

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

DECISION

LANDSOWNE BOSTON RESTAURANT, LLC DBA HOUSE OF BLUES
15-41 LANDSOWNE ST.
BOSTON, MA 02215
LICENSE#: 011600494
HEARD: 10/23/2013

This is an appeal of the action of the City of Boston Licensing Board (the "Local Board" or "Boston") suspending the M.G.L. c. 138 §12 license of Lansdowne Boston Restaurant, LLC dba House of Blues located at 15-41 Lansdowne Street, Boston, MA, for one (1) day. The Licensee timely appealed the Local Board's decisions to the Alcoholic Beverages Control Commission (the "Commission") and a hearing was held on Wednesday, October 23, 2013.

The following exhibits are in evidence:

1. Local Board's Decision and Statement of Reasons dated 8/18/2011;
2. Licensed Premises Inspection Notice no. 24601 dated 5/17/2011;
3. Boston Police Department Incident Report no. 110239662 dated 5/18/2011;
4. Boston Police Incident Summary Report Complaint No. 110239662 dated 6/22/2011; and
5. DVD of Video Surveillance of Licensed Premises on 5/9/2011.

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

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

FACTS

1. The Licensee, Lansdowne Boston Restaurant, LLC dba House of Blues, is the holder of a Common Victualler 7-Day All Alcoholic Beverages license located at 15-41 Lansdowne Street, Boston.
2. On the afternoon of May 10, 2011, Mr. George Stuart filed a report with the Boston Police Department stating that he had been assaulted by employees while at the licensed premises on the night of May 9, 2011.
3. While at the House of Blues on the night of May 9, Mr. Stuart was approached by security staff concerning his possession of alcoholic beverages without possession of a house-issued wristband.

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4. Since house-issued wristbands are generally provided to patrons at the door 21 years of age or older, and since Mr. Stuart was not wearing a house-issued wristband, security staff decided to inquire further as to why he was holding an alcoholic beverage.
5. When questioned by staff, Mr. Stuart stated that he was the designated driver for his group, that his friends were in the restroom, and that he was holding their drinks while awaiting their return. Security staff then asked Mr. Stuart to step outside to discuss the matter further.
6. Once outside and after being informed that he was being ejected from the premises, Mr. Stuart averred in his May 10, 2011 Boston Police Report that he was approached from behind by an employee who placed him in a choke hold, pushed him to the ground, and then continued to press him to the ground until he lost consciousness.
7. Mr. Stuart also reported that as a result of this incident, he suffered scrapes, and swelling to his nose, forehead, lips, elbows, and knees.
8. After receiving Mr. Stuart's May 10, 2011 complaint concerning the events of the previous night, Boston Police began an investigation.
9. In the course of this investigation, the Boston Police Department visited the premises spoke to manager Julie Jordan, who provided copies of staff-written incident reports and a copy of video surveillance from the night of the incident.
10. Ms. Deidre Butler, another member of the Licensee's management staff, contended on May 18, 2011 (and contained in the Boston Police Incident Summary Report), that Mr. Stuart had attacked staff, had made threats of physical harm, and had to be restrained for safety reasons.
11. Boston Police Department issued violation no. 24601 to the Licensee on May 17, 2011.
12. On August 18, 2011, the City of Boston Licensing Board, after hearing, found the Licensee in violation of Boston Licensing Board Rule 1.14(A), which prohibits employees or security personnel of the licensee from making bodily contact with a patron unless it is to protect other patrons or themselves from being subjected to bodily blows.
13. The Licensee timely appealed the Local Board's decisions to the Alcoholic Beverages Control Commission (the "Commission") and a hearing was held on Wednesday, October 23, 2013.

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).

Burden on Local Liquor Licensing Board to Establish Violation Based Upon Substantial Evidence

The Local Board has the burden of producing satisfactory proof to the Commission that the licensee committed the alleged violations. 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. M.G.L. c. 138 provides a comprehensive scheme for the regulation of alcoholic beverages in Massachusetts.

In the present case, the Local Board produced a Licensed Premises Inspection Notice, two police reports, and a videotape of an altercation. The Local Board brought forth no witness to provide any foundational information regarding the videotape or to provide any information relative to the claims of Mr. Stuart. No witness came forth on behalf of the Local Board to identify any of the parties involved in the videotape, or to provide guidance on what actually occurred, why it occurred, and whether anything that did occur was justified under the circumstances.


Because the Local Board is relying solely on the police reports and a videotape, bringing forth no witnesses to support its finding of a violation, it is not possible to look beyond the police report and videotape to explain or clarify anything that was presented at the Commission hearing. In relying solely on the exhibits in a factually disputed case such as this, it is not possible for this Commission to reach any firm conclusions about what occurred that night, why it occurred, whether any use of force was applied by the staff of the licensee, and if use of force was applied, whether it was justified.

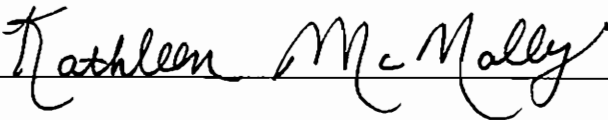
The Commission, after a hearing, finds that there was not sufficient evidence presented that the Licensee committed a violation.

CONCLUSION

Based on the evidence, the Alcoholic Beverages Control Commission **DISAPPROVES** the action of the City of Boston Licensing Board suspending the M.G.L. c. 138 §12 license of Lansdowne Boston Restaurant, LLC dba House of Blues for one (1) day. The Commission remands the matter to the Local Board with the recommendation that no further action be taken against the Licensee as any penalty would be discrepant with this Decision.

ALCOHOLIC BEVERAGES CONTROL COMMISSION

Susan Corcoran, Commissioner 

Kathleen McNally, Commissioner 

Dated: May 30, 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: Dennis Quilty, Esq. via facsimile 617-946-4624
Jean Lorizio, Esq. via facsimile 617-635-4742
Frederick G. Mahony, Chief Investigator
Administration
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