

PETITION TO FINE, SUSPEND, OR	*	BEFORE THE ALCOHOLIC
REVOKE THE ALCOHOLIC	*	
BEVERAGE LICENSE HELD BY	*	BEVERAGE HEARING BOARD
VANESSA ANN DIFLUMERI AND	*	
LUIGI PALMA-ESPOSITO ON	*	FOR
BEHALF OF FACCI RISTORANTE OF	*	
TURF VALLEY, INC., t/a FACCI	*	HOWARD COUNTY, MARYLAND
RISTORANTE	*	
	*	Case No.: 15-13-V

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### **DECISION AND ORDER**

The Board of License Commissioners for Howard County, Maryland (the "Liquor Board"), pursuant to Rule 1.02(A) of the Liquor Board Rules and Regulations, has delegated the authority to hear and decide cases to the Alcoholic Beverage Hearing Board for Howard County, Maryland (the "Hearing Board"). This Proposed Decision and Order shall take effect immediately in accord with Rule 7.05(C), and shall become Final, as provided in Rule 6.13.

On February 10, 2015, the Hearing Board heard the Petition of Howard County, Maryland and Detective Mark Baxter, Alcoholic Beverage Inspector (collectively "Petitioners"), to Fine, Suspend, or Revoke the Class B Beer, Wine, and Liquor 7-day on-sale license held by Vanessa Ann DiFlumeri and Luigi Palma-Esposito ("Licensees"), on behalf of Facci Ristorante of Turf Valley, Inc., t/a Facci Ristorante, located at 11095 Resort Road, Suite 100, Ellicott City, Maryland 21042. The Petitioners were represented by David Moore, Senior Assistant County Solicitor. The Licensees were represented by Thomas M. Meachum, Esquire.

All the documents on file were incorporated into the record by reference. These include the following: a letter dated October 6, 2014, to the Licensees, from the Liquor Board Administrator, advising the Licensees of the hearing date of January 27, 2015, and enclosing the Petition to Fine, Suspend, or Revoke the alcoholic beverage license for Facci Ristorante of Turf Valley, Inc., t/a Facci Ristorante; a letter dated January 23, 2015, from the Licensees' attorney to the Liquor Board, noting his appearance as counsel; an email dated January 27, 2015 from the Licensees' attorney to the Liquor Board Administrator asking the Liquor Board

for advice on how to proceed, as the resident agent was out of town and would not be able to attend the hearing; an email from the attorney for the Liquor Board to the parties advising the Petition to Fine, Suspend, or Revoke the alcoholic beverage license for Facci Ristorante of Turf Valley, Inc., t/a Facci Ristorante, would be postponed to a later date; a letter dated January 28, 2015, from the Liquor Board Administrator to the parties, postponing the hearing date until February 10, 2015, and an email dated January 16, 2015, from the Alcoholic Beverage Inspector stating that the property had been posted.

### **STIPULATIONS**

Counsel for the Licensees stipulated to all factual allegations of the Petition except paragraphs number 7 and 8, which alleged patrons in the establishment after 2 A.M. had mixed drinks. The Licensees agreed that the officer would testify that the subjects appeared to have alcoholic beverages in front of them, but did not admit that the beverages contained alcohol. The Licensees stipulated to the following:

1. On or before May 1, 2014, Respondents applied for and received a Class B Beer, Wine, and Liquor 7 day on-sale license for Facci Ristorante of Turf Valley, Inc., t/a Facci Ristorante, 11095 Resort Road, Suite 100, Ellicott City, Maryland 21042. Facci Ristorante is located in Howard County and is subject to the jurisdiction of the Board of License Commissioners for Howard County.
2. At all times relevant to these proceedings, Respondents were responsible for the operation of Facci Ristorante, and were responsible for ensuring compliance with all local and State laws concerning the distribution, sale, and transfer of alcoholic beverages to members of the public.
3. On June 10, 2014, Detective Mark Baxter was notified of an incident that occurred at the Facci Ristorante on June 7, 2014.
4. At approximately 2:05 A.M. on June 7, 2014, Officers Mabe and Bochinski observed approximately fifteen (15) people in an enclosed fenced-in area of the business.
5. Upon entering the business through an unlocked front door the officers also observed four subjects sitting at the bar inside. One of the subjects sitting at the bar appeared to have a mixed alcoholic beverage at the bar.
6. Officer Mabe observed that the approximately 8-10 people sitting at the outside bar had what appeared to be mixed alcoholic beverages sitting in front of them.

7. The officers made contact with the owner of the establishment, Luigi Palma-Esposito, who advised the officers that the people inside the establishment were family. Upon additional questioning by Officer Mabe, Luigi Palma-Esposito admitted that the people inside the establishment were not his family, but that he considers them family because they were all his friends.
8. At this point, Luigi Palma-Esposito began to ask the people inside the establishment to leave and the scene was cleared at approximately 2:13 A.M.

#### SUMMARY OF TESTIMONY

Detective Mark Baxter, Alcoholic Beverage Inspector, was sworn and testified that only on-duty employees are allowed on the premises after 2 A.M.

Lucia Gomgora, a court certified interpreter, was sworn in to assist with translation.

Francesco Acevedo was sworn and testified that he has known Mr. Esposito, from Facci of Montpelier, since 2010. Mr. Acevedo testified that he was at Facci on the night of the incident. Mr. Acevedo testified that he arrived at 7 P.M. with his wife to have dinner. Mr. Acevedo testified that at 9 P.M., some friends came, and they went outside onto the patio. Mr. Acevedo testified that they did not consume any alcoholic beverages after 1:00 A.M. Mr. Acevedo testified that the police officers arrived at 2 A.M., but they did not have any alcoholic beverages in their glasses. Mr. Acevedo testified that he was drinking Coke.

Mr. Acevedo testified that there were five friends, and three other people sitting outside on the patio. Mr. Acevedo testified that he did not see anyone inside at 2 A.M., but that the bartender may have been there cleaning.

Mr. Acevedo's wife, Carmen Silva, was sworn and testified that she and her husband were at Facci eating dinner. Ms. Silva testified that some friends arrived, and they went outside onto the patio. Ms. Silva testified that she had a glass of wine, but then drank water. Ms. Silva testified that her husband was drinking Coke because he was driving. Ms. Silva testified that she did not see anyone with any alcoholic beverages, or anyone in the bar area.

Ana Aviles, was sworn and testified that she was sitting outside on the patio when the police arrived. Ms. Aviles testified that she got to Facci at about 8 P.M., and that she didn't have anything to drink after 1 A.M. Ms. Aviles testified that she was drinking lemonade after 1 A.M.

Francesco Adele, was sworn and testified that he was drinking Coke, water, and lemonade while he was there, and was not sure what anyone else was drinking. Mr. Adele testified that he left when the police arrived.

Isabelle Acosta, was sworn and testified that she is a travel agent, and that she arrived at Facci at about 8 P.M. with friends. Ms. Acosta testified that she and her friends were talking and singing outside on the patio. Ms. Acosta testified that everyone stopped drinking at 1 A.M., because they knew they had to drive. Ms. Acosta testified that the bartender was cleaning, and that no one else was sitting inside the restaurant. Ms. Acosta testified that she left when the police arrived, but that the police did not come out to the patio area.

Adela Hinostroza, was sworn and testified that she arrived at Facci at approximately 6 P.M. Ms. Hinostroza testified that she introduced Isabella to Luigi Palma-Esposito. Ms. Hinostroza testified that she ate dinner at 8 P.M. Ms. Hinostroza testified that Gino brought the Italian food to the table and explained it. Ms. Hinostroza testified that they then moved to the outside patio. Ms. Hinostroza testified that she told everyone at midnight that they needed to stop drinking at 1 A.M.

Ms. Hinostroza testified that she saw a police car at 10 to 10:30 P.M., and then later the police officer came in to talk to the owner. Ms. Hinostroza testified that the police officer told the bartender he wanted to speak to the owner. Ms. Hinostroza testified that she heard yelling, and the police officer was asking for the Mr. Palma-Esposito's driver's license. The owner asked why he had to give him his driver's license, and the police officer insisted. Ms. Hinostroza testified that she saw the police officer take out a ticket or piece of paper, and give it to the owner. Ms. Hinostroza testified that she was approximately 20 feet away.

Ms. Hinostroza testified that when everyone left, police officers followed them. Ms. Hinostroza testified as they were leaving, the manager, the bartender, and the owner were inside, but there were no customers.

Luigi Palma-Esposito, Licensee, was sworn and testified. Mr. Esposito testified that he knew people were coming anywhere from 6:30 to 9:00 P.M. Mr. Esposito testified that most of his friends ate dinner, and eventually went outside onto the patio. Mr. Esposito testified that they had alcoholic beverages until 12:45 A.M., when the last one was ordered. Mr. Palma-Esposito testified that he told the police officer the people in the restaurant were family because they are his close friends, and he does not have any family in America. Mr.

Palma-Esposito testified that he checked on his friends on the patio multiple times, and sat with them for a while.

Mr. Palma-Esposito testified that the bar closes at 11:30, but if a customer wants something to drink, they will serve it. Mr. Palma-Esposito testified that he closed down the cash register, and ran a print-out from 12:01 A.M. to 12:45 A.M., when the last drink was served.

Mr. Palma-Esposito testified that the police officer came into the bar a couple of minutes past 2 A.M., according to his inside cameras. Mr. Palma-Esposito testified that the bartender had almost finished cleaning when the police officer arrived, and that his friends were outside on the patio.

Mr. Palma-Esposito testified that two police officers responded to the restaurant. When the first officer arrived, he told the manager he wanted to speak to the owner. Mr. Palma-Esposito testified that the police officer was somewhat abrasive, and he was not sure why because no one was consuming alcoholic beverages when he arrived. Mr. Palma-Esposito testified that he had a long day, and did not feel like he was doing anything wrong by talking to his friends. He said the hour went by very quickly and he didn't realize what time it was. Mr. Palma-Esposito testified that the police officer asked for his identification, and that when he asked him why, the police officer placed his book down hard on the bar. Mr. Palma-Esposito testified that he was somewhat rude to the police officer, but was not disrespectful. Mr. Palma-Esposito testified that he should have been a little nicer. Mr. Palma-Esposito testified that his friends left the restaurant while he was talking to the police officer.

Mr. Palma-Esposito testified that he closed at or before 2:00 A.M., and that one door was unlocked, out of four. Mr. Palma-Esposito testified that the doors are very complicated and hard to lock.

Mr. Palma Esposito testified that a friend came by around midnight with his guitar, and played outside on the patio until approximately 1:15 A.M.

Thomas Meachum, attorney for the Licensees, argued that there is not a violation, until non-employees are on the licensed premises 15 minutes after 2:00 A.M. Mr. Meachum noted that the Petition states that the police officers left at 2:13 A.M., which is less than fifteen minutes.

Mr. Palma Esposito testified that he had last call between 12:30 A.M. and 1:00 A.M. The manager was also there, and di nott realize what time it was.

When asked if the police officer picked up any glasses to smell their contents, Mr. Palma-Esposito testified that he did not.

Mr. Palma-Esposito testified that he called Detective Baxter the next day and left a message, but never received a call back.

Mr. Palma-Esposito testified that he called Ms. DiFlumeri to explain what had happened regarding the violation. She said that he should have cleared everyone out at 1:30 A.M., and that since then, that has been his policy.

Vanessa DiFlumeri, Licensee, was sworn and testified that she was not there on the night of the incident. Ms. DiFlumeri testified that she was contacted by Mr. Palma-Esposito the next day about the incident. Ms. DiFlumeri told Mr. Palma-Esposito that he should not have cut it that close. Ms. DiFlumeri testified that she now communicates frequently with Mr. Palma-Esposito, and that he closes earlier to avoid this happening again.

Officer Ron Mabe, Howard County Police Officer, was sworn and testified that he has been a police officer for 16 years. Officer Mabe testified that in June 2014, when he was assigned to the patrol area, he was traveling to Harris Teeter to have dinner. Officer Mabe testified that he walked out of the store at about 2:05 A.M., and heard music. He was approximately 75 yards from Facci.

Officer Mabe testified that he and the other police officer decided to go to Facci and tell the owner that everyone needed to leave because it was after hours. Officer Mabe testified that he went in through the front door of the restaurant, and saw two people standing at the bar with several glasses in front of them, Officer Mabe also testified that he saw a male subject placing an instrument in its bag. Officer Mabe testified that he asked to speak to the owner. At that time, Officer Mabe testified that he saw bartenders behind the bar. Officer Mabe testified that Mr. Palma-Esposito said everybody in the establishment was his family. When the Officer challenged that assertion, Mr. Palma Esposito admitted that they were not his family but that he considered them his family. Officer Mabe testified that he asked the owner for his driver's license, and he produced it. Officer Mabe testified that he cleared the scene at 2:13 A.M.

Officer Mabe testified that while there, he observed individuals with drinks everywhere with liquid in them. Officer Mabe testified that there were two people sitting, and two people standing at the bar who left when he arrived. Officer Mabe testified that when he observed the glasses with liquid in them, he did not ask what was in them. Officer Mabe testified that he did not take any glasses as evidence, nor did he take any photographs as he was not conducting an investigation but was only on routine patrol and had stopped to get his dinner at Harris Teeter.

The following Licensees exhibit was entered into the record:

Exhibit #1 – Cash register receipt from June 7, 2014 for Facci Ristorante

Based on the evidence presented at the hearing, the Board of License Commissioners makes the following Findings of Fact and Conclusions of Law:

#### **FINDINGS OF FACT**

1. The Hearing Board finds that Vanessa Ann DiFlumeri and Luigi Palma-Esposito are Licensees on behalf of Facci Ristorante of Turf Valley, Inc., t/a Facci Ristorante, for a Class B Beer, Wine, and Liquor 7-day on-sale license located at 11095 Resort Road, Suite 100, Ellicott City, Maryland 21042.
2. The Hearing Board finds that on June 7, 2014, Howard County police officers visited the licensed establishment after 2 A.M. because they heard music coming from the establishment and noticed several persons still in the establishment.
3. The Hearing Board finds that Officer Mabe observed several glasses in front of patrons that appeared to contain mixed drinks.
4. The Hearing Board finds that there is insufficient evidence to prove that anyone was drinking alcohol on the licensed premises after 2 A.M.
5. The Hearing Board finds that there is insufficient evidence to prove that alcoholic beverages were opened, served, dispensed, or furnished to anyone after 2 A.M.
6. The Hearing Board finds that there is insufficient evidence to prove that anyone other than on-duty employees were on the licensed premises after 2:15 A.M.

#### **CONCLUSIONS OF LAW**

1. The Hearing Board concludes that Vanessa Ann DiFlumeri and Luigi Palma-Esposito are Licensees on behalf of Facci Ristorante of Turf Valley, Inc., t/a Facci Ristorante,

for a Class B Beer, Wine, and Liquor 7-day on-sale license located at 11095 Resort Road, Suite 100, Ellicott City, Maryland 21042.

2. The Hearing Board concludes that there is insufficient evidence to find any violation of the Liquor Board's Rules and Regulations.

**ORDER**

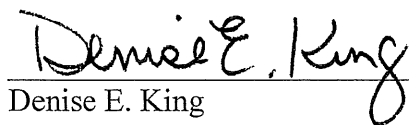
For the foregoing reasons, and upon a finding that there is insufficient evidence to establish a violation of the Liquor Board's Rules and Regulations, it is this 14<sup>th</sup> day of April, 2015, by the Alcoholic Beverage Hearing Board for Howard County, Maryland, **ORDERED:**

1. That the above referenced Petition for Violation against Vanessa Ann DiFlumeri and Luigi Palma-Esposito, Licensees on behalf of Facci Ristorante of Turf Valley, Inc., t/a Facci Ristorante, a Class B Beer, Wine, and Liquor 7-day on-sale license located at 11095 Resort Road, Suite 100, Ellicott City, Maryland 21042, is **DISMISSED** with prejudice.

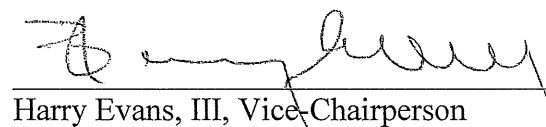


ATTEST:

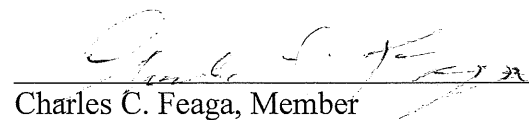
ALCOHOLIC BEVERAGE HEARING  
BOARD OF HOWARD COUNTY,  
MARYLAND

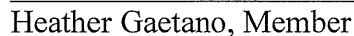
  
Denise E. King  
Administrator

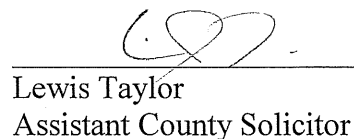
  
Mary Bird, Chairperson

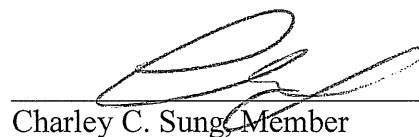
  
Harry Evans, III, Vice-Chairperson

REVIEWED BY HOWARD COUNTY  
OFFICE OF LAW  
MARGARET ANN NOLAN  
COUNTY SOLICITOR

  
Charles C. Feaga, Member

  
Heather Gaetano, Member

  
Lewis Taylor  
Assistant County Solicitor

  
Charley C. Sung, Member

ANY PERSON AGGRIEVED BY THIS DECISION AND ORDER MAY APPEAL THE  
DECISION TO THE LIQUOR BOARD WITHIN TEN DAYS OF THE DATE OF THE  
DECISION, IN ACCORD WITH RULE 6.14 OF THE RULES AND REGULATIONS OF  
THE LIQUOR BOARD.