



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

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

**2030 OCEAN STREET LLC D/B/A WINE & MARKET  
192 HAMPSHIRE STREET  
CAMBRIDGE, MA 02139  
LICENSE#: 90164-PK-0166  
HEARD: 7/14/2022**

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

2030 Ocean Street, LLC d/b/a Wine & Market ("Licensee") holds a § 15 all alcohol license located at 192 Hampshire Street, Cambridge. The Licensee applied for its license in September 2021, and it was granted in or around December 2021.

Then, the Cambridge License Commission ("Local Board") sent the Licensee a notice on April 7, 2022, and again on April 25, 2022, ordering the Licensee to appear before the Local Board for alleged violations of M.G.L. c. 138, §§ 16B, 23, 70 & 77. After a hearing was held on May 2, 2022, on May 24, 2022, the Local Board revoked, and in the alternative cancelled, the Licensee's license for violations of M.G.L. c. 138, §§ 12, 16B, 23, 64, 70 & 77.<sup>1</sup> The Licensee timely appealed.

At the hearing before the Commission, after opening statements, the Licensee orally moved for a directed verdict. The Local Board filed a written opposition on July 21, 2022.

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)

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<sup>1</sup> The Local Board found violations of M.G.L. c. 138, §§ 12 & 64, despite not including these charges in either of the hearing notices.

(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 Local Board revoked the Licensee’s § 15 license because the Licensee allegedly made false statements to the Local Board in order to secure the license, and in the alternative, cancelled the license for non-use. The Local Board therefore found violations of M.G.L. c. 138, §§ 12, 16B, 23, 64, 70 & 77. As grounds for doing so, the Local Board found that the Licensee misrepresented to it that the Licensee would retain ownership and operate the license, and instead was intent on “brokering” or “flipping” the license for a profit. (Exhibit E)

As an initial matter, it is unclear why the Licensee was found in violation of § 12. Section 12 pertains to on-premises licenses, which is irrelevant to the Licensee’s § 15 license.

The Licensee was also found in violation of §§ 16B & 70 but the only way a licensee can violate § 16B and § 70 and have its license forfeited is by failing to pay the license fee. There is no evidence or allegation that the Licensee failed to pay this fee.

Additionally, the Local Board charged a violation of § 23, but it is not clear what provision of this lengthy and broad statute was violated. Relatedly, it is unclear what part of § 64 the Licensee violated. Section 64 prohibits a licensee from violating any law of the Commonwealth, but the Local Board has not stated which law of the Commonwealth was violated.

The Local Board also, in the alternative, cancelled the license at issue pursuant to § 77 for non-use. Id. The Local Board did not follow the well-established procedure for cancelling a license, which includes providing the licensee with six months within which to utilize or *transfer* the license. See Board of Selectmen of Saugus v. Alcoholic Beverages Control Comm’n, 32 Mass. App. Ct. 914 (1992). In any event, there is no evidence on the record that the Licensee was in violation of § 77.

Finally, while the Local Board states the Licensee violated 204 C.M.R. 2.01(8) in its opposition, which prohibits making false statements in a license application, the Licensee was never charged with violating this regulation, nor did the Local Board find a violation of the regulation. The

Opposition was the first time the Local Board argued a violation of this regulation. Therefore, this alleged violation is not properly before the Commission.

For the foregoing reasons, the Licensee's motion is **ALLOWED**.

**ALCOHOLIC BEVERAGES CONTROL COMMISSION**

Jean M. Lorizio, Chairman \_\_\_\_\_ *Jean M. Lorizio*

Crystal Matthews, Commissioner \_\_\_\_\_ *Crystal Matthews*

Deborah Baglio, Commissioner \_\_\_\_\_ *Deborah A. Baglio*

Dated: January 20, 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.20

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2022-000058-ad-enf

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