



The Commonwealth of Massachusetts
Department of the State Treasurer
Alcoholic Beverages Control Commission
Boston, Massachusetts 02114

Steven Grossman
Treasurer and Receiver General

Kim J. Gainsboro, Esq.
Chairman

FELT ENTERPRISES, LLC D/B/A FELT
531-535 WASHINGTON ST
BOSTON, MA 02111
LICENSE#: 011600797
HEARD: 12/11/2013

This is an appeal of the action of the Licensing Board for the City of Boston (the "Local Board" or "Boston") for denying the M.G.L. c. 138 §12 late renewal / license application of Felt Enterprises, LLC, d/b/a Felt (the "Licensee" or "Felt") located at 531-535 Washington Street, Boston, MA. The Licensee timely appealed the Local Board's decision to the Alcoholic Beverages Control Commission (the "Commission") pursuant to which a hearing was held on Wednesday, December 11, 2013.

The following documents are in evidence as exhibits:

1. City of Boston's Pre-Hearing Memorandum;
2. Licensee's Application New License/Late Renewal;
3. Licensee's Application New License/Late Renewal;
4. Licensee's Manager Application dated 2/15/2013;
5. Citizen Bank Statements (March; April; May of 2012);
6. Licensee's Renewal Application for 2012; and
7. Local Board's Statement of Reasons dated 2/29/2013.
8. Local Board's Letter of Notification Rejecting Licensee's "Late File Renewal Application" dated April 25, 2013.

There is one (1) audio recording of this hearing.

The Commission took Administrative Notice of the Licensee's Commission Records.

FACTS

The Commission makes the following findings of facts and rulings of law:

1. Felt Enterprises, LLC was the holder of a 7-day All Alcoholic Beverage License pursuant to M.G.L. Chapter 138, §12 formerly exercised at 531-535 Washington Street, Boston, MA. The Licensee failed to timely file a 2013 renewal application within the month of November of 2012 (November 1st to November 30th) as required by M.G.L. c. 138, §16A. Instead, the Licensee filed an application for a new license on December 31, 2012.
2. As a result of this untimely December 2012 filing, the Licensee failed to comply with renewal requirements pursuant to M.G.L. c. 138, §16A, and was statutorily required to file an application for a new license pursuant to M.G.L. c. 138, §16A and §15A.

3. At the time of the renewal application, the Licensee was serving a suspension of its §12 license issued by this Commission.
4. In response to the Licensee's application for a new license, the Local Board held a hearing on February 27, 2013.
5. The Local Board found in its subsidiary findings (Exhibit 7 before this Commission) that the Licensee, through Counsel, indicated that the failure to renew its license in a timely manner stemmed from the Licensee's honestly held but erroneous belief that because the Licensee was at the time under suspension in November of 2012, the Licensee was not eligible to file an application to renew due to that existing suspension.
6. At the local hearing, and before this Commission, the Licensee submitted no evidence (such as a current and valid lease for the premises in question) which indicated that the Licensee had or will obtain the legal right to occupy the premises where the license was previously exercised.
7. The application for a new license submitted on December 31, 2012, was incomplete and failed to provide all required information.
8. Moreover, the application for a new license included the name of a manager, Konstantinos Grapsas, who had previously notified and requested of the Local Board that he be removed as the license manager of record.
9. The Licensee subsequently failed to supply any and all required information to complete the application prior to the Local Board's hearing on February 27, 2013.
10. On April 25, 2013, the Local Board notified the Licensee that it had voted to reject the 2013 late-filed renewal application for cause.
11. The Licensee, through counsel, timely filed an appeal for a hearing before this Commission.
12. At the hearing before the Commission on December 11, 2013, the Licensee failed to appear. However a representative for the landlord, who does not have standing in this matter, did appear before the Commission.

DISCUSSION

Pursuant to M.G.L. c. 138, §67, "[t]he ABCC is required to offer a de novo hearing, that is to hear evidence and find the facts afresh. United Food Corp v. Alcoholic Beverages Control Commission, 375 Mass. 240 (1978). As a general rule the concept of a hearing de novo precludes giving evidentiary weight to the findings of the tribunal from whose decision an appeal was claimed. See, e.g. Devine v. Zoning Bd. of Appeal of Lynn, 332 Mass. 319, 321 (1955); Josephs v. Board of Appeals of Brookline, 362 Mass. 290, 295 (1972); Dolphino Corp. v. Alcoholic Beverages Control Com'n, 29 Mass. App. Ct. 954, 955 (1990) (rescript). The findings of a local licensing board are 'viewed as hearsay evidence, [and] they are second-level, or totem pole hearsay, analogous to the non-eyewitness police reports in Merisme v. Board of Appeals on Motor Vehicle Liab. Policies and Bonds, 27 Mass. App. Ct. 470, 473 – 476 (1989)." Dolphino Corp. v. Alcoholic Beverages Control Commission, 29 Mass. App. Ct. 954, 955 (1990) (rescript).

Both the Local Board and the Commission have the authority to grant, revoke and suspend licenses. Their powers were authorized "to serve the public need and... to protect the common good." M.G.L. C. 138, §23, as amended through St. 1977, c. 929, §7. The Commission is given "comprehensive powers of

supervision over licensees,” Connolly v. Alcoholic Beverages Control Comm., 334 Mass. 613, 617 (1956), as well as broad authority to issue regulations. The Local Board has authority to enforce Commission regulations. New Palm Gardens, Inc. v. Alcoholic Beverages Control Commission, 11 Mass. App. Ct. 785, 788 (1981).

These “comprehensive powers” are balanced by the requirement that the Local Board and the Commission provide notice to the licensee of any violations, as well as an opportunity to be heard. M.G.L. c. 138, §64. In addition, the Local Board has the burden of producing satisfactory proof to the Commission that the licensee violated or permitted a violation of any condition thereof, or any law of the Commonwealth. M.G.L. c. 138, §§ 23, 64.

The Commission’s decision must be based on substantial evidence. See Embers of Salisbury, Inc. v. Alcoholic Beverages Control Comm’n, 401 Mass. 526, 528 (1988). “Substantial evidence” is “such evidence as a reasonable mind might accept as adequate to support a conclusion.” *Id.* Evidence from which a rational mind might draw the desired inference is not enough. See Blue Cross and Blue Shield of Mass. Inc., v. Comm’r of Ins., 420 Mass 707, 710 (1995). Disbelief of any particular evidence does not constitute substantial evidence to the contrary. New Boston Garden Corp. v. Bd. of Assessor of Boston, 383 Mass. 456, 467 (1981). In addition, the Local Board has the burden of producing satisfactory proof that the Licensee violated or permitted a violation of any condition thereof, or any law of the Commonwealth. M.G.L. c. 138, §§ 23, 64.

Felt’s Application Was Properly Considered as a New Application by the Local Board

The law is well settled that applications filed after November 30th for the subsequent/following calendar year are to be considered as new license applications, pursuant to M.G.L. c. 138, §16A which provides, in pertinent part:

[l]icenses issued under section twelve or fifteen shall be automatically renewed for the next annual license period upon application by the holder thereof during the month of November . . . , provided that said license is of the same type as the expiring license and covers the same licensed premises. If the application does not meet the conditions hereunder, *it shall be treated as an application for a new license and all the procedures set forth under section fifteen A shall be applicable thereto.* M.G.L. c. 138, §16A. (Emphasis supplied.)

Felt’s failure to timely submit an application in accordance with the requirements of Section 16A of Chapter 138, subjected the Licensee to the requirement of being treated as an application for a “new license and all the procedures set forth under section fifteen A.” M.G.L. c 138, §16A, c.f. Zelman v. Alcoholic Beverages Control Commission 140 N.E.2d 467, 335 Mass. 515 (1957). Accordingly, the Local Board was correct in considering the Licensee as a new application subject to the provisions of M.G.L. c. 138, §15A.

License Applicant Must Demonstrate Control of Premises to Be Eligible To Hold A License

In the matter of Board of Selectmen of Sudbury v. Alcoholic Beverages Control Commission, 25 Mass. App. Ct. 470 (1988), it was found that “local licensing authorities cannot issue any type of license to an original applicant unless he owns or controls the premises to which the License will apply.” Simply stated, an applicant for a license under Section 12 of Chapter 138 needs to demonstrate that it has control of the premises – a legal right to a specific and defined place to do business. Accordingly, to be entitled to a license under Section 12 of Chapter 138, the Licensee was required to demonstrate to the Local Board that it was entitled to operate the premises at 531-535 Washington Street, Boston, MA. In the case before the Commission, no evidence was presented that Felt had or would subsequently obtain control over the premises at 531-535 Washington Street, Boston, Massachusetts. This Commission finds that the

Local Board put forth satisfactory proof to demonstrate substantial evidence that the Licensee did not demonstrate a legal right to occupy the premises, and as a result, the Licensee was not eligible to receive a new license. In Board of Selectmen of Sudbury v. Alcoholic Beverages Control Commission, 25 Mass. App. Ct. 470, (1988), the Massachusetts Appeals Court held that:

[t]he fourth sentence of G. L. c. 138, Section 15 which applies to original applications for all types of license, is explicit that '[e]ach license shall describe the premises to which it applies.' The corollary of this imperative is that local licensing authorities cannot issue any type of license to an original applicant unless he owns or controls the premises to which the license will apply. Board of Selectmen of Sudbury v. Alcoholic Beverages Control Commission, 25 Mass. App. Ct. 470, 471-472 (1988), citing Cheney v. Coughlin, 201 Mass. 204 , 207-209 (1909), New City Hotel Co. v. Alcoholic Beverages Control Commn., 347 Mass. 539 , 542 (1964), Opinion of the Justices, 349 Mass. 794, 798 (1965).

CONCLUSION

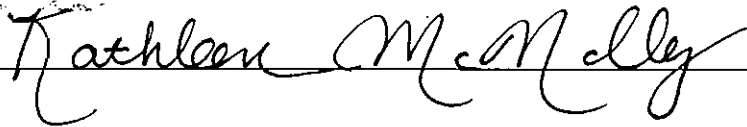
Based on the evidence, the Alcoholic Beverages Control Commission **APPROVES** the action of the Licensing Board for the City of Boston in denying the M.G.L. c. 138 §12 late renewal / license application of Felt Enterprises, LLC d/b/a Felt:

ALCOHOLIC BEVERAGES CONTROL COMMISSION

Susan Corcoran, Commissioner



Kathleen McNally, Commissioner



Dated: June 11, 2014

You have the right to appeal this decision to the Superior Courts under the provisions of Chapter 30A of the Massachusetts General Laws within thirty (30) days of receipt of this decision.

cc: Mark G. Zuroff, Esq. via facsimile 781-429-3113
Jean Lorizio, Esq. via facsimile 617-635-4742
Frederick G. Mahony, Chief Investigator
Local Licensing Board
Administration
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