



*Commonwealth of Massachusetts  
Alcoholic Beverages Control Commission  
95 Fourth Street, Suite 3  
Chelsea, Massachusetts 02150-2358*

**Jean M. Lorizio, Esq.**  
*Chairman*

**BROADWAY MARKETPLACE LLC D/B/A BROADWAY MARKETPLACE  
468 BROADWAY, CAMBRIDGE, MA 02138  
LICENSE#: 00205-PK-0166**

**CAMBRIDGE SPIRITS LLC D/B/A CAMBRIDGE SPIRITS  
250 KENDALL STREET, CAMBRIDGE, MA 02138  
LICENSE#: 00211-PK-0166;**

**FRESH POND LIQUORS, INC. D/B/A SAV-MOR SPIRITS  
233 ALEWIFE BROOK PARKWAY, CAMBRIDGE, MA 02138  
LICENSE#: 00202-PK-0166;**

**INMAN CAMBRIDGE LLC D/B/A INMAN SQUARE WINE & SPIRITS  
1226 CAMBRIDGE STREET, CAMBRIDGE, MA 02140  
LICENSE#: 00251-PK-0166;**

**PEMBERTON FRUIT ORCHARD INC. D/B/A PEMBERTON FARMS  
2225 MASSACHUSETTS AVENUE, CAMBRIDGE, MA 02138  
LICENSE#: 00218-PK-0166**

**MEMORANDUM & DECISION ON THE LICENSEES'  
MOTION FOR REQUIRED FINDING OF NO VIOLATION**

Broadway Marketplace LLC, Cambridge Spirits LLC, Fresh Pond Liquors Inc., Inman Cambridge LLC, and Pemberton Fruit Orchard Inc. (“the Licensees”) are appealing the action of the City of Cambridge Board of License Commissioners (the “Local Board”) in suspending each of their M.G.L. c. 138, § 15 All-Alcoholic Beverages Retail Package Store Licenses for two days for violations of M.G.L. c. 138, §§ 23, 34, 41, 64-64A, and Local Board Rules 2 and 5B.6.

The Applicants timely appealed the Local Board’s action to the Alcoholic Beverages Control Commission (the “Commission” or “ABCC”), and a remote hearing via Microsoft Teams was held on October 18, 2022, and February 8, 2023.

At the close of the Local Board’s case in-chief, the Licensees moved orally for a required finding of no violations.

Pursuant to 901 C.M.R. 1.02(7)(c), a party “may request rulings or relief . . . orally during a hearing.” This includes orally moving for a directed verdict. Where the Informal Rules are silent as to directed verdicts, the Commission looks to the Formal Rules, 801 C.M.R. 1.01, and the Massachusetts Rules of Civil Procedure to promote regularity and efficiency with its procedures.

Since the Formal Rules rely on the courts' interpretation of Mass. R. Civ. P. 50, so too does the Commission. See, e.g., Widen v. Oxford Hous. Auth., 1994 WL 902905 at \*2 (Mass. Super. Ct., Oct. 20, 1994) ("Much like entry of a directed verdict in the trial courts, in a state administrative agency proceeding, the judge may, upon motion, dismiss a case at the close of the plaintiff's direct case for failure to sustain his case"); 45 Rice Street Realty Trust v. Bd. Of Assessors of City of Cambridge, No. F258865, 2007 WL 4157669 at \*21 (Mass. Appellate Tax Bd., Nov. 20, 2007) (formal rules look to Mass. R. Civ. P. 50 for evaluating motions for directed verdicts); Pepin v. Div. of Fisheries and Wildlife, 467 Mass. 210, 214, 227-228 (2014) (agency properly considered motion for directed verdict).

Mass. R. Civ. P. 50(a) states, in relevant part: "A party may move for a directed verdict at the close of the evidence offered by an opponent . . . . A motion for a directed verdict shall state the specific grounds therefor."

"The standard applied to a motion for a directed verdict is identical to that applied to a motion for summary judgment for most purposes." Donaldson v. Farrakhan, 436 Mass. 94, 96 (2002). The Commission "must determine on viewing the evidence in the light most favorable to the nonmoving party, whether a reasonable inference could be drawn in favor of the nonmoving party, or if the moving party is entitled to a judgment as a matter of law." Id. "The mere existence of a scintilla of evidence" to support the Local Board's position is insufficient. Id. "[T]he evidence must contain facts from which reasonable inferences based on probabilities rather than possibilities may be drawn . . . . And the evidence must be sufficiently concrete to remove any inference which [the Commission] might draw from it from the realm of mere speculation and conjecture." Alholm v. Wareham, 371 Mass. 621, 527 (1976) (citations omitted).

The Licensees raised four specific grounds in support of their motion:

1. The Local Board failed to prove that it had its own published compliance check guidelines;
2. The investigators and underage operative did not comply with the Commission's compliance check guidelines such that the Licensees were unlawfully entrapped;
3. No sales were effectively made because Investigator Bubenick returned the alcoholic beverages so that he could recoup the marked \$20 bill used by the underage operative; and
4. There is no basis for the Licensees to have each received a two-day suspension.

First, a local board is not required to follow the Commission's compliance check guidelines; it may follow its own compliance check guidelines. Epicure Package Store, Inc. (ABCC Decision March 28, 2007). Investigator Tyler Bubenik, a license investigator for the Local Board with five years of experience, testified that the Local Board had approved their own guidelines, marked as Exhibit F. The guidelines are on the Local Board's official letterhead and are referred to as "2019 COMPLIANCE CHECK," indicating they were in effect in 2019, at the time of the compliance checks at issue. Viewing the evidence introduced in the light most favorable to the Local Board, it has met its burden at this stage in establishing that it had its own compliance check guidelines in place at the time of the compliance checks conducted with these Licensees, and they comported with the Commission's guidelines.

Relatedly, it appears, based on the Local Board's case in-chief, that the underage operative and investigators followed the Local Board's guidelines.

Because the Local Board had its own guidelines with which it fully complied, the Licensees' second ground for its motion – that the absence of local guidelines required the investigators to follow the Commission's guidelines and because they allegedly did not, the Licensees were entrapped – is moot.

Furthermore, the sale of the alcohol to the underage operative at each licensed premises was not "voided" because the investigator returned the alcohol purchased by the underage operative to recover the marked \$20 bill. The Supreme Judicial Court weighed in on this question in Commonwealth v. Manooshian, 436 Mass. 514 (1950). In considering what is a "sale" for purposes of M.G.L. c. 138, § 34, the Court stated:

No case has been brought to our attention and we have discovered none defining a 'sale' under the statute, said § 34. There is no reason to believe, however, that any different meaning was intended from that used in the law of sales. A sale is defined in G.L.(Ter.Ed.) c. 106, § 3(2), as "an agreement whereby the seller transfers the property in goods to the buyer for a consideration called the price." Where there is an agreement to sell specific goods, the property in those goods passes at such time as the parties intended. Unless a different intention appears, if there is an unconditional agreement to sell specific goods in a deliverable state, title passes when the agreement is made, even if the time of payment be postponed.

Manooshian, 436 Mass. at 515. It is clear here that each Licensee conducted a sale to the underage operative as they each took \$20 from the underage operative in exchange for alcohol. The investigator did not negate the sales by subsequently returning the alcohol.

Finally, the Licensees argue that two-day suspensions for each of them were inappropriately draconian. This is a matter that will be more appropriately addressed at the resumption of the hearing on the appeal.

The Commission emphasizes that it has not reached any conclusions on the merits of the Licensees' appeal but rather only reflects on the motion before it, presented at the end of the Local Board's case in-chief without the benefit of having heard the Licensees' case in-chief.

For the foregoing reasons, the Licensees' motion is **DENIED**.

**ALCOHOLIC BEVERAGES CONTROL COMMISSION**

Jean M. Lorizio, Chairman



Crystal Matthews, Commissioner



Deborah Baglio, Commissioner

*Deborah A. Baglio*

Dated: March 31, 2023

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.

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2022-000025-ad-enf

cc: Local Licensing Board  
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Kate Kleimola, Esq.  
Sydney Wright, Esq.  
Administration, File