

BEFORE THE INDEPENDENT ETHICS COMMISSION	
<p>COMPLAINANT: Janece Culver and West Slope Advocate CO</p> <p>v.</p> <p>RESPONDENT: David Bowman</p>	Case Number: 20-18
<p>Margaret L. Carey, Reg. No. 011095 Attorney for Respondent P.O. Box 3646 Montrose, CO 81403 (970) 249-3550                      email: mcareycolaw@gmail.com</p>	
<b>Response to Complaint</b>	

The Respondent, with counsel, responds to the Complaint herein as follows:

Identification of Parties

1. Complainant Janece Culver was, at all times relevant herein, an independent contractor providing operation of Divot's, a restaurant located on the city owned property that contains the city golf course.
2. West Slope Advocate is a business in Montrose, Colorado.
3. The signatory on the Complaint, Scott Damman, is the owner and operator of West Slope Advocate.
4. MSMS, is Montrose Summer Music Series, a Colorado Non-Profit Corporation, EIN No. 47-4416138. It is governed by a four-person board consisting of Donny Morales, Glen Patterson, Phil Friesmuth, and Michael Hudson. Dave Bowman, Respondent, is the registered agent for service of process for the corporation, and acts as the music promoter. These roles predated Mr. Bowman's election to the Montrose City Council. MSMS's purpose is to promote live music in Montrose, both as a way of allowing local musicians to perform, and of keeping Montrose residents in the community over the week-end. These purposes are consonant with the goals of the City of Montrose.
5. Respondent David Bowman is a local music producer who founded MSMS in an effort to provide nationally known music acts to the citizens of Montrose. As stated in

the statement from the City of Montrose, attached as an Exhibit to the complaint, “Mr. Bowman’s involvement with the non-profit, Montrose Summer Music Series, is unrelated to his Council position.” At the time that Mr. Bowman ran for City Council in 2016 it was well known that he promoted the Montrose Summer Music Series, and that he intended to continue to do the same.

### Response to Complaint

1. Respondent denies that he ‘dictated a fee’ to be paid by Janece Culver during the Montrose Summer Music Series, and alleges instead, that Ms. Culver told the Liquor Enforcement Division investigator stated as follows:

“I asked Culver if she felt she reserved the right to refuse to use the cups or make the donation to the MSMS told me that Bowman said “this is what you’re gonna do” but at no time did she feel threatened or *that she had to go along with what he told her.*” Liquor Enforcement Division report, Page 5 of 13, Case No. 20-0683. (emphasis added by Respondent)

The complaint before this Commission states that Culver felt intimidated, but her statement, with counsel present, to the investigator, denies that.

2. Respondent denies the allegations that he was paid any sums of money from Complainant. The checks provided by the Complainant are clearly made out to Montrose Summer Music Series, the nonprofit corporation described above.
3. Respondent denies that he “used his position and power of office for monetary gain”. Respondent affirmatively alleges that his compensation from MSMS is not related to donations but is a nominal flat fee for all services provided. Respondent works with MSMS to improve the musical acts available to Montrose, and to help community development. The actions as described by the complainant would be a violation of 18-8-302, C.R.S. However, the District Attorney’s office has reviewed the allegations contained (and exaggerated) in the complaint, and determined no prosecution would be undertaken. Liquor Enforcement Division report, Page 10 of 13, Case No. 20-0683.
4. Respondent denies that the arrangement with Divot’s donation damaged the City of Montrose in any way. The price of a beer during MSMS concerts was increased by \$2 to cover the cost of the cups and the donation to MSMS; the price of a refill was increased by \$1 for the same reason. The inclusion of this accusation demonstrates what the Complainant’s real goal is: to cause Respondent personal grief and the cost of defending this complaint. The increased business to Divot’s food division as a result of the concerts,

resulting in *increased profit* to complainant, and thus increased payment to the City, demonstrates, again, how the goals of the City and MSMS were not in conflict.

5. Respondent denies that he referred to himself as the mayor, or a city council member, wore city insignia or in anyway implied he was approaching the Complainant in his role as a city council person. He alleges instead that the Complainant was well aware he was acting for MSMS, and that the cups, which bear the MSMS logo reinforced that.
6. Respondent neither admits nor denies any allegations regarding the conversations the complainant allegedly had with Ms. Morgenthaler, as he was not party to them, and Ms. Morgenthaler declined to be interviewed by counsel for Respondent (see Rule 11, C.R.C.P.) given this pending investigation.
7. Respondent affirmatively alleges that after this incident the liquor licensing authorities came to the Montrose City Council and gave a presentation of issue of which they needed to be aware. Respondent attended that presentation and learned more specifics regarding the role of the City Council in liquor licensing.
8. Respondent affirmatively alleges that, contrary to the allegations in the liquor enforcement division report, he did not sell liquor without a license, as all cup proceeds went to MSMS, a nonprofit corporation. Because there was no prosecution this defense was never raised.
9. Respondent affirmative alleges that this matter has been reviewed by both the Montrose County Sheriff's office, at the request of complainant, and the CBI, at the request of the City Council, and no charges have filed. Respondent believes that no criminal charges are forthcoming.

### Argument

Montrose Summer Music Series is a beloved tradition started in 2015 in Montrose. Historically it was held at the City owned golf course as a way of promoting Montrose, and for the amenities available. The concerts radically increased traffic at the golf course, and at the restaurant located on the grounds, now called Divots. The concerts are professional productions and require a local promoter to organize them, from finding artists, to promotional materials, and fundraising. This service has always been provided by MSMS, a nonprofit corporation, with Respondent doing the majority of the leg work. When Respondent told Complainant, "this is the way it's done" it was not said as a threat (and was not perceived as one by Complainant's own statement) but as a historical fact. Respondent used almost identical language in talking with the liquor enforcement investigator. Liquor Enforcement Division Report, page 7 of 13, Case no. 20-0683. The

Complainant admitted, with counsel present, that she did not feel intimidated or that she had to go along with the historical method. Any allegation that the Respondent received a financial benefit from the arrangement between Divot's and MSMS is groundless and frivolous. This case has been investigated by three agencies, and the Montrose Police Department was made aware of its existence, none have pursued a criminal case against Respondent. Complainant Culver achieved a certain notoriety as a result of ongoing press coverage and may be seeking to prolong that. Complainant Scott Damman appears to be promoting his own business, West Slope Advocate by filing this complaint.

MSMS, a nonprofit corporation, is not a party to this matter. Any disgorgement of the proceeds would require that they be added as a party.

Wherefore, Respondent requests that this matter be dismissed.

Respectfully submitted this 27<sup>th</sup> day of November, 2020.

Margaret L. Carey

#### CERTIFICATE OF SERVICE

The undersigned hereby certifies that she served a true and correct copy of the within Response to Complaint on the parties by mailing the same, postage prepaid, 27<sup>th</sup> day of November, 2020, addressed as follows: Scott Damman, West Slope Advocate, 320 Denny Court, Montrose, CO 81401. No address has been provided for Janece Culver, listed as a complainant.

Margaret L. Carey