



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

*Steven Grossman*  
*Treasurer and Receiver General*

**DECISION**

*Kim J. Gainsboro, Esq.*  
*Chairman*

**GLORY RBG, LLC D/B/A REVOLUTION LOBBY BAR AND KITCHEN**  
**200 HIGH STREET**  
**BOSTON, MA 02110**  
**LICENSE#: 011601490**  
**HEARD: 06/13/2012**

This is an appeal of the action of the Boston Licensing Board (the "Local Board") in suspending the M.G.L. c. 138, §12 license of Glory RBG, LLC d/b/a Revolution Lobby Bar and Kitchen (the "Licensee" or "Glory") located at 200 High Street, Boston, MA. On March 15, 2011, the Local Board held a hearing that resulted in a one (1) day suspension. The Licensee timely appealed the Local Board's decision to the Alcoholic Beverages Control Commission (the "Commission") and a hearing was held on Wednesday, June 13, 2012.

The following documents are in evidence as exhibits:

1. Joint Pre-Hearing Memo dated June 11, 2012;
  2. Violation Notice dated December 3, 2010;
  3. Boston Police Department Incident Report dated November 27, 2010;
  4. Statement of Reasons of the Licensing Board for the City of Boston; and
  5. Audio Tape Recording of the Licensing Board for the City of Boston Hearing dated March 15, 2011.
- A. Licensee's Video Recording of Inside the Premises; and  
B. Licensee's Video Recording of Outside the Premises.

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

FACTS

1. Glory RBG, LLC is the holder of a Common Victualler 7-day All Alcoholic Beverages license issued by the Licensing Board for the City of Boston for the premises located at 200 High Street, Boston, Massachusetts.
2. On November 27, 2010, Boston police officers responded to the licensed premises and spoke with the alleged victim who stated that he was "kicked out of the bar for no reason". As they were speaking with him, they observed a small cut on the back of his head. Subsequent to this, the officers spoke to an employee of the licensee who stated that he observed the patron being escorted out of the establishment by another employee and watched as one of the patron's friends jumped on the employees back, and then at some point saw the patron fall to the ground.

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3. The waitress, who was working on the night in question, testified before the Local Board and before the Commission. She stated that on the night in question, the patron was continually harassing her. She repeatedly asked him to leave and when he refused, she asked for assistance from one of her fellow employees. This employee then escorted the patron out of the bar in the usual manner that is employed by the establishment and at no time did she ever see anyone from the establishment strike the patron. She testified that the patron was escorted out of the establishment the way any other patron would be. At one point in time, according to her testimony, the patron started to lunge at her, so the "bouncer" needed the assistance of other employees. They helped him and as they were assisting him, the patron fell to the floor.
4. Another employee of the bar stated that he observed the patron to be cut and bleeding on the night in question. However, no-one in the establishment ever stated that the employees of the establishment ever injured the patron.
5. A review of the video recordings submitted as exhibits in this matter show no evidence of the patron being struck by the licensee's employees. (Exhibits A and B)

#### ISSUE

Did the licensee violate Rule 1.13(A) of the Board's Rules and Regulations and use force in an establishment to remove an unruly patron?

#### DISCUSSION

Pursuant to M.G.L. Ch. 138, section 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).

M.G.L. chapter 138 gives the local board and commission the authority to grant, revoke and suspend licenses. Chapter 138 was "enacted ..... to serve the public need and... to protect the common good." G.L. Chapter 138, section 23, as amended through St. 1977, c.929, Section 7. "[T]he purpose of discipline is not retribution but the protection of the public." Arthurs v. Board of Registration in Medicine, 383 Mass. 299, 317 (1981). 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).

It is undisputed that the patron in the establishment on the night in question was unruly. Testimony from the waitress substantiates this. She testified without any rebuttal testimony that the patron approached her, became rude and obnoxious and would not leave her alone when she kept asking him to leave. She stated that at some point, he was yelling at her, using profanities and lunged at her, placing her in fear.

He also threw his drink in the air when one of the security personnel was escorting him out. The issue of whether he was unruly is obviously one that is not of dispute.

Whether or not excessive force was used when he was escorted out of the premises has to be further examined. When the waitress called the security personnel to help with the situation, one of the security employees assisted her. He attempted at that point to escort the patron out of the licensed premise. As he was escorting him out, the patron started lunging at the waitress, screaming and swearing at her. He then tossed his drink in the air. The "bouncer" then called for "back-up assistance" and two (2) additional bouncers came and assisted him in taking the patron outside and basically took over. It was at this point the patron fell to the floor.

The witnesses before the Board all testified that there was never any force used in escorting the patron outside of the establishment and that it is never the policy of the establishment to use such force. In fact the manager stated that they always call police in these types of situations, but the police happened to be immediately present so there was no need. The manager also stated that he asked the patron if he needed medical attention and he refused. He also stated that he gave him money for cab fare and asked if he needed further assistance. He stated that they did everything he could to assist the patron on the night in question to get home safely in a reasonable manner.

The licensee is responsible for illegalities, disturbances, and/or disorders that occur on the licensed premises. The licensee has a duty of care to prevent foreseeable harm to its patrons and others. See Tobin, Id.; Westerback v. Harold F. Leclair Co., 50 Mass App. Ct. 144, 735 N.E. 2d 1256 (2000); Kane v. Fields Corner Grille, Inc. 341 Mass. 640, 641, 171 N. E. 2d 287 (1961); Carey v. New Yorker of Worcester, Inc. 355 Mass. 450, 451, 245 N.E. 2d 420 (1969).

A review of the evidence that the Licensee provided to the Board showed the interior and the exterior of the licensed establishment. There is no evidence on the discs and recordings provided by the licensee showing the patron being assaulted by any of the employees of the establishment. It is clear, then, that the employees did not use any force, other than that which was necessary, to remove the patron from the establishment.

The Commission, after a hearing, finds that there was not sufficient evidence presented that the Licensee committed a violation of Rule 1.13(A) of the Board's Rules and Regulations and used force to remove an unruly patron from establishment.

### CONCLUSION

Based on the evidence, the Commission **DISAPPROVES** the action of the Licensing Board for the City of Boston in finding the violation. Based on this DISAPPROVAL, the Commission need not decide the reasonableness of the penalty. The Commission remands the matter to the Local Board with the recommendation that no further action be taken against the Licensee as a result of this matter.

ALCOHOLIC BEVERAGES CONTROL COMMISSION

Susan Corcoran, Commissioner

*Susan Corcoran*

I, the undersigned, hereby certify that I have reviewed the hearing record and concur with the above decision.

Kathleen McNally, Commissioner

*Kathleen McNally*

Dated: July 31, 2012

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: Jean Lorizio, Esq.  
Dennis A. Quilty, Esq.  
Frederick G. Mahony, Chief Investigator  
Administration  
File