

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

DEPARTMENT OF BUSINESS AND )  
PROFESSIONAL REGULATION, )  
DIVISION OF ALCOHOLIC BEVERAGES )  
AND TOBACCO, )  
 )  
Petitioner, )  
 )  
vs. ) Case No. 01-3132  
 )  
MANOS, INC., d/b/a SEA PORT, )  
a/k/a LIGHTHOUSE, )  
 )  
Respondent. )  
\_\_\_\_\_ )

RECOMMENDED ORDER

A formal hearing in the above-styled case was held before Daniel M. Kilbride, Administrative Law Judge, Division of Administrative Hearing, on January 17 and 18, 2002, in Viera, Florida.

APPEARANCES

For Petitioner: Michael Martinez, Esquire  
Department of Business and  
Professional Regulation  
1940 North Monroe Street, Suite 60  
Tallahassee, Florida 32399-2202

For Respondent: Richard J. Dempsey  
Qualified Representative  
223 Columbia Drive, No. 221  
Cape Canaveral, Florida 32920

STATEMENT OF THE ISSUES

Whether disciplinary action should be taken against Respondent's license no. 15-02311, 4COP, based on the violations of Sections 893.13, 561.29, and 823.13, Florida Statutes, as charged in the Second Amended Notice to Show Cause filed against Respondent in this proceeding.

PRELIMINARY STATEMENT

On August 10, 2001, Petitioner issued a Notice to Show Cause and an Emergency Order of Suspension which was personally served on Respondent's agent. Respondent was advised of its right to an Immediate Post-Suspension Hearing, scheduled for August 16, 2001. Respondent filed a request for an immediate hearing with the Division of Administrative Hearings on August 12, 2001. Said request for immediate hearing was waived on August 13, 2001, and Respondent requested a regularly scheduled formal hearing. This matter was set for hearing and discovery ensued. Following the denial of various motions to dismiss and other motions and a pre-hearing conference, this matter was continued twice.

The formal hearing was conducted on January 17 and 18, 2002. At the hearing, Petitioner called 12 witnesses and offered 15 exhibits, which were admitted in evidence. Respondent offered the testimony of one witness and recalled two witnesses, who had testified previously, and placed four

documents in evidence. Both parties requested 30 days from the filing of the transcript for post-hearing submittals, which request was granted.

The Transcript was filed on March 20, 2002. Petitioner filed its Proposed Recommended Order on April 19, 2002. Respondent filed its proposals on April 17, 2002. Both proposals have been given careful consideration in preparation of this Recommended Order.

In addition, Respondent filed a Post-Hearing Motion to Quash Second Amended Notice to Show Cause and a post-hearing motion to dismiss. After careful consideration, both motions are denied.

#### FINDINGS OF FACT

1. Petitioner is the State of Florida, Department of Business and Professional Regulation, Division of Alcoholic Beverages and Tobacco (DABT).

2. Respondent is Manos, Inc., d/b/a Sea Port Restaurant and Lighthouse Lounge.

3. Respondent holds Beverage License No. 15-02311, 4COP, and is located at 680 George King Boulevard, Cape Canaveral, Florida 32920.

4. Raymond J. Cascella is the president, vice-president and secretary of Respondent. Cascella indicated that his wife, Eileen Cascella, was the manager of Respondent's restaurant and

lounge during the period of June through August 2001. A customer going by the name of "Red" had been at the establishment three or four times a week for a couple of years. Mahatha Brownlee is the individual who goes by the nickname "Red" and frequents Respondent's establishment. An individual going by the name of "Diamond" had been at the establishment frequently over a period of six months.

5. Ronald Carlson, caretaker of the premises during the relevant time-period of June through August 2001, became aware that drug usage was occurring on the licensed premises when two bartenders of Respondent complained to him. Carlson also observed that whenever uniformed officers came into the establishment, many of the customers would get up and leave.

6. Deputy Thomas D. Rodgers made two arrests on drug warrants inside the licensed premises during 2001, both of whom were employees of Respondent.

7. On July 31, 2001, Special Agent Bethany Driggers, DABT, while in the licensed premises overheard a conversation whereby a customer asked a bartender about the availability of crack cocaine at the licensed premises.

8. Stephanie Farrington, a bartender employed by Respondent, gave a statement to law enforcement under oath, which Special Agent Richard Waters, DABT, signed as a witness. The sworn statement of Stephanie Farrington was introduced as a

business record exception. Respondent's qualified representative waived any objection to its introduction.

Sometime in July 2002, Farrington confronted Cascella about the drug abuse in his business and the obvious drug dealing going on in the establishment. Cascella told her to go speak to the suspect known as "Red" to let "Red" handle it. Farrington had spoken with the manager, Eileen Cascella, as well, who indicated that she was aware that drug dealing was going on in the premises.

9. Richard Hurlburt is a Special Agent with DABT. He is an 18-year veteran agent and has prior law enforcement experience. Agent Hurlburt was found, without objection, to be an expert in conducting undercover operations. Agent Hurlburt, based on his training and experience, believed that there was rampant drug dealing going on at the licensed premises, during the months of June through August 2001.

10. Agent Hurlburt began his investigation during the daytime hours in June 2001, so that he could have more of a one-on-one contact with the employees. As a result of the violations he observed occurring during the day, Agent Hurlburt was able to conduct the investigation during the day and avoid the violence that frequently occurred at the premises in the later hours. Agent Hurlburt indicated that a suspect's exchange

of a wad of money with an employee and receiving a large bill in return is consistent with the actions of drug dealers.

11. In June 2001, Agent Hurlburt observed suspect "Red" exchange a wad of money with Cascella and receive a large bill in return.

12. On June 27, 2001, Agent Hurlburt was served a beer by suspect "Red" while on the subject premises.

13. On June 27, 2001, Agent Hurlburt purchased drugs twice from suspect "Big Mama," a person not further identified.

14. Agent Hurlburt turned both samples of suspected crack cocaine over to Special Agent Roy Dotson, DABT.

15. Agent Dotson is a ten-year law enforcement veteran with over 1,500 hours of specialized training. Agent Dotson has field-tested suspected crack cocaine over 500 times and has never had a field test result invalidated by later testing.

16. Agent Dotson field-tested the suspected crack cocaine turned over to him by Agent Hurlburt on June 27, 2001, and the results were positive for the presence of cocaine.

17. Special Agent Gregory Aliberti, DABT, secured the suspected crack cocaine purchased by Agent Hurlburt on July 11, 2001.

18. Kim Poon, employed by the Florida Department of Law Enforcement (FDLE) as a crime laboratory analyst, was recognized, without objection as an expert drug analyst. Poon

used two separate instrument tests, the mass spectrometer, as well as a gas chromatograph. Poon indicated that when the instruments are used correctly and in conjunction, the instruments are foolproof, there is no room for error.

19. None of the drugs in this case that were in Poon's possession were tampered with to his knowledge. The three exhibits were tested and came back positive for cocaine, using the aforementioned two tests.

20. The drugs purchased by Agent Hurlburt on June 27, 2001, were tested and the results came back positive for cocaine.

21. On June 29, 2001, Agent Hurlburt purchased \$20 of crack cocaine from suspect "Big Mama" and turned these drugs over to Agent Aliberti. These drugs were subsequently tested positive for cocaine.

22. On or about July 2001, Agent Hurlburt, DABT, while in the licensed premises overheard a conversation between a bartender, Elaine, and another bartender, Jason, in which they indicated that Farrington had come into the establishment and named the names of people who were dealing drugs. They went on to say that Farrington named specific individuals "Moo-Moo," "Red" and "Diamond" as drug dealers. Farrington stated that there is a black male known as "Red" who hangs-out in the bar

five out of seven days a week and she believed he was selling crack cocaine.

23. Suspect Ray Charles was observed exiting the kitchen on numerous occasions. Agent Hurlburt asked suspect Ray Charles if he was an employee and he indicated that he cleaned up or did whatever Ray wanted him to do on the premises.

24. On July 10, 2001, the agent made three separate drug purchases from suspect Ray Charles. The suspected crack cocaine was turned over to Agent Dotson who subsequently conducted a field test. It rendered a positive result for the presence of cocaine. The three separate samples of suspected crack cocaine purchased from suspect Ray Charles by Agent Hurlburt were subsequently tested positive for cocaine.

25. Agent Hurlburt established that after meeting with support personnel the packages in which the suspect crack cocaine was stored in were marked with the date of the purchase, Agent Hurlburt's initials, which purchase it was for that day, and the suspect's name.

26. On July 11, 2001, Agent Hurlburt purchased a \$100 piece of crack cocaine from suspect Ray Charles. Ray Charles is the same individual as Ray Charles Mitchell, who is a felon on probation for possession of cocaine at the time of the formal hearing in this matter.



27. Agent Hurlburt made a second purchase from Ray Charles on July 11, 2001. The suspected crack cocaine purchased from suspect Ray Charles on July 11 by Agent Hurlburt was subsequently tested positive by Poon of the FDLE.

28. Agent Hurlburt also purchased crack cocaine on July 11 from the suspect known as "Red." The suspected crack cocaine purchased from suspect "Red" by Agent Hurlburt subsequently tested positive after analysis by Poon.

29. On July 13, 2001, Agent Hurlburt purchased a \$20 piece of crack cocaine from suspect "Red." On July 13, 2001, Agent Hurlburt made a second purchase of suspected crack cocaine from "Red." The suspected crack cocaine subsequently tested positive for cocaine.

30. On July 17, 2001, Agent Hurlburt made two purchases of suspected crack cocaine from suspect "Red" and both subsequently tested positive for presence of cocaine.

31. On July 20, 2001, Agent Hurlburt returned to the premises and purchased suspected crack cocaine from suspect "Red." Poon tested the crack cocaine purchased from "Red" on July 20 and it tested positive for cocaine.

32. On July 24, Agent Hurlburt purchased suspected crack cocaine from suspect "Red" on two occasions and turned over the drugs to support personnel. The drugs purchased by Agent Hurlburt on July 24, 2001, subsequently tested positive for the

presence of cocaine. Agent Dotson field-tested the drugs purchased from suspect "Red" on July 24 with a positive result for cocaine.

33. During some of the drug purchases from suspect "Red" on July 24, 2001, Cascella was in the bar area.

34. On July 25, Agent Hurlburt purchased suspected crack cocaine from a suspect known only as Rudy and turned the substances over to Agent Dotson, who subsequently field-tested it with a positive result. The drugs purchased by Agent Hurlburt on July 25, 2001, were subsequently tested positive for the presence of cocaine. Cascella was in the bar area on July 25, 2001.

35. On July 27, 2001, Agent Hurlburt purchased two pieces of suspected crack cocaine. The drugs purchased by Agent Hurlburt were subsequently tested by Poon with the FDLE and tested positive for cocaine.

36. On July 31, 2001, Agent Hurlburt overheard a conversation between two suspected narcotic dealers talking about a sale of crack cocaine to an individual bartender named Jason.

37. On July 31, 2001, Agent Hurlburt purchased suspected crack cocaine from an individual on the licensed premises. The drugs purchased subsequently tested positive for the presence of cocaine. Agent Scott Behringer of the Brevard County Sheriff's

Office (BCSO), Special Investigation Unit, secured the suspected crack cocaine purchased by Agent Hurlburt on July 31, 2001. Agent Behringer has been employed by the BCSO for approximately 13 years. He has been involved in several hundred investigations and has specialized training in narcotic identification schools including DEA basic and DEA advanced. Agent Behringer observed drug transactions occurring at the licensed premises. Agent Behringer subsequently tested the narcotics purchased by Agent Hurlburt on July 31, 2002, and the field test results were positive. Agent Behringer never had an occasion where he had field-tested a substance and was later disproved by drug analysis. This is despite having conducted approximately 1,000 field tests.

38. On August 2, 2001, Agent Hurlburt and Agent Driggers were sitting at the bar at the licensed premises when they observed suspect "Red" sitting in a booth in the premises as well. Visible from the bar, placed on the suspect's calf was a stack of crack cocaine. Agent Hurlburt proceeded to measure the distance from the bar to a spot parallel to the suspect in order to determine the distance. The distance was estimated to be 155 inches.

39. On August 2, 2001, Agent Hurlburt purchased \$100 worth of crack cocaine from suspect "Red." On August 3, Agent

Hurlburt purchased \$50 worth of crack cocaine from suspect Rudy. The contraband was turned over to support personnel.

40. Agent Behringer secured evidence on August 2, 2001; he field-tested the substance and it was positive for cocaine. It had the appearance of crack cocaine as well. All the evidence that Agent Behringer maintained was kept in a security area until being forwarded to Agent Dotson. Agent Behringer never had drugs in his possession that had been tampered with in any way.

41. Agent Behringer saw Cascella observing drug sales during the relevant time-period late July and early August 2001.

42. Agent Driggers indicated that even though she didn't have a great deal of training, she was able to observe numerous individuals making hand drug transactions in the licensed premises.

43. The crack cocaine purchased on August 2 by Agent Hurlburt from suspect "Red" was tested by Poon and the result was positive for the presence of cocaine.

44. Agent Driggers purchased suspected crack cocaine from suspect "Red" on August 8. The suspected crack cocaine purchased by Agent Driggers on July 31 and August 8, 2001, from suspect "Red" subsequently tested positive for cocaine.

45. On August 10, 2001, Agent Hurlburt entered the establishment, made a purchase and departed the premises. He

then went to the staging area where they were subsequently transported and tested by Kimberly Hampton-Sheley of the FDLE crime lab with a positive result for cocaine.

46. FDLE Analyst Kimberly Hampton-Sheley indicated that the two tests that she ran on the substance resulted in a positive reading for cocaine. Further, the accuracy of combined testing in terms of chemistry is 100 percent accurate.

47. Agent Driggers purchased \$20 worth of suspected crack cocaine from an employee of the licensed premises, Jason, August 10, 2001. The drugs subsequently tested positive for the presence of cocaine.

48. Shortly thereafter, Agents from the combined task force from the DABT and BCSO reentered the licensed premises in order to arrest those engaging in illegal activity. Agent Dotson searched bartender, Jason Gilroy, on August 10, 2001, at the time of the raid on the licensed premises. Agent Dotson discovered a small napkin with some cocaine in one of his pants' pockets. The drugs discovered on employee Gilroy on August 10, 2001, subsequently tested positive for the presence of cocaine.

49. Another Manos employee, a bartender named Mike, was apprehended with a crack pipe in his manual possession on the night of the raid.

50. Evidence Agents Aliberti and Waters, DABT, secured in this investigation was stored in the trunk of their state

vehicle or at the Florida Highway Patrol unit where they have an evidence storage locker until it is forwarded to the BCSO or whatever agency is going to be responsible for the evidence. Agent Waters indicated that at the location of the Florida Highway Patrol is a locker which has their own personal key and they are the only ones with that key. Both Waters and Aliberti indicated that they have never had any evidence that was in their possession tampered with in this case or any other to their knowledge.

51. Agent Aliberti was involved in transporting drugs from the BCSO to the FDLE. Agent Dotson testified that he secured the evidence in an evidence bag. He would initial them and they would be put into an evidence locker in one of their precincts to be forwarded to the Evidence Unit. Agent Dotson has never had any drugs tampered with in any of his cases, including the case at hand.

52. The evidence is clear and convincing that on numerous occasions between June and August 2001, on the licensed premises, agents and employees, while in the scope of their employment, sold or permitted to be sold controlled substances, to wit: cocaine, in violation of Florida law.

53. The evidence is clear and convincing that on numerous occasions between June and August 2001, the licensee, Raymond J. Cascella, permitted others, while on the licensed premises, to

violate the laws of this state and of this United States by selling controlled substances, to wit: cocaine.

54. The evidence is clear and convincing that the licensed premises was used for the illegal keeping, selling and delivery of controlled substances and is a public nuisance.

55. The evidence is clear and convincing that the licensee, Raymond J. Cascella, maintained the licensed premises for the illegal keeping, selling and delivery of controlled substances.

#### CONCLUSIONS OF LAW

56. The Division of Administrative Hearings had jurisdiction over the parties and subject matter of this proceeding, pursuant to Sections 120.569 and 120.57(1), Florida Statutes.

57. Petitioner, the Department of Business and Professional Regulation, is the state agency charged with regulating the activities of licensees under the Beverage Law pursuant to Section 561.02, Florida Statutes.

58. Pursuant to Section 561.29, Florida Statutes, the Division of Alcoholic Beverages and tobacco is empowered to revoke, suspend or otherwise discipline the license of a licensee who is found guilty of any of the grounds enumerated in Section 561.29, Florida Statutes.

59. Petitioner has the burden of proving by clear and convincing evidence the allegations against Respondent. Section 120.57(1)(h), Florida Statutes (2001); Department of Banking and Finance v. Osborne Stern and Co., 670 So. 2d 932 (Fla. 1996); and Ferris v. Turlington, 510 So. 2d 292 (Fla. 1987).

60. Section 561.29(1), Florida Statutes, provides that a violation by the licensee or his or her agents, officers, servants or employees on the licensed premises or elsewhere in the scope of employment of any of the laws of this state or the United States . . . or permitting another on the licensed premises to violate any of the laws of this state or the United States is punishable by the Division of Alcoholic Beverages and Tobacco, Department of Business and Professional Regulation.

61. Section 893.13(1)(a), Florida Statutes, provides that it is unlawful to possess, sell or deliver a controlled substance as defined in Section 893.03, Florida Statutes.

62. Petitioner has proven by clear and convincing evidence that Respondent's agents, servants or employees sold a controlled substance on the licensed premises on numerous occasions during the Summer of 2001, and that Respondent permitted patrons to make at least 23 sales of controlled substances, to wit: cocaine, in violation of Section 893.13, within Section 561.29(1), Florida Statutes.



63. Section 893.13(7)(a)5, within Section 561.29(1)(c), Florida Statutes, prohibits the keeping or maintaining of 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 the substances or which is used for keeping or selling them in violation of this Chapter.

64. Petitioner has proven by clear and convincing evidence that Respondent has violated Section 893.13(7)(a)5, within Section 561.29(1)(c), Florida Statutes, by maintaining a building which was used for the keeping and/or selling of controlled substances.

65. Section 823.10, within Section 561.29(1)(a)-(c), Florida Statutes, states that any building which is used for the illegal keeping, selling or delivering controlled substances under Chapter 893, shall be deemed a public nuisance and no persons shall keep or maintain such public nuisance or aid and abet another in keeping or maintaining such public nuisance.

66. Petitioner has proven by clear and convincing evidence that Respondent violated Sections 823.10 and 561.29, Florida Statutes, by maintaining and/or abetting the maintenance of a licensed establishment which is used for the illegal keeping, selling or delivering controlled substances defined under Chapter 893, Florida Statutes.

67. Rule 61A-2.022, Florida Administrative Code, provides in pertinent part, the following:

a. The first occurrence of a violation of Florida Statute 893 calls for a revocation of the License.

b. The first occurrence of a violation of any noncriminal violation not specifically mentioned in the Penalty Guidelines calls for a two hundred fifty dollar fine.

#### RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that a final order be rendered as follows:

1. Finding Respondent guilty of having violated Section 893.13(1)(a), Florida Statutes, as alleged in Counts 1-18 of the Second Amended Administrative Complaint, and imposing a penalty therefor of Revocation of Respondent's license number 15-02311, 4-COP, SRX.

2. Finding Respondent guilty of having violated Section 893.13(7)(a)5, Florida Statutes, as alleged in Count 19 of the Second Amended Administrative Complaint, and imposing as a penalty therefor of Revocation of Respondent's license number 15-02311, 4-COP, SRX.

3. Finding Respondent guilty of having violated Section 823.10, Florida Statutes, as alleged in Count 20 of the Second

Amended Administrative Complaint, and imposing as a penalty therefor of an administrative fine in the amount of \$250.

DONE AND ENTERED this 20th day of May, 2002, in Tallahassee, Leon County, Florida.

---

DANIEL M. KILBRIDE  
Administrative Law Judge  
Division of Administrative Hearings  
The DeSoto Building  
1230 Apalachee Parkway  
Tallahassee, Florida 32399-3060  
(850) 488-9675 SUNCOM 278-9675  
Fax Filing (850) 921-6847  
www.doah.state.fl.us

Filed with the Clerk of the  
Division of Administrative Hearings  
this 20th day of May, 2002.

COPIES FURNISHED:

Raymond Cascella  
Manos Inc., d/b/a Sea Port Restaurant  
680 George J. King Boulevard  
Port Canaveral, Florida 32920

Richard J. Dempsey  
Qualified Representative  
223 Columbia Drive, No. 221  
Cape Canaveral, Florida 32920

Michael Martinez, Esquire  
Department of Business and  
Professional Regulation  
1940 North Monroe Street, Suite 60  
Tallahassee, Florida 32399-2202

Hardy L. Roberts, III, General Counsel  
Department of Business and  
Professional Regulation  
Northwood Centre  
1940 North Monroe Street  
Tallahassee, Florida 32399-2202

Richard Turner, Director  
Division of Alcoholic Beverages and Tobacco  
Department of Business and  
Professional Regulation  
Northwood Centre  
1940 North Monroe Street  
Tallahassee, Florida 32399-0792

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.