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Dear Mr. Fank:

**THE GARAGE BAR, POOL HALL, AND BOWLING ALLEY
ASSESSMENT OF OPERATIONS**

The following report is an assessment of The Garage Bar, Pool Hall, and Bowling Alley (hereafter Garage) located in the city of Ruston, Jammer County, State of Major, LCB license number 023454. The assessment was contracted by F.C. Fank for the purposes of establishing the level of management, control, and compliance with laws and industry standards predating and on September 3, 20XX, the date of the shooting of Mr. Bruno Summers.

Qualifications of Ben Kaplan:

I have a Ph.D. in Hotel and Restaurant Management from Cornell University. I am an Emeritus Professor at Major State University, where I taught Hotel and Restaurant Management for 29 years. I continue to teach in the Westbrook School of Hotel and Restaurant Management Department of Major State University on a part time basis. I also have been a hotel and restaurant management expert and consultant for the past 30 years as president of my limited liability corporation. I have served as a consultant for hotels and restaurants across the United States and internationally, including The Winn Corporation, NV and Widely World Enterprises, CA. Both plaintiffs and defendants have hired me to testify as an expert on hotel, restaurant, and tavern management, and I have testified over 400 times. Areas of expertise for which I have been accepted as a qualified expert witness in both Federal and state courts (California, Major, New York, Florida, Nevada, and Wyoming to name a few), among others include: alcohol service, restaurant and tavern security, and management protocols and procedures. I have been certified by the Northeast Traffic Institute on alcohol consumption and alcohol related felony traffic offenses.

Procedure:

On January 24, 20XX+1, I traveled to Ruston where I met with you and your investigator. At that time you presented me with file materials including among other documents: Ruston Police

Department reports concerning the September 3, 20XX shooting, the Complaint and related legal documents, and medical records for Bruno Summers.

After our initial meeting, my additional investigation included among other tasks: reviewing the Major State Liquor Control Board's records regarding the Garage (the Premises Description, Administrative Activity, Criminal Statistics and Major State Liquor Control Board—Violation/Training History recited below were derived from the MSLCB); conducting a site visit of the Garage; and interviewing Ruston Police Sergeant Walther and Letty Prout, Program Manager of the MSLCB Enforcement and Education Division (interviews are discussed later in this report).

Overview of Incident:

At approximately 8:00 p.m., Edward Hard and two friends entered the bar area of The Garage. They had been drinking before they arrived in the bar area. There, the bartender Thomas Donaldson served them several rounds of drinks. At about 9:00 p.m. Bruno Summers, his wife Deborah and a friend came from the bowling side of the Garage to the bar area. At the entry to the bar area, they saw Hard and decided to go to the front of the tavern and sit in a booth. They did this because on August 20th, Bruno Summers had gotten in a fight with Hard in the bar area and the bartender had ejected them from the tavern.

Around 9:00 p.m., Bruno Summers went to the restroom. Shortly after that, Hard left the bar area and headed towards the restroom also. Just as Summers exited the men's room, Hard confronted him. There was an exchange; Hard drew a .22 caliber revolver and shot Summers. Summers collapsed, and Hard fled from the Garage. Summers was taken to Mercy Hospital where he died on September 9th.

After Hard left the Garage on September 3rd, he went to his home. At approximately 10:30 p.m., Hard was arrested in his home. He gave a statement to the police admitting that he shot Summers. He claimed that Summers threatened to kill him and reached for his pocket, and that when he (Hard) pulled his revolver to protect himself, it accidentally discharged.

At 11:40 p.m. on September 3, Ruston Police Officer Yale conducted a breathalyzer test on Hard, resulting in a .16 reading. Yale observed that Hard had an odor of alcohol about him, his eyes were red and watery, and his speech was slurred. When Hard was arrested three empty beer cans were found in his living room.

Premises Description:

The Garage Bar, Pool Hall, and Bowling Alley is licensed as tavern.

Licensee of Record—M.C. Davola

Original Date of Licensing—September 1, 20XX-12

Subsequent License Renewals—20XX-7 and 20XX-2 with no objections by local authorities; two late renewals resulting in late fee penalty, 20XX-7 and 20XX-2.

Administrative Activity:

Dept. of Revenue, withhold and deliver, 20XX, 18 months arrears B&O released by payment 20XX. One month licensing delay.

Dept. of Health, food service violations 4 warnings 2 citations. Corrected and in compliance. No penalty assessed.

Ruston Fire Dept.—Stop business order, 20XX—Emergency exit not operational, overcrowding—Repaired and paid \$1000 fine.

City of Ruston—All licenses current.

Criminal Statistics:

Ruston Police Department—Calls for Service/Crime Reports 20XX-12 to 9/03/20XX

Assaults	11	Arrests	5
Weapons Involved	4	Arrests	3
Disorderly	10	Arrests	2
Theft	3	Arrests	0
Narcotics/Drugs	3	Arrests	1
Administrative	4	N/A	
Drunk in Public	5	Arrests	3 (1/8 mile radius)
Traffic	2	Arrests	3 (1 single, 1 double DUI accidents)

Law Enforcement Interview:

On February 28, 20XX+1, I met with Sergeant Rex Walther of Ruston PD. Sergeant Walther stated that officers in his Precinct had made visits to the Garage premises on four occasions during the year from September 20XX-1 to September 20XX. In October of 20XX-1, and twice in January 20XX+1, they made visits regarding disorderly conduct calls to the Garage tavern. On May 5, 20XX, Sergeant Walther and other officers responded to the call of a disturbance with a firearm involved and subsequently arrested a suspect matching the original description at a nearby park. The subject was in possession of a Glock 40 caliber handgun. Sergeant Walther later advised the licensee of the arrest.

Sergeant Walther reports that after the two disturbance calls in January 20XX, he met with the licensee Davola to discuss the increased police service requirements, and he gave the licensee advice as to how to avoid overservice and disorderly conduct. He states that a liquor enforcement officer was present at the meeting at his request.

Washington State Liquor Control Board—Violation/Training History:

10/05/20XX-12: Initial Licensee Briefing —Licensee M.C. Davola
7/04/20XX-10: Verbal Warning—Minor allowed in restricted area
6/19/20XX-2: Written Warning—Overservice

10/02/20XX-1: Administrative Violation Notice (AVN)—Allowing Disorderly Conduct – Aggravated, licensee failed to call police after injury assault. \$1000.00 paid in lieu of 5 day suspension.

3/15/20XX: Verbal Warning—MAST (Mandatory Alcohol Server Training) permits – Employee Thomas Donaldson

6/15/20XX: Written Warning—MAST Permits – Employee Thomas Donaldson

7/21/20XX: AVN—MAST permit. Server Donaldson expired permit (Permit not valid as of September 3, 20XX)

CONCLUSIONS

The practices and operation of the Garage were assessed to determine whether the premises was operated in accordance with the law of the state of Major and industry standards for safety, protection of patrons, and service of clientele. I determined that Garage practices and operations were deficient in several respects.

Alcohol Server Training:

An establishment licensed as a tavern, according to industry standards, needs to adopt written policies and to conduct regular training of servers of alcohol. Over the past decade, most licensed premises in Ruston have adopted written policies for their employees. No such written policies had been adopted for The Garage.

Under the State of Major Statute 77.20.010, a manager, bartender, or server of alcohol must have a permit. On September 3, 20XX, the Garage's owner and manager M.C. Davola held valid Class 12 permits authorizing him to sell, or mix alcohol, spirits, wines or beer for consumption, and waitress Mary Apple held a valid Class 13 permit, which is required for servers of alcohol. However, bartender Thomas Donaldson's Class 12 permit had lapsed. He had received two warnings, a verbal one on March 15, 20XX and a written warning on June 15, 20XX. When the warnings did not provoke action on his part, a liquor enforcement officer issued an Administrative Violation Notice (AVN) to him on July 21, 20XX. Even that did not cause Mr. Donaldson to renew his permit, and on the day of the incident he still did not have a valid permit.

Mr. Donaldson's failure to renew his permit was not a mere administrative matter. The Class 12 permit is issued by a state certified provider of alcohol server training, and the permit is only granted to someone who completes the curriculum. The permit must be renewed every five years, and thus employee Donaldson had not gone through training by a certified provider for over five years from when he first received his permit. This absence of training coupled with the Garage's failure to provide written guidance meant that Mr. Donaldson was not up to date in his training on critical server requirements, including overservice of patrons and ways to deal with problem customers, to stop service, and to handle belligerent customers.

Overservice:

State of Major Alcoholic Beverage Administrative Regulation 2.3(a) and State of Major Statute 2.1 prohibit a licensee from supplying liquor to any person apparently under the influence of liquor. My interview of MSLCB Enforcement and Education Division Program Manager Letty Prout covered proper standards and practices for management and servers. These standards and practices are

routinely taught during the bartender and server training programs required for a permit, and they are contained in the Appendix to this report, entitled “Recognizing and Dealing with Apparently Intoxicated Persons.”

The Garage’s alcohol servers, Thomas Donaldson and Mary Apple, failed to comply with the regulation, statute, and standards and practices regarding overservice. When Mary Apple, who served Ed Hard on September 3, 20XX, was telephonically interviewed by Ruston Police Detective Tharp on September 9, 20XX, she said that she thought Hard’s speech was slurred and that “Hard was intoxicated” on September 3.

Mary Apple’s opinion is supported by Hard’s breathalyzer reading of .16 at 11:40 p.m. that night. While .08 is the level of blood/alcohol for driving while intoxicated, it is accepted industry practice that a reading of .10 to .14 is necessary before it can be said that a person would be “apparently under the influence of liquor.” Hard exceeded that level.

It might be contended that Hard consumed alcohol (three beers) after the shooting and his .16 reading can be attributed to that consumption. However, it is unlikely that the mere three beers would have elevated his blood/alcohol level to .16. Rather, he reached that level while at the Garage and the alcohol had not burned off by the time of the breathalyzer test.

Bartender Donaldson and server Apple failed to follow the steps for refusing service that are outlined in Appendix A when dealing with Edward Hard; specifically they did not count his drinks, chat with him to determine his level of sobriety, and stop service and remove his drinks when it became clear that he was intoxicated.

The Garage alcohol servers overserved the apparently intoxicated Edward Hard leading to tragic consequences.

Duty to Protect Patrons:

Industry standards for an establishment serving alcohol require licensees to protect patrons, and State of Major Alcohol Beverage Administrative Regulation 2.2 explicitly forbids a licensee from permitting a “disorderly or boisterous person” from being on the premises. The mandatory training for alcohol servers specifically covers intervention with problem patrons, including terminating service, eviction of disorderly patrons, and hiring security.

The Garage has a history of over 40 criminal incidents associated with the establishment. More to the point, within the year prior to the shooting, there had been four police responses to the Garage for disorderly conduct incidents, an escalation of such incidents. The situation was so serious that the Ruston Police Precinct’s Sergeant along with a liquor enforcement officer met with Davola and instructed him on dealing with these situations. Despite these incidents and police intervention, Davola did not hire security.

Within the context of these disorderly conduct reports, no action was taken that might have prevented the shooting of Bruno Summers. The hostility between Ed Hard and Bruno Summers was well known to Garage employees Donaldson and Apple. On August 20th, just a couple weeks before the shooting, they had observed a fight between Hard and Summers. Because of the disorderly conduct, bartender Donaldson ejected them from the Garage. Hard was known to

Donaldson as an aggressive and belligerent customer. Donaldson described Hard's behavior on August 20th as "acting loud and obnoxious." On the 20th, both Donaldson and Apple saw Hard jump Summers from behind.

On September 3rd, Donaldson overheard Hard remark to his friend that "That Nazi (referring to Summers) had better not come near me again." This remark was made when Hard saw Summers in the Garage on the 3rd. With Hard fueled by an overservice of alcohol and a prior violent conflict between the two men, action should have been taken. Service of alcohol should have been refused and the apparently intoxicated Hard should have been ejected from the premises.

APPENDIX

Major State Liquor Control Board Enforcement and Entertainment Division

RECOGNIZING AND DEALING WITH APPARENTLY INTOXICATED PERSONS

THE LAW

SMS 2.1 (a liquor law) and MAB 2.3(a) (a liquor administrative rule) prohibit the selling, serving or supplying of liquor to an apparently intoxicated person. Intoxicated persons may remain on a licensed premises as long as they are not disorderly, or boisterous, and **do not consume or possess** liquor.

SIGNS OF INTOXICATION

1. Overly friendly
2. Bragging
3. Talks loudly
4. Sudden or unexplained mood changes
5. Annoys other customers
6. Complains about strength of drink or slowness of service
7. Consumes drinks faster than usual; gulps drinks; orders doubles
8. Argues with employees or other customers
9. Uses foul language
10. Sullen, doesn't want to communicate except to order drinks
11. Buys rounds for strangers or the house
12. Lights more than one cigarette at a time
13. Unable to light cigarette
14. Eyes glassy, dilated pupils, lack of focus
15. Loss of train of thought (stops talking in mid-sentence)
16. Slurred speech or speaking very slowly and deliberately
17. Unable to pick up money or drops money; unable to count out correct amount for drink
18. Spills drink; misses mouth with glass
19. Head bobs, eyelids drooping, looks sleepy
20. Staggeres, sways while attempting to stand still; holding on to bar, chair, etc.

Alcohol affects each individual differently. The same number of drinks may affect an individual differently at various times depending on the person's mood, the time of day, amount of food in the stomach, how fast drinks are consumed, mixer used (carbonated mixers speed the passage of alcohol into the bloodstream), medications, gender (women are affected by alcohol more quickly than men), reasons for drinking, etc.

Just because a person “holds his/her liquor” well sometimes, doesn’t mean that will be true all the time.

REFUSING SERVICE

Get to know your customers to ensure any refusal of service is based on their state of sobriety, not a disability. It is important to be careful not to confuse a disability characteristic with a sign of intoxication. Determine if the symptoms of apparent intoxication could mimic symptoms of a disability or medical condition. Isolate and evaluate each symptom in order to determine if there is a possible disability or medical condition. If questions still remain, where possible, interview the apparently intoxicated person in as discreet a way as possible.

Federal and state laws prohibit discrimination against a person due to a disability. If a disability appears to explain a sign of intoxication—unsteady walking due to leg braces, muscular dystrophy, cerebral palsy, etc., or drooping eyelids due to blindness, stroke, head injury, etc.—look for additional signs of intoxication.

Drinking can put people on the offensive. It gives them a sense of power and a false sense of security. You are no longer dealing with the logical, rational person of *several* drinks ago, because judgment is the first faculty affected.

1. Be courteous but firm, avoid confrontation and don’t bargain or back down.
2. Don’t make statement that will embarrass or provoke a customer, such as “you’re drunk,” or “you’re eighty-sixed,” or “you’ve had too much.”
3. Don’t give the customer the impression you know what’s best for him/her.
4. Count drinks, but also be aware that new customers may have been drinking elsewhere.
5. Chat briefly with customers to help determine their sobriety. If the intoxicated person is part of a group, suggest to a sober member that the person be taken home (not allowed to drive home).
6. Slow the frequency of service down when a customer orders rapidly.
7. When a customer begins to show signs of intoxication, do not continue to serve weakened (feathered) drinks. No amount of liquor may be served to an apparently intoxicated person and any drinks an apparently intoxicated person has **must be removed**.

Suggested Statements

- a. I’d really appreciate it if you don’t order another drink.
- b. The Liquor Control Board is (local police are) cracking down, and I can’t serve you another drink.
- c. You’re welcome to stay—you can order coffee or food, but I can’t serve you another drink (**or allow you to keep this drink**). (Coffee will not sober someone up, but it will buy time, and time is the only thing that will bring about sobriety.)

- d. I might lose my job (permit or license) if I serve you another drink.

REMEMBER: After telling a customer that you cannot serve him/her another drink, *remove any existing drinks and walk away*. It is harder for a person to argue when you're not there.

SOME TIPS FOR MANAGEMENT

1. Establish and follow a policy on refusing service to apparently intoxicated persons.
2. Make all employees aware of their responsibility, and your responsibility, for seeing that apparently intoxicated persons are not served and are not allowed to possess liquor. Ensure all staff have their required permits.
3. Owners and managers should back any employee who refuses service, even if the employee's decision is questionable.
4. The toughest call of all: back your employee's refusal to serve even when the drinker is a steady customer who may threaten to take his/her business elsewhere. Remember, their judgment is impaired; when sober later, they may thank you.