



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

Jean M. Lorizio, Esq.
Chairman

DECISION

**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**

HEARD: 10/19/2022, 2/8/2023, and 6/21/2023

This is an appeal under M.G.L. c. 138, § 67, by Broadway Marketplace LLC, Cambridge Spirits LLC, Fresh Pond Liquors Inc., Inman Cambridge LLC, and Pemberton Fruit Orchard Inc. ("the Licensees") of the action of the Cambridge Board of License Commissioners ("Local Board") in suspending their respective 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 Licensees timely appealed the Local Board's actions to the Alcoholic Beverages Control Commission (the "Commission" or "ABCC"), and remote hearings via Microsoft Teams were held on October 19, 2022, February 8, 2023, and June 21, 2023.

The following documents are in evidence:

1. Massachusetts Alcoholic Beverages Control Commission Investigation and Enforcement Division: Operations Manual, Chapter O-019, Subject: Compliance Checks;
2. Dataquest Monitoring report for Broadway Marketplace from 2018;

3. Email to Broadway Marketplace dated 6/19/2017;
 4. Email to Broadway Marketplace dated 4/11/2017;
 5. Two "Yelp" reviews for Broadway Marketplace;
- A. License of underage operative with affidavit of Manisha Tibrewal, Director of Planning, Budget and Personnel for Cambridge Police Department dated 7/7/2022;
 - B. Rules and Regulations of the City of Cambridge Board of License Commissioners Relating to All Holders of Common Victualer, Innholders, Alcoholic Beverages, and/or Entertainment Licenses;
 - C. Local Board's 2019 Notice of Compliance Checks;
 - D. Two photographs of underage operative, taken August 6, 2019, and August 15, 2019;
 - E. Three photographs of a United States twenty-dollar bill;
 - F. Two signed Compliance Check Agreement of Participation, Waiver of Liability & Guidelines Forms;
 - G. Broadway Marketplace LLC d/b/a Broadway Marketplace
 - (a) Local Board's Statement of Reasons
 - (b) Audio clip of Local Board's compliance check hearing
 - (c) Licensed Premises Inspection Report and recorded observations by Licensing Investigator Tyler Bubenik;
 - H. Cambridge Spirits LLC d/b/a Cambridge Spirits
 - (a) Local Board's Statement of Reasons
 - (b) Audio clip of Local Board's compliance check hearing
 - (c) Licensed Premises Inspection Report and recorded observations by Licensing Investigator Tyler Bubenik;
 - I. Fresh Pond Liquors, Inc, d/b/a Sav-Mor Spirits
 - (a) Local Board's Statement of Reasons
 - (b) Audio clip of Local Board's compliance check hearing
 - (c) Licensed Premises Inspection Report and recorded observations by Licensing Investigator Tyler Bubenik;
 - J. Inman Cambridge LLC d/b/a Inman Square Wine & Spirits
 - (a) Local Board's Statement of Reasons
 - (b) Audio clip of Local Board's compliance check hearing
 - (c) Licensed Premises Inspection Report and recorded observations by Licensing Investigator Tyler Bubenik;
 - K. Pemberton Fruit Orchard, Inc. d/b/a Pemberton Farms
 - (a) Local Board's Statement of Reasons
 - (b) Audio clip of Local Board's compliance check hearing

(c) Licensed Premises Inspection Report and recorded observations by Licensing Investigator Tyler Bubenik.

There are three (3) audio recordings of the three days of this adjudicatory proceeding.

FINDINGS OF FACT

The Commission makes the following findings of fact:

1. Broadway Marketplace LLC d/b/a Broadway Marketplace ("Broadway Marketplace") is a § 15 all-alcohol package store located at 468 Broadway, Cambridge. (Testimony; Exhibit G)
2. Broadway Marketplace has been in operation for 27 years and, as of 2019, had no violations of its package store license for at least five years. (Testimony)
3. Cambridge Spirits LLC d/b/a Cambridge Spirits ("Cambridge Spirits") is a § 15 all-alcohol package store located at 250 Kendall Street, Cambridge. (Testimony; Exhibit H)
4. Cambridge Spirits has been in operation for nine years and, as of 2019, had no violations of its package store license for at least five years. (Testimony)
5. Fresh Pond Liquors, Inc. d/b/a Sav-Mor Spirits ("Sav-Mor"), is a § 15 all-alcohol package store located at 233 Alewife Brook Parkway, Cambridge. (Testimony; Exhibit I)
6. Sav-Mor has been in operation for 37 years and, as of 2019, had no violations of its package store license for at least five years. (Testimony)
7. Inman Cambridge LLC d/b/a Inman Square Wine & Spirits ("Inman Square") is a § 15 all-alcohol package store located at 1226 Cambridge Street, Cambridge. (Testimony; Exhibit J)
8. Inman Square has been in business "for many years" and, as of 2019, had no violations of its package store license for at least five years. (Testimony)
9. Pemberton Fruit Orchard, Inc. d/b/a Pemberton Farms ("Pemberton Farms") is a § 15 all-alcohol package store located at 2225 Massachusetts Avenue, Cambridge. (Testimony; Exhibit J)
10. Pemberton Farms has been in operation for 89 years and, as of 2019, had no violations of its package store license for at least five years. (Testimony)
11. In 2019, the Cambridge License Commission ("Local Board") had in place compliance check guidelines, titled 2019 Compliance Check Agreement of Participation, Waiver of Liability and Guidelines. (Exhibit F)
12. The Local Board issued a 2019 Notice of Compliance Checks on its website on January 28, 2019, and published it in the Cambridge Chronicle on February 7, 2019, indicating that compliance checks would take place between February 8, 2019, and December 31, 2019. (Exhibit C)

13. The Local Board conducted compliance checks on August 6, 2019, and August 15, 2019, with the assistance of a 20-year-old male underage operative. (Testimony; Exhibits G-K).
14. On July 10, 2019, the underage operative signed a 2019 Compliance Check Agreement of Participation, Waiver of Liability & Guidelines. Investigator Bubenik signed it on August 6, 2019. It indicated establishments to be checked included Cambridge Spirits, Sav-Mor, and Inman Square. (Exhibit F)
15. Before conducting the compliance checks in question, a marked United States \$20 bill to be used was photographed. (Testimony; Exhibit E).
16. Prior to conducting compliance checks, on August 6, 2019, the underage operative was photographed. (Testimony; Exhibit D)
17. On August 6, 2019, Licensing Investigator Bubenik, accompanied by the underage operative, conducted a compliance check at Sav-Mor. The underage operative purchased a six-pack of beer with the marked \$20 bill without being asked for identification. Upon exiting the premises, Investigator Bubenik took possession of the six-pack. He entered the premises and returned the six-pack and change, and requested the marked \$20 bill be returned to him. The cashier confirmed he had not asked the underage operative for identification. The cashier signed Licensed Premise Inspection Form #989 describing the violation as "sale of a six-pack of beer to a minor." (Testimony; Exhibit I(c)).
18. That same day, Investigator Bubenik, along with the same underage operative, conducted a compliance check at Inman Square. The underage operative purchased a six-pack of beer with the marked \$20 bill without being asked for identification. Upon exiting the premises, Investigator Bubenik took possession of the six-pack. He entered the premises and returned the six-pack and change and requested the marked \$20 bill be returned to him. The cashier signed Licensed Premise Inspection Form #976 describing the violation as "sale of a six-pack of beer to a minor." (Testimony; Exhibit J(c)).
19. On August 15, 2019, prior to conducting any compliance checks, the underage operative and Investigator Bubenik signed the 2019 Compliance Check Agreement of Participation, Waiver of Liability & Guidelines. It indicated establishments to be checked included Broadway Marketplace, Pemberton Farms, and Cambridge Spirits. (Testimony; Exhibit F).
20. The underage operative was also photographed prior to conducting these compliance checks. (Testimony; Exhibit D)
21. Subsequent to signing the Compliance Check agreement on August 15, 2019, Investigator Bubenik, accompanied by the underage operative, conducted a compliance check at Pemberton Farms. The underage operative purchased a six-pack of beer with the marked \$20 bill without being asked for identification. Upon exiting the premises, Investigator Bubenik took possession of the six-pack. He entered the premises and returned the six-pack and change and requested the marked \$20 bill be returned to him. The cashier confirmed he had not asked the underage operative for identification. The cashier signed Licensed Premise Inspection Form #982 describing the violation as "sale of a six-pack of beer to an underage individual." A photograph of the six-pack was taken. (Testimony; Exhibit K(c)).

22. Also on August 15, 2019, Investigator Bubenik, accompanied by the same underage operative, conducted a compliance check at Cambridge Spirits. The underage operative purchased a six-pack of beer with the marked \$20 bill without being asked for identification. Upon exiting the premises, Investigator Bubenik took possession of the six-pack. He entered the premises and returned the six-pack and change and requested the marked \$20 bill be returned to him. The cashier confirmed he had not asked the underage operative for identification. The cashier signed Licensed Premise Inspection Form #968 describing the violation as "sale of a six-pack of beer to an underage individual." A photograph of the six-pack was taken. (Testimony; Exhibit H(c)).
23. Investigator Bubenik, along with the same underage operative, conducted another compliance check on August 15, 2019, this time at Broadway Marketplace. The underage operative purchased a six-pack of beer with the marked \$20 bill without being asked for identification. Upon exiting the premises, Investigator Bubenik took possession of the six-pack. He entered the premises and returned the six-pack and change and requested the marked \$20 bill be returned to him. The cashier confirmed he had not asked the underage operative for identification. The cashier signed Licensed Premise Inspection Form #977 describing the violation as "sale of a six-pack of beer to an underage individual." A photograph of the six-pack was taken. (Testimony; Exhibit G(c)).
24. Each Licensee was charged by the Local Board with violations of M.G.L. c. 138, §§ 23, 34, 41, 64-64A, and Local Board Rules 2 and 5B.6. (Testimony; Exhibits G(b), H(b), I(b), J(b), K(b))
25. The Local Board found all the Licensees in violation of M.G.L. c. 138, §§ 23, 34, 41, 64-64A, and Local Board Rules 2 and 5B.6. (Testimony; Exhibits G(a), H(a), I(a), J(a), K(a))
26. The identity of the underage operative was disclosed to the Licensees prior to the first of three hearing days before the Commission when a photocopy of the underage operative's driver's license was delivered to counsel for the Licensees. (Hearing Record)

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. 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." Dolphino Corp. v. Alcoholic Beverages Control Comm'n, 29 Mass. App. Ct. 954, 955 (1990) citing United Food Corp v. Alcoholic Beverages Control Comm'n, 375 Mass. 240 (1978). 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, 29 Mass. App. Ct. at 955.

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. "[T]he purpose of discipline is not retribution but the protection of the public." Arthurs v. Bd. 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’n, 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 Comm’n, 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 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. 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. Blue Cross and Blue Shield of Mass. Inc. v. Comm’r of Ins., 420 Mass. 707 (1995). “The Local Board has the burden of producing satisfactory proof to the Commission that the licensee committed the alleged violations.” Jaman Corp., d/b/a Crossroads (ABCC Decision Nov. 4, 2010).

Pursuant to M.G.L. c. 138, §34, the sale of alcohol to minors is prohibited, and imposes both criminal and civil sanctions. M.G.L. c. 138, § 34 provides: Whoever makes a sale or delivery of any alcoholic beverages or alcohol to any person under twenty-one (21) years of age, either for his own use or for the use of his parent or any other person...or whoever furnishes any such beverage or alcohol for a person under twenty-one (21) years of age shall be punished by a fine of not more than two thousand (2,000) dollars or by imprisonment for not more than one (1) year or both. To enforce the provisions of M.G.L. c. 138, § 34, both the Commission and Local Boards commonly perform compliance checks, also known as “stings”, at licensed establishments.

The legality of using an underage operative to conduct compliance checks was established in Fran’s Lunch, Inc. v. Alcoholic Beverages Control Commission, 45 Mass. App. Ct. 663 (1998). The Appeals Court held that “[a]bsent entrapment or other abuses violative of fundamental fairness, government involvement in criminal activity for purpose of investigating possible violations of law is permissible, even if technical violations of law occur.” Id. at 664. The Appeals Court further held that where a “sting operation was conducted in accordance with published guidelines designed to ensure that such operations were conducted fairly, the commission could properly rely on this evidence.” Id. at 665.

The Licensees have raised specific grounds in support of their appeal. These grounds are:

1. The Local Board failed to prove that it had its own approved and published compliance check guidelines;
2. The investigators and underage operative did not comply with the Commission nor Local Board’s compliance check guidelines such that the Licensees were unlawfully entrapped;
3. The Local Board’s compliance check guidelines did not permit the allegedly unlawful marking or photocopying of the \$20 bills used in the compliance checks;

4. No sales were effectively made because Investigator Bubenik returned the alcoholic beverages so that he could recoup the marked \$20 bill used by the underage operative;
5. There was no “direct evidence” that alcohol was actually sold to the underage operative;
6. The Local Board’s adjudication is “void” because the Local Board did not provide the identity of the underage operative to the Licensees; and
7. There is no basis for the Licensees to have each received a two-day suspension based on their respective license histories.

The Commission previously addressed several of these grounds for appeal as a result of the Licensees’ motion for a required finding. With the conclusion of this hearing, and after the introduction of the Licensees’ evidence, the Licensees have not introduced any additional evidence establishing a basis to disturb the Commission’s prior rulings.

Claim 1: The Local Board Failed to Prove That It Had Its Own Approved and Published Compliance Check Guidelines

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. The Commission finds that the Local Board did have its own approved and published compliance check guidelines.

Claim 2: The Local Board’s Investigators and Underage Operative Did Not Comply with the Commission or the Local Board’s Compliance Check Guidelines Such That the Licensees were Unlawfully Entrapped

Local boards are 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). “Conducting compliance checks in strict compliance to the written guidelines is essential to the validity of the checks. Local authorities’ failure to follow the guidelines ...for compliance checks undermines the legitimacy and integrity of the compliance checks throughout the state and fails to adequately preserve their fairness.” Fay, et al v. Jenkins et al, Middlesex Superior Court C.A. No. 2007002652-F (Muse. J.) See also Fran’s Lunch, Inc., 45 Mass. App. Ct. at 655; 700 NE 2d 846 (1998) (sting operation conducted by ABCC was constitutional where strict procedure for fair control check was observed); BBRG Massachusetts, Inc. dba. Papa Razzi (ABCC decision May 21, 2007); Assinippi Liquors, Inc. (ABCC decision April 7, 2004); Epicure Package Store, Inc. (ABCC decision January 31, 2007).

The Commission finds that the underage operative and investigators followed the Local Board’s guidelines when compliance checks were conducted at the Licensees’ licensed premises on August 6 and 15, 2019, and therefore the Licensees were not entrapped.

Claim 3: Alleged Unlawful Marking and Photocopying of Undercover Buy Money

The Licensees argue that the photocopying of the U.S. currency used by the underage operative was a violation of 18 U.S.C.A. § 474, and that the process of allegedly unlawfully photocopying and marking the currency was not addressed in the Local Board's compliance check guidelines. The Commission need not wade into an analysis of 18 U.S.C.A. § 474 because the photocopying of the currency used during the compliance check is not necessarily relevant as to whether the Licensees sold and/or delivered alcoholic beverages to the underage operative. The Commission finds that marking and photocopying the currency used in the compliance check does not void the Local Board's compliance checks conducted on August 6, 2019, and August 15, 2019.

Claim 4: Returning the Alcoholic Beverages "Voided" the Sale to the Underage Operative So There was No Violation

The sale of the alcoholic beverages to the underage operative at each licensed premises was not "voided" because the investigator returned the alcoholic beverages purchased by the underage operative and recovered the marked \$20 bill. The Supreme Judicial Court weighed in on this question in Commonwealth v. Manooshian, 326 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.

Furthermore, M.G.L. c. 138, § 34 does not only include sale of an alcoholic beverage to a person under the age of twenty-one years old, but also delivery of an alcoholic beverage to a person under the age of twenty-one years old. The Commission finds that substantial evidence was presented that the Licensees sold and delivered alcoholic beverages to the Local Board's underage operative on August 6, 2019, and August 15, 2019.

Claim 5: There was No Direct Evidence that "Alcohol" was Actually Sold to the Underage Operative

It is well-established that there must be substantial evidence to support a finding of a violation at adjudicatory proceedings before the Commission. In determining whether the Local Board introduced substantial evidence that the alcoholic beverages bought by the underage operative at each licensed establishment were actually "alcoholic beverages" as defined in M.G.L. c. 138, § 1, the Commission will give "due weight to [its] experience, technical competence, and specialized

knowledge[.]” Brown-Forman Corp. v. Alcoholic Beverages Control Comm’n, No. 03-1684, 2004 WL 1385495, at *4 (Mass. Super. June 14, 2004) (and cases cited).

Introduced into evidence were Investigator Bubenik’s reports of the compliance checks at each of the Licensees’ premises, along with his testimony. Investigator Bubenik’s testimony was not hearsay as he personally observed the underage operative at each establishment enter the establishment with no alcoholic beverages in his possession and exit the premises with a six-pack of beer. Investigator Bubenik, on each occasion, took personal possession of the six-pack of beer and identified it as such, along with the change from the purchase and returned them to the employee working the register. Finally, at every compliance check, an employee signed a Licensed Premises Inspection Form indicating that they had sold a six-pack of beer to a minor.

It is important to note that the Local Board did not have to prove the six-packs in question were beer/alcoholic beverages beyond a reasonable doubt. Instead, it only needed to introduce “such evidence as a reasonable mind might accept as adequate to support a conclusion” that the six-packs were beer. M.G.L. c. 30A, § 1(6). The Commission is convinced, based on Investigator Bubenik’s personal observations and opinions, as well as the Commission’s specialized knowledge of alcohol products, that all the six-packs of beer purchased from all of the Licensees were “alcoholic beverages.”

Claim 6: Identity of Underage Operative was Not Provided Before or at the Local Board Hearings in Violation of the Licensees’ Due Process Rights

The Licensees maintain that they were not provided with the identity of the underage operative before or at the Local Board hearings and they frame this issue as a violation of their rights.

“While [d]ue process does not require that notices of administrative proceedings be drafted with the certainty of a criminal pleading, the notice must be sufficient for persons whose rights may be affected to understand the substance and nature of the grounds upon which they are called to answer.” 15 LaGrange St. Corp. v. Massachusetts Comm’n Against Discrimination, 99 Mass. App. Ct. 563 (2021) (quotations omitted). Chapter 30A likewise requires “sufficient notice of the issues involved to afford [parties] reasonable opportunity to prepare and present evidence and argument.” M.G.L. c. 30A, § 11.

This appeal was heard de novo by the Commission. The identity of the underage operative was disclosed to the Licensees prior to the first of three hearing days before the Commission when a photocopy of the underage operative’s driver’s license was delivered to counsel for the Licensees. The underage operative was not subpoenaed for any of the three hearing days before the Commission. As the Court notes in Embers of Salisbury v. ABCC, “the right to confront and cross-examine adverse witnesses is not self-executing.” Embers of Salisbury Inc. v. ABCC, 401 Mass. 526, 531 (1988). When a party does not subpoena a witness, “they cannot be heard to complain of the consequences.” Id. Due to the Licensees failure to subpoena or request the ABCC to subpoena the underage operative involved in the compliance checks, there is not a violation of due process at the de novo adjudicatory proceeding before the Commission.

Claim 7: Two-day suspensions were inappropriate based on the Licensees' respective license histories.

The Licensees argue that two-day suspensions were an unreasonable penalty issued by the Local Board but it was not. In assessing penalties for violations occurring solely as the result of a "sting," penalties imposed should never be draconian. See Applebee's Northeast, Inc. dba Applebee's Neighborhood Bar & Grill, Suffolk Superior Court C.A. No. 03-610-A (Sikora, J.), See Epicure Package Store, Inc. (ABCC decision dated 01/31/2007). The Commission has consistently held that [t]he policy behind a "sting" operation should be the education of licensees in the risks associated with selling alcoholic beverages without requesting proof of age. In re: Assinippi Liquors, Inc., Wareham (ABCC decision dated 06/08/2004), Epicure Package Store, supra. (ABCC decision dated 01/31/2007), See Saba Foodmarket, Inc., dba Bradford Shell (ABCC decision dated 05/16/2012). While small suspensions may further that purpose by imposing a consequence for taking a risk, a heavy-handed suspension does not. See Assinippi Liquors, supra. (ABCC decision dated 06/08/2004 where the Commission held that a twenty (20) day suspension of the alcoholic beverages license for a compliance check was unreasonable.); 75 Purchase Street Corporation, (ABCC Decision dated 5/30/2014 where the Commission held that a thirty (30) day suspension of the alcoholic beverages license for a compliance check was unreasonable.); Eddie-Moe LLC, (ABCC Decision dated 7/22/2010 where the Commission held that a forty-five (45) day suspension of the alcoholic beverages license for a compliance check was unreasonable.).

In this matter, the Licensees were suspended for two days which is neither draconian nor unreasonable and is a "small suspension." Even if the Licensees had no previous violations in their respective histories, a two-day suspension is not long enough to be considered unreasonable. The Commission has previously upheld a compliance check violation from a Local Board with a suspension of two days for a first offense. See True Flavors LLC (ABCC Decision dated 10/2/2017). The Commission finds here that the Local Board's decision to suspend the Licensees for two-days was reasonable.

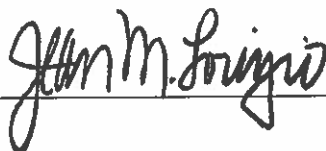
CONCLUSION

Based on the evidence, the Alcoholic Beverages Control Commission ("Commission") **APPROVES** the action of the Cambridge Board of License Commissioners ("Local Board") in finding that Broadway Marketplace LLC, Cambridge Spirits LLC, Fresh Pond Liquors Inc., Inman Cambridge LLC, and Pemberton Fruit Orchard Inc. committed a violation of M.G.L. c. 138, § 34 and Local Board Rule 5B.6.

The Alcoholic Beverages Control Commission ("Commission") also **APPROVES** the action of the Cambridge Board of License Commissioners in suspending the alcoholic beverages licenses of Broadway Marketplace LLC, Cambridge Spirits LLC, Fresh Pond Liquors Inc., Inman Cambridge LLC, and Pemberton Fruit Orchard Inc. for a period of two (2) days each.

ALCOHOLIC BEVERAGES CONTROL COMMISSION

Jean M. Lorizio, Chairman



We, the undersigned, hereby certify that we have reviewed the hearing record.

Crystal Matthews, Commissioner Cybil Matthews

Deborah Baglio, Commissioner Deborah A. Baglio

Dated: February 27, 2025

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
William A. Kelley, Esq.
Kate Kleimola, Esq.
Sydney Wright, Esq.
Frederick G. Mahony, Chief Investigator
Administration, File