Note: Decisions of a three-justice panel are not to be considered as precedent before any tribunal.

ENTRY ORDER

SUPREME COURT DOCKET NO. 2005-080

MARCH TERM, 2006

In re Appeal of Mad River Pizza, Inc.	}	APPEALED FROM:
dba Manhattan Pizza & Wings	}	
	}	Burlington Local Control Commission
		}

In the above-entitled cause, the Clerk will enter:

Licensee appeals from an order of the Burlington Local Control Commission concluding that licensee violated two regulations and suspending its liquor license for two days. We affirm.

At approximately one o=clock in the morning on October 16, 2004, police were informed that an intoxicated person swinging a pool stick was causing a disturbance outside licensee=s establishment. The police responded and eventually took the person to a detoxification center after testing revealed that he had a blood-alcohol level of .154. As a result of the incident, the local control commission notified licensee of a hearing to consider sanctions for alleged violations of Vermont Liquor Control Board General Regulation 19, which prohibits serving alcohol to intoxicated persons or allowing intoxicated persons to loiter on the licensed premises, and General Regulation 41, which requires licensees to control the conduct of their patrons and prohibits disturbances or other conduct creating a public nuisance. At the designated hearing date, counsel for the Burlington Police Department presented the commission=s hearing panel with a proposed settlement, but the

hearing panel rejected the settlement because it believed that the seriousness of the allegations warranted a hearing.

An evidentiary hearing was held on January 27, 2005. One week later, the hearing panel presented its proposed decision and recommendation to the full commission. The commission adopted the panel=s determination that licensee had violated Regulations 19 and 41, but increased the panel=s recommended liquor license suspension from one to two days, and also imposed the condition that the establishment=s side exit no longer be used as a general exit from the premises. This Court stayed the sanction pending appeal. On appeal, licensee argues that (1) the hearing panel abused its discretion and erred in rejecting the proposed settlement negotiated between licensee and the police department; and (2) the evidence did not support a finding of a violation of either Regulation 19 or Regulation 41.

Regarding the first claim of error, licensee merely asserts, without citation to authority, that it was clear error for the hearing panel to reject the settlement without first finding that the settlement was precluded by law. We find no support for this assertion. The Administrative Procedures Act provides that A[u]nless precluded by law, informal disposition may be made of any contested case by stipulation, agreed settlement, consent order, or default.@ 3 V.S.A. ' 809(d) (emphasis added). Nothing in the act or commission regulations required the hearing panel to accept the stipulation. See Town of Calais v. County Road Comm=rs, 173 Vt. 620, 621 (2002) (mem.) (AThe plain, ordinary meaning of the word >may= indicates that a statute is permissive, not mandatory.@). Apparently, the hearing panel believed that the incident was serious enough to require a hearing on the matter. Licensee could not avoid a hearing by compelling the legal body authorized to administer liquor regulations to accept the proposed stipulation.

Regarding licensee=s second claim of error, we conclude that there was sufficient evidence in the record to support the commission=s conclusions that licensee violated Regulations 19 and 41. There was substantial direct and circumstantial evidence that the intoxicated person in question drank alcohol in licensee=s establishment, exited the side door with a pool cue, instigated a disturbance with the doorman at the bar next door, and generally engaged in conduct creating a public disturbance. See Jarvis v. Gillespie, 155 Vt. 633, 637

(1991) (findings of trier of fact will stand if there is any reasonable and credible evidence to support them; findings are viewed in light most favorable to prevailing party, disregarding effect of modifying evidence). The intoxicated person himself admitted to a police officer at the scene that he had been drinking at licensee=s establishment, and the doorman next door witnessed that person standing on the steps outside the side door and engaging in disruptive conduct. See In re Capital Inv., 150 Vt. 478, 481 (1988) (trier of fact may infer previous fact from present conditions). The evidence also indicated that licensee=s employees made no attempt to control the intoxicated patron=s conduct. Indeed, one of licensee=s employees explicitly testified that it was not her job to control patrons. In short, there was more than enough evidence for the commission to conclude that licensee allowed an intoxicated patron to loiter outside its establishment and failed to control that person, who created a public disturbance.*

Affirmed.

BY THE COURT:

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Paul L. Reiber, Chief Justice

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Denise R. Johnson, Associate Justice

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Brian L. Burgess, Associate Justice

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* Appellee moved to strike pages 143-48 of appellant=s printed case, which consists of an affidavit by appellant=s counsel explaining why he could not comply with Vermont Rule of Appellate Procedure 10(c) regarding recreating the record, and setting forth his version of missing testimony. In an earlier entry order, we indicated that we would consider the motion to strike with the merits of the appeal. Because appellant=s unilateral rendition of the missing testimony does not comply with Rule 10(c), and because appellant failed to demonstrate good cause for failing to comply with the rule, appellee=s motion is granted. In any event, as

indicated herein, the part of the record that was transcribed contains ample evidence to support the commission=s decision.