

STATE OF WISCONSIN

BEFORE THE ALCOHOL  
LICENSE REVIEW COMMITTEE  
OF THE CITY OF MADISON

DANE COUNTY

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CITY OF MADISON,

Plaintiff,

COMPLAINT

vs.

Orpheum Theatre Company of Madison  
dba Orpheum Theatre  
Eric Fleming, agent  
216 State Street  
Madison, WI

Respondent.

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NOW COMES the City of Madison by Jennifer Zilavy, Assistant City Attorney, and alleges as follows, that:

1. The complainant, Assistant City Attorney Jennifer Zilavy, is an adult resident of the City of Madison, with a business address of 210 Martin Luther King Jr. Blvd , Madison, Wisconsin, and at all times material to this action, she has been an Assistant City Attorney for the City of Madison.
2. The respondent herein, Orpheum Theatre Company of Madison, Eric Flemming, agent, is the alcohol beverage licensee doing business as Orpheum Theatre, 216 State Street, Madison, Wisconsin, according to documents filed with the City Clerk of the City of Madison.
3. The Common Council of the City of Madison granted a Class B Combination Alcohol Beverage License to Orpheum Theatre Company of Madison, Eric Flemming, agent, for the premises located at 216 State Street, Madison, Wisconsin, for the period July 1, 2006 through June 30, 2007. At all times alleged in this complaint, Respondent was the holder of a Class B Combination Alcohol Beverage License issued by the City of Madison.

On information and belief, the licensee, under the City of Madison Class B Combination Alcohol Beverage License for the retail sale of alcohol beverages, at the premises known as Orpheum Theatre, 216 State Street, Madison, Wisconsin, has accumulated in excess of 200 points of alcohol beverage ordinance violations rendering any issuance of a Formal Expression of Concern, within the meaning of Sec. 28.10(4)(d), Madison General Ordinances, inapplicable, to wit:

FIRST COUNT: On September 3, 2006, did unlawfully permit a person to leave the licensed premises with an open container of an alcohol beverage, contrary to Sec. 38.07(5) of the Madison General Ordinances for which the penalty is a forfeiture of not more than One Thousand Dollars (\$1,000) plus 26% statutory penalty surcharge, \$18 jail and crime lab surcharge, plus court costs and fees.

SECOND COUNT: On September 4, 2006, did unlawfully permit a person to leave the licensed premises with an open container of an alcohol beverage, contrary to Sec. 38.07(5) of the Madison General Ordinances for which the penalty is a forfeiture of not more than One Thousand Dollars (\$1,000) plus 26% statutory penalty surcharge, \$18 jail and crime lab surcharge, plus court costs and fees.

FACTS: On September 3, 2006, Madison Police Officer Meredith York was on foot patrol on State Street when she passed the Orpheum Theater and observed a wedding reception in progress. Officer York observed approximately 12 to 15 people walking in and out of the front doors of the Orpheum with open containers of alcohol and walking down State street and crossing State Street to have pictures taken. Officer York contacted Kevin Pellerin who identified himself as the bar manager. He told Officer York that he did not realize people were walking out and up and down the sidewalk with alcohol. Pellerin told Officer York he would take steps to make sure it no longer happened. On September 4, 2006, Officer York was again on foot patrol on State Street when she noticed another wedding reception at the Orpheum. York again observed people leaving the Orpheum with open containers of alcohol and walking back and forth across State Street with the open containers. Madison Police Report No. 06-108738

THIRD COUNT: On October 26, 2006, did unlawfully sell, vend, deal or traffic in alcohol beverages to or with an underage person not accompanied by parent, guardian or spouse who has attained the legal drinking age, to wit: Ariela Cohen, d/o/b 12/24/1986, contrary to Section 38.04(1)(a)2. of the Madison General Ordinances and upon conviction thereof shall be subject to a forfeiture of not more than Five Hundred Dollars (\$500) plus 26% statutory penalty surcharge, \$18 jail and crime lab surcharge, plus court costs and fees

FOURTH COUNT: On October 26, 2006, did unlawfully sell, vend, deal or traffic in alcohol beverages to or with an underage person not accompanied by parent, guardian or spouse who has attained the legal drinking age, to wit: Jamie E. Gans, d/o/b 04/27/1987, contrary to Section 38.04(1)(a)2. of the Madison General Ordinances and upon conviction thereof shall be subject to a forfeiture of not more than Five Hundred Dollars (\$500) plus 26% statutory penalty surcharge, \$18 jail and crime lab surcharge, plus court costs and fees

FIFTH COUNT: On October 26, 2006, did unlawfully sell, vend, deal or traffic in alcohol beverages to or with an underage person not accompanied by parent, guardian or spouse who has attained the legal drinking age, to wit: R.B., d/o/b 11/08/1987, contrary to Section 38.04(1)(a)2. of the Madison General Ordinances and upon conviction thereof shall be subject to a forfeiture of not more than Five Hundred Dollars (\$500) plus 26% statutory penalty surcharge, \$18 jail and crime lab surcharge, plus court costs and fees

SIXTH COUNT: On October 26, 2006, did unlawfully sell, vend, deal or traffic in alcohol beverages to or with an underage person not accompanied by parent, guardian or spouse who has attained the legal drinking age, to wit: Erica J. Byer, d/o/b 09/30/1987 Erica J. Byer, d/o/b 09/30/1987, contrary to Section 38.04(1)(a)2. of the Madison General Ordinances and upon conviction thereof shall be subject to a forfeiture of not more than Five Hundred Dollars (\$500) plus 26% statutory penalty surcharge, \$18 jail and crime lab surcharge, plus court costs and fees

SEVENTH COUNT: On October 26, 2006, did unlawfully sell, vend, deal or traffic in alcohol beverages to or with an underage person not accompanied by parent, guardian or spouse who has attained the legal drinking age, to wit: Samantha Jacqueline Russ, d/o/b 05/07/1987, contrary to Section 38.04(1)(a)2. of the Madison General Ordinances and upon conviction thereof shall be subject to a forfeiture of not more than Five Hundred Dollars (\$500) plus 26% statutory penalty surcharge, \$18 jail and crime lab surcharge, plus court costs and fees

FACTS: On October 26, 2006, at approximately 10:30 p.m., Madison Police Officers Corey Urso and Mark Miller responded to the Orpheum Theater, 216 State Street, Madison, Wisconsin, to check on a party that Sigma Alpha Mu fraternity was allegedly sponsoring. The officers responded and eventually got inside. Their first contact was with a female identified as Ariela Cohen, d/o/b 12/24/1986. Officer Urso smelled a strong odor of intoxicants on Cohen's breath and observed her to be somewhat unsteady on her feet. Cohen was holding a drink that she told Officer Urso was cranberry juice and vodka. Officer Urso observed several individuals he believed to be intoxicated as he walked through the Orpheum and he also observed many individuals who he believed were under the age of 21 and who appeared to be consuming alcohol. Officer Urso contacted a female identified as Jamie E. Gans, d/o/b 04/27/1987. Officer Urso observed that Gans was very intoxicated as she had a hard time standing still and keeping her balance. Gans also had a wristband on which indicated that she was over the age of 21. Report of Madison Police Officer Corey Urso, #06-129990.

At approximately 11:57 p.m., Madison Police Officer Kim Meyer responded to the Orpheum to assist other officers on site. Upon entry into the Orpheum, Officer Meyer observed many people who appeared to be under the age of 21. Officer Meyer contacted a white female, identified as

Erica J. Byer, d/o/b 09/30/1987. Byer had an alcoholic beverage in her hand. Report of Madison Police Officer Kim Meyer #06-129990.

At approximately midnight on 10/26/2006, Madison Police Officer Christina Hill arrived at the Orpheum to assist other officers. Officer Hill contacted a female, later identified as Samantha Jacqueline Russ, d/o/b 05/07/1987. Russ had an alcoholic beverage in her hand and admitted to Officer Hill that she was under the age of 21. Report of Madison Police Officer Christina Hill, #06-129990

On October 27, 2006, at approximately 2:17 a.m., Madison Police Officer Brian Sheehy was dispatched to 502 North Francis Street for a person down on the 9<sup>th</sup> floor. Officer Sheehy responded and came upon Justin Martell, d/o/b 06/16/1988 and R.B., d/o/b 11/08/1987. Martell told Officer Sheehy that she and R.B. had been at the Orpheum earlier in the night and that R.B. had been drinking alcohol there. R.B. was taken to Meriter Hospital and Officer Sheehy responded to Meriter to contact R.B.. Officer Sheehy observed that R.B. was extremely intoxicated and smelled strongly of intoxicants and was spitting all over the floor. R.B. was unresponsive and very difficult to awaken. R.B. did admit to Officer Sheehy that he had been at the Orpheum drinking. R.B.'s portable breath test showed an alcohol level of .173. Report of Madison Police Officer Brian Sheehy, #06-129990.

NOW, THEREFORE, for all the above stated reasons and pursuant to Sec.38.10(1)(a), Madison General Ordinances, the Complainant demands that the Common Council of the City of Madison suspend the Class B Combination Alcohol Beverage License issued to Orpheum Theatre, 216 State Street, Madison, Wisconsin.

STATE OF WISCONSIN)
) ss.
COUNTY OF DANE )

City of Madison Assistant City Attorney, Jennifer Zilavy, being duly sworn on oath, states that she has read the foregoing Complaint against Orpheum Theatre and that the statements are believed to be true of her own knowledge, except those which are stated upon information

and belief, and as to such matters, she believes them to be true as they are based upon reports by Madison Police Officers filed pursuant to their official duties.

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Jennifer Zilavy  
Assistant City Attorney

Subscribed and sworn to before me  
this \_\_\_\_ day of May 2007

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Notary Public, Dane County, Wis.  
My Commission expires: \_\_\_\_\_