



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

Jean M. Lorizio, Esq.
Chairman

DECISION

DEUKO ENTERPRISES INC. D/B/A THISTLE & SHAMROCK
62-62 ½ WALDEN STREET
CAMBRIDGE, MA 02140
LICENSE#: 00241-PK-0166
HEARD: 11/13/2023

This is an appeal of the action of the Cambridge Board of License Commissioners ("Local Board") in suspending the M.G.L. c. 138, § 15 wines and malt beverages license of Deuko Enterprises Inc. d/b/a Thistle & Shamrock ("Licensee" or "Thistle & Shamrock") located at 62-62 ½ Walden Street, Cambridge, Massachusetts, for two days. The Licensee timely appealed the Local Board's decision to the Alcoholic Beverages Control Commission (the "Commission" or "ABCC"), and a remote hearing via Microsoft Teams was held on Monday, November 13, 2023.

The following documents are in evidence as agreed upon exhibits:

1. Licensee's Record of Sale and Return Regarding One Six- Pack of Molson Golden beer, dated 8/6/2019;
2. Atty. Virginia Coleman's Letter to the Local Board, dated 1/4/2020;
3. Cambridge Atty. Sydney Wright's Email to Atty. Virginia Coleman, dated 6/23/2022;
- A. License of Underage Operative with Affidavit of Manisha Tibrewal, Director of Planning, Budget and Personnel for Cambridge Police Department, dated 10/27/2023;
- 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. Photograph of Underage Operative taken 8/6/2019;
- E. Three photographs of a United States Twenty-Dollar Bill;
- F. Compliance Check Agreement of Participation, Waiver of Liability & Guidelines Form, signed 7/10/2019 and 8/6/2019;

- G. Local Board's Decision dated 9/24/2019 and 12/5/2019;
- H. Audio clip of Local Board's Compliance Check Hearing on 9/24/2019;
- I. Licensed Premises Inspection Report and recorded observations by Licensing Investigator Tyler Bubenik dated 8/6/2019.

There is one (1) audio recording of this hearing, and three (3) witnesses testified.

FINDINGS OF FACT

The Commission makes the following findings based on the evidence presented at the hearing:

1. Deuko Enterprises Inc. d/b/a Thistle & Shamrock ("Licensee" or "Thistle & Shamrock") holds a M.G.L. Ch. 138, § 15 wines and malt beverages retail package store license located at 62-62 ½ Walden Street, Cambridge, Massachusetts. (Testimony)
2. Jackson Hall appeared and testified that he has been the owner of Thistle & Shamrock since 2013. (Testimony)
3. In 2019, the Cambridge License Commission ("Local Board") approved compliance check guidelines, titled 2019 Compliance Check Agreement of Participation, Waiver of Liability and Guidelines. (Testimony, Exhibit F)
4. 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. (Testimony, Exhibit C)
5. The Local Board conducted compliance checks on August 6, 2019, with the assistance of a 20-year-old male underage operative. (Testimony, Exhibits A, F, I)
6. Just prior to conducting compliance checks on August 6, 2019, the underage operative was photographed. (Testimony, Exhibit D)
7. Before conducting the compliance check in question, a marked U.S. \$20 bill to be used was photographed. (Testimony, Exhibit E)
8. On August 6, 2019, the underage operative and Investigator Bubenik reviewed the 2019 Compliance Check Agreement of Participation, Waiver of Liability & Guidelines. The underage operative signed the form on July 10, 2019, and Investigator Bubenik signed it on August 6, 2019. (Testimony, Exhibit F)
9. The underage operative was instructed to attempt to purchase a six-pack of Heineken beer and if he could not find Heineken, to buy a six-pack of another brand of beer. (Testimony)
10. On August 6, 2019, Licensing Investigator Bubenik, accompanied by the underage operative, conducted a compliance check at Thistle & Shamrock. The underage operative purchased a six-pack of Molson Golden beer with the marked \$20 bill without being asked for

identification. Investigator Bubenik completed Licensed Premise Inspection Form #1000 describing the violation as “sale of six-pack of beer to a minor.” (Testimony, Exhibits 1, E, I)

11. Mr. Hall was not on the license premises during the compliance check but viewed a picture of the underage operative and believed, “he look[ed] like a thirty year old.” (Testimony)
12. The Local Board held a hearing on September 24, 2019, regarding the alleged violations of M.G.L. c. 138 §§ 23, 34, 41, 64, 64A and Local Board Rules 2 and 5B.6. (Testimony, Exhibits G, H)
13. By decision dated December 5, 2019, the Local Board found Thistle & Shamrock in violation of a compliance check and voted to suspend its license for two (2) days. (Exhibit G)
14. On December 8, 2019, the Licensee timely filed its petition to appeal to the Commission. (Commission Records)

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 Licensee raised four specific grounds in support of their appeal. These grounds are:

1. The Local Board’s Compliance Check Guidelines were not published so the compliance check is invalid;
2. The Local Board’s Compliance Check Guidelines were not followed because the underage operative did not reasonably look their age and the underage operative purchased a different brand of beer than he was instructed to purchase;
3. The Local Board’s adjudication is invalid because the Local Board did not have the underage operative testify at either the Local Board or ABCC hearings; and
4. The Local Board’s two-day suspension is excessive.

Claim 1: The Local Board’s Compliance Check Guidelines were not published so the compliance check is invalid

Investigator Tyler Bubenik, a license investigator for the Local Board testified that the Local Board adopted their own guidelines, which is 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 check at issue. The Commission finds that the Local Board did have its own approved and published compliance check guidelines during 2019. (Testimony, Exhibit F)

Claim 2: The Local Board's Compliance Guidelines were not followed because the underage operative did not reasonably look their age and the underage operative purchased a different brand of beer than instructed to purchase

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).

Based on the photograph of the underage operative taken the day of the compliance check in question and the testimony offered at the hearing, the Commission finds that the underage operative reasonably looked their age and the operative's "business casual" clothing was not worn in an effort to make him appear older. (Exhibit D)

The underage operative purchased a six-pack of Molson Golden beer at Thistle & Shamrock on August 6, 2019. (Exhibit 1) The Local Board's Compliance Check Guideline No. 8 states "The underage person shall attempt to purchase an alcoholic beverage. The person should attempt to purchase the same alcoholic drink at every location visited on the same day." (Exhibit F) The word "should" does not produce an absolute obligation that the underage operative purchase the same brand of alcoholic beverage at every location visited on the same day but rather attempt to do so. The Commission recognizes that a specific alcoholic beverage may not be available at all establishments visited during compliance checks or the underage operative may not be able to locate a particular brand of alcoholic beverage at every location visited. Here, the record is devoid of evidence explaining why the underage operative purchased Molson Golden beer instead of Heineken beer. However, substantial evidence was presented to support a finding that the underage operative purchased a six-pack of beer at the licensed premises.

The Commission finds that the underage operative and investigators followed the Local Board's guidelines when a compliance check was conducted at the Licensee's licensed premises on August 6, 2019, and therefore the Licensee was not entrapped.

Claim 3: The Local Board's adjudication is invalid because the Local Board did not have the underage operative testify at either the Local Board or ABCC hearings

It is well-established that there must be substantial evidence to support a finding of a violation at adjudicatory proceedings before the Commission. "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 Licensee prior to the Commission’s hearing. There is nothing on the record indicating that the underage operative was subpoenaed for the hearing 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. There is not a violation of due process at the de novo adjudicatory proceeding before the Commission when the Licensee failed to subpoena or request the ABCC to subpoena the underage operative involved in the compliance check. The Local Board offered substantial evidence through the direct testimony of Investigator Bubenik and Manisha Tibrewal and did not need the underage operative to prove the elements of the violation charged.

Claim 4: The Local Board’s two-day suspension is excessive

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 03/28/2007). 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 03/28/2007), 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, Thistle & Shamrock was suspended for two days which is neither draconian nor unreasonable and is a “small suspension.” The Commission has upheld a compliance check violation finding 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 that the Local Board’s decision to suspend Thistle & Shamrock for two days was within its discretion.

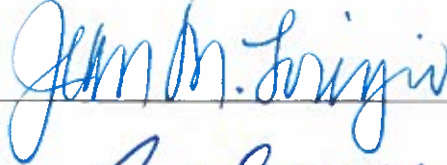
CONCLUSION

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 Thistle & Shamrock committed a violation of M.G.L. c. 138, § 34 and Local Board Rule 5B.6.

The Commission also **APPROVES** the action of the Local Board in suspending the alcoholic beverages licenses of Thistle & Shamrock for a period of two (2) days.

ALCOHOLIC BEVERAGES CONTROL COMMISSION

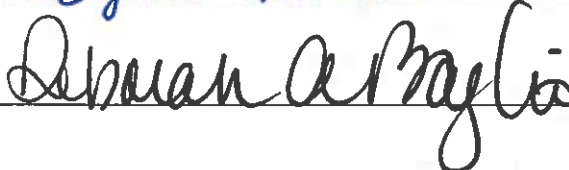
Jean M. Lorizio, Chairman



Crystal Matthews, Commissioner



Deborah Baglio, Commissioner



Dated: March 10, 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.

This document is important and should be translated immediately.
Este documento es importante y debe ser traducido inmediatamente.
Este documento é importante e deve ser traduzido imediatamente.
Ce document est important et devrait être traduit immédiatement.
Questo documento è importante e dovrebbe essere tradotto
immediatamente.

Το έγγραφο αυτό είναι σημαντικό και θα πρέπει να μεταφραστούν αμέσως.

这份文件是重要的，应立即进行翻译。

यह दस्तावेज़ महत्वपूर्ण है और इसका तुरंत अनुवाद किया जाना चाहिए

Dokiman sa a enpòtan epi li ta dwe tradwi touswit

'Đây là tài liệu quan trọng và cần được dịch ngay'

ឯកសារនេះសំខាន់ណាស់ ហើយត្រូវបកប្រែជាបន្ទាន់។

2019-023970-ad-enf

cc: Virgini Coleman, Esq.
Sydney Wright, Esq.
Local Licensing Board
Frederick G. Mahony, Chief Investigator
Administration, File