



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

Jean M. Lorizio, Esq.
Chairman

**CHAZUMBA LLC D/B/A FELIPE'S TAQUERIA
21 BRATTLE STREET
CAMBRIDGE, MA 02138
LICENSE#: 00429-RS-0166
HEARD: 8/01/2022**

**MEMORANDUM AND ORDER ON
THE LICENSEE'S MOTION FOR DIRECTED VERDICT**

Chazumba, LLC, d/b/a Felipe's Taqueria ("Licensee"), holds a § 12 all alcoholic beverages license at 21 Brattle Street, Cambridge. After a hearing before the City of Cambridge Board of License Commissioners ("Local Board"), the Local Board found the Licensee permitted two patrons to leave the licensed premises with alcoholic beverages, in violation of M.G.L. c. 138, §§ 12, 23 & 64, and Local Board Rules 2.2-2.5, 5.1-5.4, 12B.8, and 13.1. The Local Board suspended the Licensee for one day and brought forward another day that was being held in abeyance from a previous violation.

The Licensee timely filed a notice of appeal with the Commission and a hearing commenced on August 1, 2022. The Licensee orally moved for a directed verdict at the close of the Local Board's case-in-chief, arguing there was no evidence introduced regarding the Licensee permitting alcohol to leave its premises, and no evidence introduced that the drinks brought outside contained alcohol.¹

Pursuant to 801 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

¹ Throughout the hearing, the Licensee orally moved for a directed verdict, on four prior occasions, during the Local Board's case-in-chief.

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).

Pursuant to Local Board Rule 12B.8, “Licensees that have a licensed [*sic*] issued under Chapter 138, § 12 shall take such steps as are necessary to ensure that patrons or employees do not leave the premises with alcoholic beverages except as allowed to by G.L. c. 138, § 12 (re-corking of wine)” (parentheticals in original). Inherent in this Rule is that the Local Board must establish patrons removed *alcoholic* beverages from the licensed premises. This element must be proven by substantial evidence – “evidence as a reasonable mind might accept as adequate to support a conclusion.” M.G.L. c. 30A, §§ 1(6) & 14(7)(e).

Even viewing the evidence introduced in the Local Board’s case in-chief in the light most favorable to the Local Board, there was not substantial evidence that the patrons left the Licensee’s licensed premises with alcohol. Local Board Investigator Joseph Kelley observed two patrons leaving the licensed premises with two glasses containing light green liquid. While he assumed they were margaritas, he did not confirm his suspicions with the patrons by asking what was contained in the glasses. He did not ask the bartender that served the drinks or the license manager what was in the glasses, either.

The Local Board puts significant weight on its Licensed Premises Inspection Form, Inspection No. 1374 (Exhibit E), because the license manager, Tom Brush, signed the Form. The Form stated Investigator Kelley’s conclusion that “Two patrons leaving the premises w/ alcoholic beverages in open containers, walked about 20 yards down Brattle and put drinks down.” The Local Board contends that when Mr. Brush signed the Form he was acknowledging that the glasses contained alcohol and that the establishment was in violation of the law. However, nowhere on the Form

does Mr. Brush admit to a violation of the law. Instead, Mr. Brush's signature only indicated that he "[r]eceived" the Form.

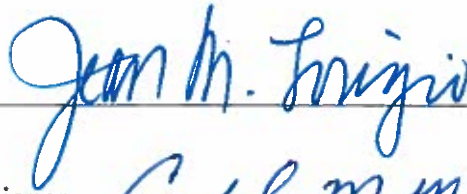
Finally, that Mr. Brush "did not contest" or "did not dispute" (Opp'n at 2) that the glasses contained alcoholic beverages and that he "apologized" to Investigator Kelley only amounts to "speculation and conjecture" that he was apologizing for violating the law and admitting the glasses contained alcohol. Because the Local Board did not establish, by substantial evidence, that the patrons removed alcoholic beverages from the licensed premises, an essential element of the violation charged, the Licensee's motion for a direct verdict is allowed.²

CONCLUSION

For the foregoing reasons, the Licensee's oral motion for a directed verdict is ALLOWED.

ALCOHOLIC BEVERAGES CONTROL COMMISSION

Jean M. Lorizio, Chairman



Crystal Matthews, Commissioner



Deborah Baglio, Commissioner



Dated: December 7, 2022

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.

² While the Licensee orally moved for a directed verdict on four earlier occasions, the Commission's ruling on the fifth motion for directed verdict is dispositive and as such, it does not reach the merits of the Licensee's remaining four motions.

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2022-000081-ad-enf

cc: Local Licensing Board
Frederick G. Mahony, Chief Investigator
William A. Kelley, Esq.
Evan C. Bjorklund, Esq.
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