

## **OPERATIONS PRACTICES REPORT**

The Garage Bar, Pool Hall, and Bowling Alley  
Regarding *Summers v. Hard*

By

Dr. Dale Thompson  
Dorian Tower  
1962 Pioneer St.  
Suite 401  
Reno, NV 13432

As part of my evaluation of the operations of The Garage Bar, Pool Hall, and Bowling Alley, known as the Garage, in regards to *Summers v. Hard*, I reviewed the following materials:

- The Complaint;
- Answer by Edward Hard;
- Answer by Davola, Donaldson, and Apple;
- Ruston Police Department reports concerning the shooting of Bruno Summers
- Major State Liquor Control Board's records, including:
  - Premises Description;
  - Administrative Activity;
  - Criminal Statistics; and
  - Major State Liquor Control Board—Violation/Training History
- Mercy Hospital medical records for Bruno Summers;
- Deborah Summers medical records;
- Report of Ben Kaplan;
- Interview with Thomas Donaldson;
- State of Major Statutes and Liquor Board Regulations;
- Major State Liquor Control Board Enforcement and Entertainment Division training materials; and
- State of Major pattern jury instructions.

In addition, I conducted a site inspection of the Garage and spoke with D.L. Hass, counsel for Mr. Davola, Mr. Donaldson, and Ms. Apple. I also spoke with Sergeant Rex Walther.

### ***Training***

Ben Kaplan's report concluded that the Garage management failed to adopt written policies and that this fell below industry standard. While the Major State Liquor Control Board Enforcement and Education Division recommends that management "establish and follow a policy of refusing service to apparently intoxicated persons," it neither recommends nor requires the adoption of written policies. In any event, to put such policies into written form would be an unnecessary act because overservice is forbidden by statute regulations and the policies and procedures are part of the MSLCB Enforcement and Education Division's written training materials.

While Thomas Donaldson, The Garage's bartender on the night of the shooting, has a lapsed Class 12 permit on September 3, 20XX, that does not mean that his work performance that night was below the standard of care for the industry. Mr. Donaldson held a valid permit until February 15, 20XX when it expired. Permits must be renewed every five years. My interview of Mr. Donaldson showed that he is an experienced bartender who is knowledgeable about both recognizing apparently intoxicated patrons and handling them. He told me that he had an ailing mother whom he was caring for during the spring and summer of 20XX, and this caused him to neglect to renew his permit. In October 20XX, his permit was renewed, and when I interviewed him, he was still gainfully employed at the Garage.

### ***Overservice***

Bartender Donaldson, who served Hard on September 3, 20XX and knew him as a frequenter of The Garage, did not perceive that Hard was intoxicated. Although Mary Apple in 20/20 hindsight told Detective Tharp that she thought Hard was intoxicated on September 3rd, she at the time just before the shooting took no steps to refuse service to Hard. Mary Apple held a valid alcohol server's permit on the night of September 3rd, and she had been trained on how to identify apparently intoxicated persons and how to refuse service to them.

Although Hard did have a .16 breathalyzer reading, it was administered two and a half hours after the shooting and after Hard had consumed three beers in his home. According to the Blood Alcohol Concentration Chart that is appended to this report, the consumption of three drinks at his body weight would have elevated his blood alcohol level by .07. Subtracting that from his .16 reading, Hard could well have had a .09 level when he was at the Garage. This level would be well below the .12 to .14 level that is the accepted level for someone to be apparently intoxicated.

Therefore, in my opinion, the evidence does not support a claim that Edward Hard was obviously intoxicated when he was in the Garage tavern on September 3, 20XX.

### ***Duty to Protect***

It is important to recognize that owners of establishments do not act as insurers for patrons. They only have a duty to provide a safe environment. I have reviewed the record of the number of Ruston Police service calls to the Garage over a 12-year period, and it is not at all remarkable. It reflects an average of a little over three calls per year. This is normal for such an establishment.

I reviewed the four disorderly conduct incidents and discussed them with Mr. Donaldson. He and Ms. Apple were only familiar with the incident in May 20XX when a man displayed a firearm in the Garage. Mr. Donaldson ordered the man out of the Garage and called the police. He performed his job in a satisfactory manner. The October 20XX-1 disorderly conduct incident was almost a year old by the date of the shooting. That leaves the two other disorderly conduct calls in January 20XX. Both were minor in nature. One involved a mentally ill man who was yelling and pounding on a pool table. The other involved what was described as a "domestic shouting and pushing match." On both occasions, the Garage employees called the police, and both matters were disposed of without an arrest. Sergeant Walther and a liquor enforcement officer did speak with Davola at the beginning of February 20XX, not because they believed that Garage employees were at fault in handling the disturbances but to make recommendations on how to avoid them, if possible. Both officers were satisfied that Davola understood their concerns and he and his employees would be prepared for any further troublesome patrons.

Regarding the conflict between Hard and Summers on August 20, 20XX, it was a fight that was quickly over. No weapon was involved. Mr. Donaldson took immediate remedial action by ejecting both men from The Garage. On September 3rd, Donaldson heard Hard, who had been the aggressor on the 20th say that he did not want Summers

coming near him and Summers avoiding contact with Hard by going to sit away from him in a booth near the front of the tavern. No reason existed for not permitting the two men to remain as long as they continued to act peacefully.

### ***Conclusion***

It is my opinion based upon my experience in the hotel, restaurant, and tavern industry and based upon my findings in this case that the Garage did not fall below the industry standard of reasonable care. While it is indeed unfortunate that Mr. Bruno Summers was shot in the Garage on September 3, 20XX, the operation of the Garage was not the cause of the shooting. The Garage was not, as is well established, required to be an insurer of a patron's safety.

# Avoid an alcohol meltdown!

*Small amounts of alcohol can put you at risk*

## BLOOD ALCOHOL CONCENTRATION CHARTS (BAC)

Drinks Per Hour	MALE Body Weights								Legal Limit 0.08 BAC
	100	120	140	160	180	200	220	240	
0	<b>ONLY SAFE DRIVING LIMIT</b>								
1	.04	.03	.03	.02	.02	.02	.02	.02	<b>At Risk</b>
2	.08	.06	.05	.05	.04	.04	.03	.03	
3	.11	.09	.08	.07	.06	.06	.05	.05	
4	.15	.12	.11	.09	.08	.08	.07	.06	
5	.19	.16	.13	.12	.11	.09	.09	.08	<b>Over Limit</b>
6	.23	.19	.16	.14	.13	.11	.10	.09	
7	.26	.22	.19	.16	.15	.13	.12	.11	
8	.30	.25	.21	.19	.17	.15	.14	.13	
9	.34	.28	.24	.21	.19	.17	.15	.14	

Drinks Per Hour	FEMALE Body Weights								Legal Limit 0.08 BAC
	100	120	140	160	180	200	220	240	
0	<b>ONLY SAFE DRIVING LIMIT</b>								
1	.05	.04	.03	.03	.03	.02	.02	.02	<b>At Risk</b>
2	.09	.08	.07	.06	.05	.05	.04	.04	
3	.14	.11	.10	.09	.08	.07	.06	.06	
4	.18	.15	.13	.11	.10	.09	.08	.08	
5	.23	.19	.16	.14	.13	.11	.10	.09	<b>Over Limit</b>
6	.27	.23	.19	.17	.15	.14	.12	.11	
7	.32	.27	.23	.20	.18	.16	.14	.13	
8	.36	.30	.26	.23	.20	.18	.17	.15	
9	.41	.34	.29	.26	.23	.20	.19	.17	



Major State  
Liquor Control Board

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