



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

Jean M. Lorizio, Esq.
Chairman

DECISION

LA FABRICA CENTRAL LLC D/B/A LA FABRICA
450 MASSACHUSETTS AVENUE
CAMBRIDGE, MA 02139
LICENSE#: 02952-RS-0166
VIOLATION DATE: 05/05/2018
HEARD: 12/19/2019 and 11/09/2022

This is an appeal of the action of the City of Cambridge License Commission (the "Local Board" or "Cambridge") in suspending the M.G.L. c. 138, § 12 all Alcoholic Beverages license of La Fabrica Central LLC d/b/a La Fabrica ("Licensee" or "La Fabrica") located at 450 Massachusetts Avenue, Cambridge MA 02139 for four days. The Licensee timely appealed the Local Board's decision to the Alcoholic Beverages Control Commission ("Commission" or "ABCC"), and hearings were held on Thursday, December 19, 2019, and Wednesday, November 09, 2022¹.

The following documents are in evidence as exhibits:

1. Cambridge Board of License Commission Annual Report 2015;
 2. Cambridge Board of License Commission Annual Report 2016;
 3. Cambridge Board of License Commission Annual Report 2017;
 4. Cambridge Board of License Commission Annual Report 2018;
 5. Picture of Inside Back Room, "Count: 126";
 6. Picture of Inside Back Room, "Count: 50";
 7. Picture of Inside Back Room, "Count: 93".
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- A. St. 1919, c. 83 as amended by St. 1922, c. 95, as amended by St. 1949, c. 84 (The "Board's Special Act" as amended);
 - B. Rules and Regulations of City of Cambridge Board of License Commissioners Relating to All Holders of Common Victualer, Innholders, Alcoholic Beverages and/or Entertainment Licenses;
 - C. La Fabrica's 2018 Common Victualler with Alcohol to be Consumed on the Premises and Entertainment License/ License No 11593-1;
 - D. La Fabrica Floor Plan;
 - E. Notice of Violation Hearing, dated June 19, 2018;
 - F. Statement of Reason re: the Board's July 11, 2018, Decision Issuing a Four-day Suspension to La Fabrica;

¹ The November 9, 2022, hearing was held remotely via Microsoft Teams.

- G. Cambridge Fire Department Bureau of Fire Prevention form dated May 6, 2018 re: La Fabrica;
- H. Cambridge Fire Department Bureau of Fire Prevention forms dated February 9, 2018 re: La Fabrica, 450 Massachusetts Avenue, Cambridge;
- I. Cambridge License Commission License Premise Inspection Form dated May 5, 2018 re: La Fabrica, 450 Massachusetts Avenue, Cambridge;
- J. Cambridge License Commission License Premise Inspection Form dated February 9, 2018 re: La Fabrica, 450 Massachusetts Avenue, Cambridge;
- K. Cambridge Inspectional Services Department Task Force Inspection Report dated February 9, 2018;
- L. Statement of Reasons dated June 19, 2017, re: Chazumba, LLC dba Felipe's Taqueria;
- M. Notice of Violation Hearing dated April 25, 2018 re: May 9, 2018, Board Hearing;
- N. Statement of Reason dated May 09, 2018 re: La Fabrica Central, LLC;
- O. Statement of Reasons dated July 11, 2018 re: Charlie's Kitchen/Red House;
- P. JMRS Restaurant Inc. d/b/a Tavern in the Square (ABCC Decision, December 19, 2017);
- Q. Paga, Inc. d/b/a Icon (ABCC Decision, June 20, 2017).

There are audio recordings of each of the two (2) hearings, and (6) six witnesses testified.²

FINDINGS OF FACT

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

1. La Fabrica Central LLC d/b/a La Fabrica ("Licensee" or "La Fabrica") holds a § 12 all alcoholic beverages license and operates its business at 450 Massachusetts Avenue, Cambridge, Massachusetts. (Exhibit C)
2. In 2018, the allowed capacity at La Fabrica as stated on its license was as follows: "back function room, if seating only 143; back function room alternative plan, if standing, 380; middle room – 65; front room 41." (Testimony, Exhibit C)
3. On the evening of May 5, 2018, members of the License Commission Task Force, Deputy Fire Chief Peter Donovan, Chief of Licensing Investigations Andrea Boyer and Building Inspector Branden Vigneault, ("Task Force") inspected the licensed premises. (Testimony, Exhibits G, I)
4. Deputy Chief Donovan performed a capacity check of the front room. Using a handheld counter, Deputy Chief Donovan counted 67 people in the front room. The allowed capacity was 41. (Testimony, Exhibits C, G, I)

² After the Local Board's presentation of its case in chief, the Licensee made an oral Motion for a Required Finding of No Violation. The Local Board presented its objections to the Motion and the matter was taken under advisement. Given this Decision, the Motion is moot and the Commission need not rule on it.

5. Deputy Chief Donovan performed a capacity check of the back function room using a handheld counter. Ms. Boyer stood by the rear exit to prevent people from exiting while Deputy Chief Donovan conducted a count. Id.
6. After counting approximately a quarter of the patrons in the back room, Deputy Chief Donovan asked an employee to turn the lights on and the music off. He instructed patrons to form a single file line and exit through the doorway that leads to the middle room as he counted one by one. Id.
7. Once there were approximately a quarter of the patrons remaining in the back room, Deputy Chief Donovan allowed those patrons to stay in the back room as he counted the rest. Id.
8. Deputy Chief Donovan's total count for the back room was 447. The allowed capacity was 380. (Testimony, Exhibits C, F, G, I)
9. Investigator Boyer issued a Licensed Premise Inspection Form to the Licensee which indicated capacity violations in the front room and the back function room of the licensed premises. (Testimony, Exhibit I)
10. Mikhail Druskin, former Security Manager for La Fabrica, was at the licensed premises on the evening of May 5, 2018, when the task force arrived. Mr. Druskin had not kept a count of people inside the licensed premises himself that evening. (Testimony)
11. Dennis Benzan, Principal Owner, was present at La Fabrica on the evening of May 5, 2018, when the task force arrived. Mr. Benzan had not kept his own count of the number of people within the licensed premises. (Testimony)
12. Mr. Druskin edited photographs taken by Investigator Boyer of the back function room by attempting to add red dots to each person depicted. As a result, Mr. Druskin determined there were 269 patrons in the back room. (Testimony, Exhibits I, 5, 6, 7)
13. On June 19, 2018, the Local Board emailed a notice of disciplinary hearing to the Licensee for Wednesday July 11, 2018 for an alleged violation: "Permitting disorder, disturbance, or illegality on a licensed premise, to wit, Overcapacity on May 5, 2018, in violation of M.G.L. c 138, §§ 23 and 64 and Rules and Regulations of the City of Cambridge Board of License Commissioners Rule 2.3, 2.5, 5.1 and 9." (Testimony, Exhibit E)
14. On July 11, 2018, the Local Board held a hearing and found the Licensee had violated "G.L. c. 138, §23 and the Board's Rules 2.3, 2.5, 5.1 and 9." The Local Board based their decision "on the substantial evidence and particulars of this case, related disciplinary history, configuration of the space, large discrepancy between the number of persons allowed inside the premises per room, severe public safety issues and testimony of all parties." The Local Board issued a four (4) day suspension. (Exhibit F)
15. The Licensee filed a timely appeal to the Commission. (Commission Records)
16. The Local Board Rules and Regulations are silent regarding discipline. (Exhibit B)

17. Sometime after May 5, 2018, the Cambridge Inspectional Services Department recalculated the occupancy for the front room of La Fabrica. The allowed capacity is now 67 seated and 113 standing. (Testimony)

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. 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.* Evidence from which a rational mind might draw the desired inference is not enough. See Blue Cross and Blue Shield of Mass. Inc. v. Comm’r of Ins., 420 Mass. 707 (1995). Disbelief of any particular evidence does not constitute substantial evidence to the contrary. New Boston Garden Corp. v. Bd. of Assessor of Boston, 383 Mass. 456, 467 (1981).

The Licensee is charged with “Permitting disorder, disturbance, or illegality on a licensed premise, to wit, Overcapacity on May 5, 2018, in violation of M.G.L. c 138, §§ 23 and 64 and Rules and Regulations of the City of Cambridge Board of License Commissioners Rule 2.3, 2.5, 5.1, and 9.” (Testimony, Exhibits E, F)

M.G.L. c. 138, § 23 provides “whenever, in [the local licensing authorities’] opinion any holder of such license fails to maintain compliance with this chapter... they may, after hearing or opportunity to therefor, modify, suspend, revoke or cancel such license, or may levy a fine in

accordance with regulations which shall be promulgated by the alcoholic beverages control commission.”

M.G.L. c. 138, § 64 provides “[t]he licensing authorities after notice to the licensee and reasonable opportunity for him to be heard by them, may modify, suspend, revoke or cancel his license upon satisfactory proof that he has violated or permitted a violation of any condition thereof, or any law of the commonwealth.”

Rule 2.3 of the Local Board Rules and Regulations states, “[a]ll licensees are expected to comply with all of the laws of the Commonwealth of Massachusetts, the City of Cambridge Municipal Code, and all rules and regulations of the other City of Cambridge Departments which regulate the licensee.” (Exhibit B)

Rule 2.5 of the Local Board Rules and Regulations states, “[v]iolation(s) of any law, ordinance, policy, or rules and regulations may result in the suspension, cancellation, revocation or modification of a license.” Id.

Rule 5.1 of the Local Board Rules and Regulation states, “[n]o licensee shall permit any disorder, disturbance or illegality of any kind to take place in or on the licensed premises. The licensee shall be responsible therefor whether present or not.” Id.

Rule 9.1 of the Local Board of Rules and Regulations states in pertinent part, “Licensees shall not permit more persons on the premises than the capacity number approved by the Board.” It further instructs in subpart 9.1(c) “Operating beyond the capacity established by the Board is a violation of the terms of the license and these Rules and Regulations.” Id.

Direct evidence was presented through the testimony of Deputy Chief Donovan who conducted the count of people inside the licensed premises on May 5, 2018. Both the “front room” and the “back function room” were found to contain a number of people in excess of the allowed capacity. (Testimony, Exhibits G, I)

The Licensee argued Deputy Chief Donovan’s count was inaccurate and cited the edited photographs of the back function room which were allegedly marked with red dots on each person therein. (Testimony, Exhibits 5, 6, 7) The Licensee asserts there were 269 people in the back function room. (Testimony) The Commission does not find this a reliable method of calculating the number of people in the back function room. These edited photographs do not amount to “substantial evidence” that is “such evidence as a reasonable mind might accept as adequate to support a conclusion.” Embers of Salisbury, Inc. v. Alcoholic Beverages Control Comm’n, 401 Mass. 526, 528 (1988).

Based on the evidence, the Commission finds the Licensee violated M.G.L. c 138, §§ 23 and 64 and Rules and Regulations of the City of Cambridge Board of License Commissioners Rule 2.3, 2.5, 5.1, and 9.

Reasonableness of Penalty Issued by the Local Board

With the Commission’s finding that the Licensee committed the violations, the Commission must determine if the penalty issued by the Local Board is reasonable. “The burden is on the licensee to prove the penalty imposed should not be approved.” Metrowest Tropical Foods, Inc. (ABCC

Decision September 20, 2006). The required conduct of licensees who sell alcoholic beverages is set out in M.G.L. c. 138. Chapter 138 was “enacted ... to serve the public need and ... to protect the common good.” M.G.L. c. 138, §23. “[T]he purpose of discipline is not retribution, but the protection of the public.” Arthurs v. Bd. of Registration of Medicine, 383 Mass. 299, 317 (1981).

The Local Board’s Rules and Regulations are silent as to discipline for violations committed. Thus, the Commission must consider, in the absence of these regulations, the totality of the evidence, including but not limited to the prior violation history of the Licensee, the egregiousness of the violation, and the penalties imposed against other licensees by the Local Board for comparable violations.

The Licensee argues that the penalty of a four (4) day suspension is excessive and that the temporary closure of La Fabrica during the COVID pandemic should be considered as a mitigating factor, as well as the fact that the occupancy of the front room has since been recalculated allowing 67 people standing and 113 standing. (Testimony) The Licensee also contends that it had no record of prior violations. Id.

The Local Board argues its prior comparable decisions demonstrate a four (4) day suspension is reasonable. In the Local Board decisions in evidence, the Local Board imposed between a warning and a six (6) day suspension for similar violations. (Exhibits L, O, 2, 3, 4)

The Commission finds the Local Board improperly considered La Fabrica’s violation in February 2018 as a prior violation as it had not been adjudicated at the time of the second violation on May 5, 2018. (Exhibit F) See Westborough Quick Mart, Inc. (ABCC decision 9/22/2004) (“[P]rogressive discipline is an appropriate disciplinary approach by local boards. However, it requires final adjudication on an offense in order to consider it as a prior offense.”)

Notwithstanding the Local Board’s improper consideration of the February violation, the Commission finds the capacity violations a serious threat to public safety and the sanction imposed was reasonable and within the Local Board’s discretion.

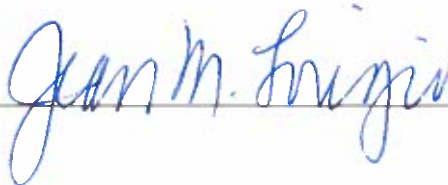
CONCLUSION

The Alcoholic Beverages Control Commission (“Commission”) **APPROVES** the action of the City of Cambridge Licensing Board in finding that La Fabrica Central LLC d/b/a La Fabrica (“La Fabrica”) committed violations of: M.G.L. c 138, §§ 23 and 64 and Rules and Regulations of the City of Cambridge Board of License Commissioners Rule 2.3, 2.5, 5.1, and 9.

The Commission **APPROVES** the action of the City of Cambridge Licensing Board in imposing a four (4) day suspension.

ALCOHOLIC BEVERAGES CONTROL COMMISSION

Jean M. Lorizio, Chairman



Crystal Matthews, Commissioner



Dated: February 4, 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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