

Assault & Disorderly Premises Charges against a licensed premises

A common charge against a licensed premises is an alleged violation of the Alcoholic Beverages Control Law for permitting assaults or disorderly conduct to occur on the premises. In our experience, licensed operators too often plead guilty to a violation of ABC law 106(6) when in fact they could defeat the charges imposed upon them by the State Liquor Authority, if they will simply defend the charges at a hearing.

In order to be guilty of permitting an assault to occur on the premises, the statute requires that the licensee "suffered or permitted" the premises to become disorderly.

The Authority, at a hearing, must establish that the licensee or manager either knew of the condition on the premises that led to the assault or disorderly conduct, or should have known through reasonable diligence, and tolerated its existence. Thus, simply because a fight occurs at the premises does not mean that the statute was violated. As with most fights, if the bar took reasonable steps to prevent fights, and if the fight was not preventable through reasonable efforts, the licensee has not violated the statute. One reasonable step is to have bouncers patrolling or viewing the premises that would intervene quickly if a disturbance occurred. If the bouncers quickly intervene to quell a disturbance that they could not have reasonably prevented, then the Licensee should be victorious after a hearing.

One exception to the rule is if a manager or other employee with managerial authority has created the disturbance or was instrumental in creating such disturbance. In this case, it is not necessary for the Authority to establish actual knowledge on the part of the licensee or a foreseeable pattern of conduct, and a single incident will be sufficient to hold the licensee responsible.

Thus, the bar should train its employees to be on the lookout for disorderly conduct and intervene in a quick but orderly manner to quell such conduct. The failure to have any steps in place to prevent such conduct could very well lead to a finding that the ABC Law was violated.