

Supreme Court sides with bar staff forced to pay cash shortages with tips

POLICY AT NOW-DEFUNCT NIGHTCLUBS PROMPTED PRECEDENT-SETTING LAWSUIT.

By ABBY SIMONS
Star Tribune

The rules were clear when Thomas Rupp began bartending at the popular Minneapolis party bar Drink as a college student in 2007.

If the cash register was short for any reason — for instance, if a customer walked out on a tab or forgot to sign a credit card receipt — you were responsible.

“It didn’t seem right,” Rupp said. “But who were we to question the bosses who said we had to pay in?”

Rupp, 31, and more than 750 Drink and Spin nightclub employees who challenged their companies’ tactics won a major victory Wednesday when the Minnesota Supreme Court ruled that they were entitled to damages for being forced to use their tip money to make up cash shortages. Their award could surpass six figures, according to Steven Andrew Smith, an attorney representing

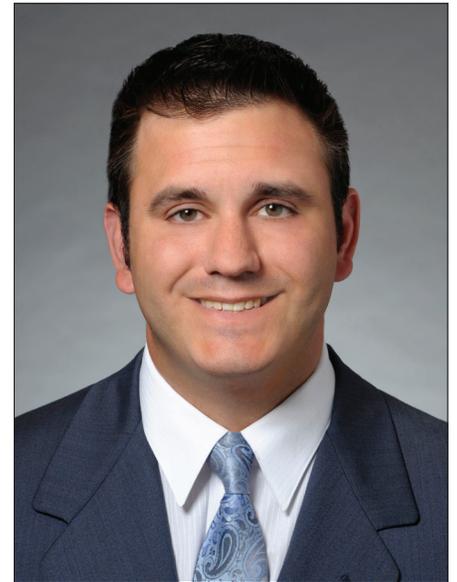
the plaintiffs in the class-action lawsuit, and the decision sets a precedent for Minnesota labor law.

“This ruling deals with a practice that is sort of the dirty little secret of Twin Cities bars and restaurants — where if the till’s short, you’ve gotta pay if you want to keep your job,” Smith said. “It sends the message that you can’t do that.”

The decision means the lawsuit will return to Hennepin County District Court to calculate damages for the servers, bartenders and security guards who first brought their claim against Uptown Drink LLC and related companies in 2010.

The suit alleged that there had been multiple violations of the Minnesota Fair Labor Standards Act, including that employees were required to pay for register shortages and the bills of customers who walked out without paying or who did not sign credit card receipts.

Employees testified at trial that failing to make the payments could get them fired. Drink countered that employees voluntarily paid the shortages



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rather than be written up for failing to properly handle cash.

Establishments now closed

Messages left for Drink LLC attorney Ashwin Madia were not returned. Both Drink locations, in Uptown and downtown Minneapolis, have since been shuttered, as has Spin nightclub. Uptown Drink filed for Chapter 11 bankruptcy, but has since reopened as Uptown Tavern. Owner Mike Whitelaw could not be reached for comment. The bar was also ordered to pay \$700,000 in attorneys’ fees and costs

as part of the initial lawsuit. However, the bankruptcy has placed any payout on hold.

Although it awarded \$70,000 in damages to the plaintiffs and the state of Minnesota, a jury rejected the staffers' claims that their rights were violated

said that tips are counted as wages, regardless of whether they fall above or below the minimum wage.

"A gratuity is paid to an employee for performing a service for an employer, such as serving food and drinks

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by forcing to pay for shortages. A district judge and Court of Appeals agreed, ruling in part that the employees failed to prove that paying for shortages made their wages fall below the state's minimum.

However, in its unanimous ruling, the Supreme Court

to the employers' patrons. Gratuities also fall under the definition of 'wages' even though the money is paid by 'another person,'" Chief Justice Lorie Gildea wrote.

The law's definition prevents employers from using "self help" to enforce a claimed

indebtedness against an employee, she continued, such as in the Drink case.

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Money 'rightfully earned'

Rupp, who now works in government finance, couldn't say how much money he lost and could possibly recoup. However, he said the ruling is about more than just money.

"It's a great victory for bartenders and servers who don't have to be afraid and be bullied by their bosses," he said. "This is their money that they rightfully earned, and it should be up to the business to account for these losses through better management."

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