$150.00. Agent DeGidio and Howell returned to the bar area and Howell picked up the phone from Ms. Reardon. Howell placed a brief telephone call, and within a short time, Ms. Reardon picked up the ringing telephone, and gave it to Howell. Howell then departed the premises and returned shortly thereafter, whereupon he handed Agent DeGidio a small plastic bag containing suspected cocaine. Howell did not attempt to conceal the nature of the transaction from Ms. Reardon, who was in position to observe the transfer. The substance purchased on this occasion was laboratory analyzed and found to contain cocaine.

JUNE 23, 1998

18. On June 23, 1998, the undercover agents returned to the licensed premises. On this date, Agent DeGidio approached employee Ms. Reardon and openly asked her if Howell was around and whether he could "get us some stuff." Ms. Reardon began looking for Howell, but did not take any other action regarding Agent DeGidio's obvious drug request. When Howell arrived at the premises shortly thereafter, he approached Agents DeGidio and

Stanton. Howell told Agent DeGidio that Ellie (Ms. Reardon) had told him that she (DeGidio) wanted some, meaning drugs. When Agent DeGidio told Howell that she was looking for a gram of cocaine, Howell said he would try, made a phone call, and thereafter departed the premises. When Howell returned, he told the agents that his cocaine supplier had not come yet.

19. No drugs were purchased by the undercover agents on this date.

JUNE 26, 1998

20. On June 26, 1998, the undercover agents returned to the licensed premises. On this date, Agent DeGidio made contact with Howell regarding the purchase of cocaine. Howell placed a phone call at the bar phone, and received a return call a few minutes later. Howell informed Agent DeGidio that he could sell her cocaine as soon as his supplier arrived. When Howell returned and advised that his cocaine supplier had not arrived, the agents departed. The evidence failed to establish that anyone employed by Respondent heard this conversation.

21. No drugs were purchased by the undercover agents on this date.

JULY 1, 1998

22. On July 1, 1998, Agents Stanton and DeGidio returned to the licensed premises. On this date, Agent DeGidio made contact with Howell regarding the purchase of cocaine. Their conversation occurred at the bar less than two feet from Shannon

Dowding, who was tending the bar and in a position to hear the conversation. Ms. Dowding took no action in response to this conversation. Howell placed a call using the telephone at the bar and received a return call seconds later.

23. Agent DeGidio approached Agent Stanton, who openly handed her \$60.00. Agent DeGidio then handed the money to Howell. This exchange occurred in the middle of the bar in plain

view of Ms. Dowding, but no reasonable inquiry or action was taken.

24. Howell later approached an unidentified patron and called Agent DeGidio to where he was standing in the hallway in the vicinity of the men's room. This area was not monitored or supervised by the Respondent or his employees and was not visible from the bar counter where the Respondent's bartender was stationed. When Agent DeGidio arrived, Howell handed her a small plastic bag containing cocaine. The substance purchased on this occasion was laboratory-analyzed and found to contain cocaine.

JULY 15, 1998

25. On July 15, 1998, Agents Stanton and DeGidio returned to the licensed premises. On this date, the agents met with Kathy Harris, who was working as the bartender at the premises. Ms. Harris answered the telephone at the bar and the caller asked for Howell, but Howell was not on the premises. Agent Stanton asked Ms. Harris if she knew whether Howell was coming to the premises that day. When Ms. Harris replied that she did not know, Agent DeGidio asked Ms. Harris if she knew someone who could get the agents "something to party with." Ms. Harris told the agents that Howell's "partner" was present. Ms. Harris then brought the partner into the premises and introduced him to the agents as "Scott," later identified as Scott Lyons. Agent DeGidio then loudly asked Lyons, in the presence of Ms. Harris, whether he could provide the agents "something to party with."

Agent DeGidio and Lyons then discussed availability and price of the cocaine in the presence of Ms. Harris. When Agent Stanton expressed concern over giving Lyons money before receiving cocaine, Ms. Harris stated that Lyons could be trusted. Agent Stanton then handed Lyons \$60.00 and Lyons departed the premises. Soon thereafter, Lyons returned to the premises and approached Agent Stanton, who was sitting at the bar two feet from Ms. Harris. Lyons handed Agent Stanton, at bar level, a small plastic bag with a white powdery substance. At no time during this transaction did Ms. Harris, or any other employee, take any action to stop the drug transaction or even inquire about it. The substance purchased on this occasion was laboratory-analyzed and found to contain cocaine.

JULY 21, 1998

26. On July 21, 1998, Agents Stanton and DeGidio returned to the licensed premises. On this date, the agents sat at the bar, which was tended by Ms. Dowding. Agent DeGidio made contact with Lyons, who was standing at the bar in front of Ms. Dowding, and asked if he could "get some stuff." Lyons said that he could, made another call using the bar phone, and departed the premises. Lyons and Howell later entered the premises together. Lyons approached Agent Stanton, and they discussed a cocaine transaction. Agent Stanton openly handed Lyons \$60.00. These conversations were at normal speaking volumes and could have been heard by anybody at the bar including Ms. Dowding. After

departing and then returning to the premises, Lyons approached Agent Stanton, who was sitting at the bar three feet from Ms. Dowding and four feet from Ms. Reardon, who had entered the premises. Lyons handed Agent Stanton, at bar level, two small clear plastic bags containing a white powdery substance. Agent Stanton placed the small clear bags in the palm of his hand, and then placed his hand at chest level and looked at the bags of cocaine for a few seconds. Anybody at the bar was in a position to see the bags in Agent Stanton's hand including Ms. Dowding and Ms. Reardon. At no time did Ms. Dowding or Ms. Reardon take any action to stop the drug transaction or inquire about it. The substance purchased on this occasion was laboratory-analyzed and found to contain cocaine.

JULY 23, 1998

27. On July 23, 1998, Agents Stanton and DeGidio returned to the licensed premises. Agent Stanton went to the hallway by the men's room and met with Lyons regarding the purchase of cocaine. Agent Stanton handed Lyons \$60.00. Approximately five minutes later, Lyons approached Agent Stanton at the bar and handed him at bar level two small clear plastic bags containing a white powdery substance. Agent Stanton held the cocaine in his palm and looked at it before placing it into his pocket. The cocaine transfer could have been viewed by anyone sitting at the bar, including a ten-year old boy, who was sitting next to Agent Stanton, and Ms. Reardon. At no time did Ms. Reardon or any

other employee take any action to stop the drug transaction or inquire about it. The substance purchased on this occasion was laboratory analyzed and found to contain cocaine.

JULY 29, 1998

28. On July 29, 1998, Agents Stanton and DeGidio returned to the licensed premises. On this date, Agent DeGidio met with Howell regarding the purchase of cocaine and asked him, in the presence of Ms. Dowding, for a gram. Howell walked to the end of the bar where Ms. Dowding handed him the telephone. Howell placed a call. When the phone rang moments later, Ms. Dowding answered and handed the telephone to Howell. After a short conversation, Howell told Agent DeGidio that she would have to wait. Ms. Dowding was sitting right next to Howell during this exchange. Shortly thereafter Ms. Dowding departed the premises and was replaced by Ms. Reardon, who had arrived with a child approximately ten years old. Agent DeGidio looked out the back door and saw Howell and an unidentified male in an automobile engaged in what appeared to be a hand-to-hand drug transaction. Howell then reentered the bar and approached Agent DeGidio. Agent DeGidio told Agent Stanton that Howell needed the money, and Agent Stanton gave Howell \$60.00 in the presence of Ms. Reardon. Howell briefly walked out the back door, reentered and handed Agent DeGidio two small clear plastic bags containing a white powdery substance. The transfer occurred at the back of the bar. At no time did Ms. Dowding or Ms. Reardon take any

action to stop the drug transaction or to inquire about it. The substance purchased on this occasion was laboratory-analyzed and found to contain cocaine.

JULY 31, 1998

29. On July 31, 1998, Agents Stanton and DeGidio returned to the licensed premises. On this date, Agent Stanton met with Lyons regarding the purchase of cocaine. Later, Lyons signaled Agent Stanton to walk to the hall by the men's room. Lyons stated that he needed the money, and Agent Stanton gave Lyons \$60.00. Approximately ten minutes later, Lyons again signaled Agent Stanton to go to the back of the bar. There Lyons handed Agent Stanton two small clear plastic bags containing a white powdery substance. The evidence failed to establish that any employee of the Respondent was in a position to see these events or hear these conversations. The substance purchased on this occasion was laboratory-analyzed and found to contain cocaine.

AUGUST 4, 1998

30. On August 4, 1998, the undercover agents returned to the premises, but they did not purchase any drugs.

AUGUST 6, 1998

31. On August 6, 1998, Agents Stanton and DeGidio returned to the licensed premises. On this date, Agent DeGidio met with Howell regarding the purchase of cocaine. Agent DeGidio obtained \$60.00 from Agent Stanton and handed it to Howell. Approximately ten minutes later, Howell signaled Agent DeGidio to go to the



back of the bar in front of the men's restroom. Once there Howell handed Agent DeGidio two small clear plastic bags containing a white powdery substance. Ms. Reardon was in a position to observe Agent Stanton give Agent DeGidio the money that she subsequently gave to Howell. Ms. Reardon was not in a position to see or hear the remaining events. At no time did any employee take any action to stop the drug transaction or to inquire about it. The substance purchased on this occasion was laboratory-analyzed and found to be cocaine.

AUGUST 12, 1998

32. On August 12, 1998, Agents Stanton and Agent DeGidio returned to the licensed premises. On this date, Agent DeGidio again met with Howell regarding the purchase of cocaine. Howell was standing in the back of the bar with employee Ms. Reardon, Respondent, and an unknown patron. In the presence of these people, Agent DeGidio asked Howell if he could "hook her up." This question should have been construed by all who heard it as an inquiry pertaining to drugs. Howell replied that he would attempt to locate some cocaine for Agent DeGidio. Shortly thereafter, Howell met with Agent DeGidio and told Agent DeGidio that his usual source wasn't home, but he would see if he could get it from someone else. After discussing price with Howell, Agent DeGidio approached Agent Stanton and obtained \$60.00 from him. Agent Stanton counted out the money in front of Ms. Reardon and Ms. Dowding and handed the money to Agent DeGidio. Agent DeGidio then gave the \$60.00 to Howell. Shortly thereafter, Howell motioned for Agent DeGidio to come to the area of the men's room, where he handed Agent DeGidio \$10.00<sup>3</sup> and two paper packets containing a white powdery substance. At no time did any of the employees attempt to stop the transaction or to inquire about it. The substance purchased on this occasion was laboratory-analyzed and found to be cocaine.

33. Although the consummation of the foregoing transactions was frequently in the area of the men's room, any reasonable

employee knew or should have known that the undercover agents were purchasing drugs from Howell and Lyons. With the exception of the transaction on July 31, 1998, at least a part of each transaction was conducted in an open manner near the bar, where the transaction could easily be viewed by the bartender on duty. Ellie Reardon, Shannon Dowding, and Kathy Harris were aware of, or should have been aware of, the drug activity. Respondent's employees openly condoned it, to the point of actually directing the agents to the sellers and vouching for the reliability of Lyons.

34. The testimony of the Respondent and his employees that they had no idea drugs were being bought and sold in the establishment is rejected because that testimony is contrary to the clear and convincing evidence of the two special agents and to the multiple bags of cocaine that were produced as evidence.

#### NO RESPONSIBLE VENDOR TRAINING

35. Respondent took no action to prevent drug activity on the premises. Respondent provided no Responsible Vendor Training pursuant to Section 561.701, Florida Statutes.<sup>4</sup> The Respondent never informed his employees that drug use and sales were not to be tolerated on the licensed premises, nor did he instruct them what they should do if they observed drugs being trafficked on the premises.

36. Ms. Reardon, Ms. Dowding, and Ms. Harris testified that they had been given appropriate vendor training by the

Respondent. This testimony is rejected as being contrary to the Respondent's testimony.

CONCLUSIONS OF LAW

37. The Division of Administrative Hearings has jurisdiction of the parties to and the subject of this proceeding. Section 120.57(1), Florida Statutes.

38. Petitioner bears the burden of proving the allegations of the Notice to Show Cause by clear and convincing evidence. Department of Banking and Finance v. Osborne Stern & Co., 670 So. 2d 932 (Fla. 1996).

39. Counts 1 through 9 of the Notice to Show Cause alleged that Respondent, through his employees, permitted named patrons (Howell or Lyons) on specified dates, to possess, sell, or deliver cocaine on the licensed premises in violation of Sections 893.13(1)(a) and 561.29(1)(a), Florida Statutes. The respective dates of the alleged violations are the dates the undercover agents purchased cocaine at the licensed premises.

40. Count 10 of the Notice to Show Cause alleged that Respondent, through his employees, violated Sections 893.13(7)(a)5 and 561.29(1)(a), Florida Statutes, by keeping or maintaining his licensed premises as a place that is used for keeping or selling cocaine.

41. Count 11 of the Notice to Show Cause alleged that Respondent, through his employees, kept or maintained his licensed premises in such a manner that his premises constituted a public nuisance as defined by Section 823.10, Florida Statutes, and in violation of Section 561.29(1)(c), Florida Statutes.

42. The provisions of Section 561.29(1)(a), Florida Statutes, pertain to Counts 1 through 10 of the Notice to Show Cause. The provisions of Section 561.29(1)(c), Florida Statutes, pertain to Count 11. Those provisions provide, in pertinent part, as follows:

(1) The division is given full power and authority to revoke or suspend the license of any person holding a license under the Beverage Law, when it is determined or found by the division upon sufficient cause appearing of:

(a) Violation by the licensee or his or its agents, officers, servants, or employees, on the licensed premises, or elsewhere while in the scope of employment, of any of the laws of this state or of the United States, . . . or permitting another on the licensed premises to violate any of the laws of this state or of the United States. . . .

\* \* \*

(c) Maintaining a nuisance on the licensed premises.

43. Pursuant to Section 893.13(1)(a), Florida Statutes, it is a violation of state law to sell, use, deliver, or possess cocaine, which is a controlled substances as defined in Section 893.03, Florida Statutes. Petitioner established by clear and convincing evidence that the undercover agents purchased quantities of cocaine on the licensed premises on nine separate occasions. With the exception of the transaction on July 31, 1998, a part of each transaction was in an open and conspicuous manner.

44. There was no evidence that the Respondent or any of his

employees dealt in drugs.

45. The evidence was not clear and convincing that Respondent personally knew that Howell and Lyons were dealing drugs in the licensed premises.

46. The evidence was clear and convincing that the bartenders employed by the Respondent knew or should have known that Lyons and Howell were routinely dealing drugs on the licensed premises and that the bartenders did nothing to stop or discourage it.

47. Respondent provided no Responsible Vendor training pursuant to Section 561.701, Florida Statutes, and is not entitled to the benefits of Section 561.706, Florida Statutes.<sup>5</sup>

48. Section 893.13(7)(a), Florida Statutes, reads in pertinent part:

(7)(a) It is unlawful for any person:

\* \* \*

5. To keep or maintain any store, shop, warehouse, dwelling, building, vehicle, boat, aircraft, or other structure or place which is resorted to by persons using controlled substances in violation of this chapter for the purpose of using these substances, or which is used for keeping or selling them in violation of this chapter.

49. Section 823.10, Florida Statutes, provides as follows with respect to places where illegal activity involving controlled substances takes place:

Any store, shop . . . or any place whatever which is visited by persons for the purpose of unlawfully using any substance controlled

under chapter 893 . . . or which is used for the illegal keeping, selling, or delivering of the same, shall be deemed a public nuisance. No person shall keep or maintain such public nuisance or aid and abet another in keeping or maintaining such public nuisance.

50. An alcoholic beverage licensee's responsibility for illegal acts committed by others on the licensed premises was discussed in Department of Business Regulation, Division of Alcoholic Beverages and Tobacco v. James Roy Crews d/b/a Roy's Place, DOAH Case No. 91-5349, at paragraph 97:

[T]he licensee is not the absolute insurer of the actions of his employees, servants or agents or actions by patrons. He is not strictly accountable for their conduct. When misconduct occurs by one of those persons a single incident would not suffice to subject the licensee to discipline, especially not if the licensee had taken measures to protect against the prohibited acts by those persons. It is the persistent and recurring violations that may place the license in jeopardy. There, even acts of simple negligence by an employee would subject the licensee to the penalties envisioned by Section 561.29(1), Florida Statutes. Culpability by the Respondent for the actions of agents, servants and employees or patrons can occur through his own negligence, wrongdoing or lack of diligence. If he fosters, condones or negligently overlooks the violations, even if absent from the premises when they occurred, he may be held accountable. Repeated or flagrant violations by those persons creates an inference that the licensee condoned or negligently overlooked the violations and is accountable for them, even when absent. Respondent may not remove himself from responsibility in this case by reason of his absence from the premises or by a claim of ignorance of the repeated violations. See Pauline v. Lee, 147 So. 2d 359 (Fla. 2nd DCA 1962); G & B of



Jacksonville. Inc. v. Department of Business Regulation, Division of Beverage, 371 So. 2d 138 (Fla. 1st DCA 1979); and Lash, Inc. v. State of Florida, Department of Business Regulation, 411 So. 2d 276 (Fla. 3rd DCA 1982).

51. Also supporting the conclusion that Respondent should be held responsible for the acts of his employees in turning a blind eye toward the flagrant drug dealing that occurred inside the licensed premises are the following cases: Taylor v. State Beverage Department, 194 So. 2d 321 (Fla. 2nd DCA) cert. den., 201 So. 2d 464 (Fla. 1967); Woodbury v. State Beverage Department, 219 So. 2d 47 (Fla. 1st DCA 1969); Golden Dolphin #2, Inc. v. Division of Alcoholic Beverages and Tobacco, 403 So. 2d 1372 (Fla. 5th DCA 1981); Pic N' Save v. Division of Alcoholic Beverages and Tobacco, 601 So. 2d 245 (Fla. 1st DCA 1992); Department of Business and Professional Regulation, Division of Alcoholic Beverages and Tobacco v. McKown's, Inc. d/b/a The Cabin, DOAH Case No. 94-5882; and Department of Business Regulation v. 3673 Bird, Inc. d/b/a Uncle Charlie's, DOAH Case No. 91-7901.

52. The Petitioner established by clear and convincing evidence the allegations of all counts in the Notice to Show Cause with the exception of Count 7, which pertained to the sale on July 31, 1998. There was insufficient evidence to establish that the Respondent's employees knew or should have known about that transaction.

53. The guideline penalty for this violation, contained in

Rule 61A-2.022, Florida Administrative Code, is revocation of the alcoholic beverage license. No separate civil penalty is recommended because Petitioner did not establish that Respondent had direct knowledge that Howell and Lyons were dealing drugs on the premises.

#### RECOMMENDATIONS

Based on the foregoing findings of fact and conclusions of law it is

RECOMMENDED that Respondent's alcoholic beverage license number 60-05660, series 2COP, be revoked.

DONE AND ENTERED this 24th day of September, 1998, in Tallahassee, Leon County, Florida.

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CLAUDE B. ARRINGTON  
Administrative Law Judge  
Division of Administrative Hearings  
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Filed with the Clerk of the  
Division of Administrative Hearings  
this 24th day of September, 1998.

#### ENDNOTES

1/ The allegations of the Notice to Show Cause are discussed in generalities here and in the Conclusions of Law section of this Recommended Order. Any question as to the specific contents of the Notice to Show Cause should be resolved by reviewing the Notice to Show Cause in its entirety.

2/ Respondent and Ms. Reardon had cooperated with Deputy Falsia in the past in attempting to clear loiterers from the parking lot

of the bar and in keeping persons who had been banned for fighting away from the bar.

3/ Howell explained to Agent DeGidio that he was charging \$50.00 instead of the customary \$60.00 because he had purchased the cocaine from a different supplier who had a cheaper price.

4/ Section 561.705, Florida Statutes, sets out the requirements for qualification as a responsible vendor:

To qualify as a responsible vendor, the vendor must:

(1) Provide a course of instruction for its employees that must include subjects dealing with alcoholic beverages and may also include subjects dealing with controlled substances as follows:

(a) Laws covering the service of alcoholic beverages and the operation of establishments serving alcoholic beverages.

(b) Alcohol or controlled substances or both as a drug and its effects on the body and behavior, including its effects on a person operating a motor vehicle.

(c) Effects of alcohol in combination with commonly used drugs, both legal and illegal.

(d) Methods of recognizing and dealing with underage customers.

(e) Methods for dealing with customers, and for dealing with employees, who use or traffic in illegal drugs.

(2) Provide an alcohol server management course for managers of establishments that sell alcoholic beverages. The course must include subjects on alcoholic beverages and may include subjects on controlled substances as follows:

(a) Laws governing the service of alcoholic beverages and the operation of establishments serving alcoholic beverages.

(b) Development of standard operating procedures for dealing with underage customers.

(c) Development of standard operating procedures for dealing with customers, and for dealing with employees, who use or traffic in illegal drugs.

(d) Methods of assisting employees in dealing with underage customers and in maintaining records that relate to such

incidents.

(3) Require each nonmanagerial employee who is employed to serve alcoholic beverages to complete the employee training course specified in subsection (1) within 30 days after commencing employment. The vendor must provide for the supervision of such an employee in the service of alcoholic beverages until the employee has received such training.

(4) Require each managerial employee to complete the managerial training course specified in subsection (2) within 15 days after commencing employment.

(5) Require all employees to attend one meeting every 4 months. Each meeting must include the dissemination of information covering the applicable subjects specified in this section and an explanation of the vendor's policies and procedures relating to those subjects.

(6) Require each employee, as a condition of her or his initial employment, to complete a written questionnaire "providing the vendor the same information as is required by the division from persons who apply for alcoholic beverage licenses and to determine therefrom whether the employee is precluded by law from serving or selling alcoholic beverages; however, employees of vendors licensed under s. 563.02(1)(a) or s. 564.02(1)(a) shall not be subject to the requirements of this subsection.

(7) Establish a written policy under which any employee who engages in the illegal use of controlled substances on the licensed premises will be immediately dismissed from employment and require each employee to acknowledge the policy in writing.

(8) Maintain employment records ~f the applications, acknowledgments, and training of its employees required by this section and records of the vendor's enforcement of the policies requiring dismissal specified in subsection (7).

(9) Post signs on the vendor's premises informing customers of the vendor's policy against serving alcoholic beverages to underage persons and informing customers that the purchase of alcoholic beverages by an

underage person or the illegal use of or trafficking in controlled substances will result in ejection from the premises and prosecution.

5/ Section 561.706, Florida Statutes, states, in pertinent part, as follows:

(1) The license of a vendor qualified as a responsible vendor under this act may not be suspended or revoked for an employee's illegal sale or service of an alcoholic beverage to a person who is not of lawful drinking age or for an employee's engaging in or permitting others to engage in the illegal sale, use of; or trafficking in controlled substances, if the employee had completed the applicable training prescribed by this act prior to committing such violation, unless the vendor had knowledge of the violation, should have known about such violation, or participated in or committed such violation.

COPIES FURNISHED:

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1940 North Monroe Street  
Tallahassee, Florida 32399-0792

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NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions within 15 days from the date of this Recommended Order. Any exceptions to this Recommended Order should be filed with the agency that will issue the Final Order in this case.

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<sup>1</sup> The allegations of the Notice to Show Cause are discussed in generalities here and in the Conclusions of Law section of this Recommended Order. Any question as to the specific contents of the Notice to Show Cause should be resolved by reviewing the Notice to Show Cause in its entirety.

<sup>2</sup> Respondent and Ms. Reardon had cooperated with Deputy Falsia in the past in attempting to clear loiterers from the parking lot of the bar and in keeping persons who had been banned for fighting away from the bar.

<sup>3</sup> Howell explained that he charged Agent DeGidio \$50.00 instead of the customary \$60.00 because he had purchased the cocaine from a different supplier who had a cheaper price.

<sup>4</sup> Section 561.705, Florida Statutes., sets out the requirements for qualification as a responsible vendor:

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To qualify as a responsible vendor, the vendor must:

(1) Provide a course of instruction for its employees that must include subjects dealing with alcoholic beverages and may also include subjects dealing with controlled substances as follows:

(a) Laws covering the service of alcoholic beverages and the operation of establishments serving alcoholic beverages.

(b) Alcohol or controlled substances or both as a drug and its effects on the body and behavior, including its effects on a person operating a motor vehicle.

(c) Effects of alcohol in combination with commonly used drugs, both legal and illegal.

(d) Methods of recognizing and dealing with underage customers.

(e) Methods for dealing with customers, and for dealing with employees, who use or traffic in illegal drugs.

(2) Provide an alcohol server management course for managers of establishments that sell alcoholic beverages. The course must include subjects on alcoholic beverages and may include subjects on controlled substances as follows:

(a) Laws governing the service of alcoholic beverages and the operation of establishments serving alcoholic beverages.

(b) Development of standard operating procedures for dealing with underage customers.

(c) Development of standard operating procedures for dealing with customers, and for dealing with employees, who use or traffic in illegal drugs.

(d) Methods of assisting employees in dealing with underage customers and in maintaining records that relate to such incidents.

(3) Require each nonmanagerial employee who is employed to serve alcoholic beverages to complete the employee training course specified in subsection (1) within 30 days after commencing employment. The vendor must provide for the supervision of such an employee in the service of alcoholic

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beverages until the employee has received such training.

(4) Require each managerial employee to complete the managerial training course specified in subsection (2) within 15 days after commencing employment.

(5) Require all employees to attend one meeting every 4 months. Each meeting must include the dissemination of information covering the applicable subjects specified in this section and an explanation of the vendor's policies and procedures relating to those subjects.

(6) Require each employee, as a condition of her or his initial employment, to complete a written questionnaire "providing the vendor the same information as is required by the division from persons who apply for alcoholic beverage licenses and to determine therefrom whether the employee is precluded by law from serving or selling alcoholic beverages; however, employees of vendors licensed under s. 563.02(1)(a) or s. 564.02(1)(a) shall not be subject to the requirements of this subsection.

(7) Establish a written policy under which any employee who engages in the illegal use of controlled substances on the licensed premises will be immediately dismissed from employment and require each employee to acknowledge the policy in writing.

(8) Maintain employment records of the applications, acknowledgments, and training of its employees required by this section and records of the vendor's enforcement of the policies requiring dismissal specified in subsection (7).

(9) Post signs on the vendor's premises informing customers of the vendor's policy against serving alcoholic beverages to underage persons and informing customers that the purchase of alcoholic beverages by an underage person or the illegal use of or trafficking in controlled substances will result in ejection from the premises and prosecution.

Section 561.706, Florida Statutes, states, in pertinent part, as follows:

(1) The license of a vendor qualified as a responsible vendor under this act may not be suspended or revoked for an employee's



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illegal sale or service of an alcoholic beverage to a person who is not of lawful drinking age or for an employee's engaging in *or permitting others to engage in the illegal sale, use of; or trafficking in controlled substances*, if the employee had completed the applicable training prescribed by this act prior to committing such violation, unless the vendor had knowledge of the violation, should have known about such violation, or participated in or committed such violation.