



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

Jean M. Lorizio, Esq.
Chairman

**180 BROADWAY LIQUOR INC. D/B/A CHELSEA LIQUOR MART
180-184 BROADWAY, CHELSEA, MA 02150
LICENSE#: 89288-PK-0202**

**BANWAIT LIQUORS INC. D/B/A ONE STOP LIQUORS
141 CENTRAL AVE., CHELSEA, MA 02150
LICENSE#: 0202-00052;**

**CANADIAN LIQUORS INC. D/B/A BROADWAY VARIETY II
469 EASTERN AVE., CHELSEA, MA 02150
LICENSE#: 0202-00077;**

**CHELSEA LIQUORS INC. D/B/A HELLER'S LIQUOR MART
429 BROADWAY, CHELSEA, MA 02150
LICENSE#: 88845-PK-0202;**

**K B CORP. D/B/A YOGI'S VARIETY
698 BROADWAY, CHELSEA, MA 02150
LICENSE#: 0202-00076;**

**NILAM LLC D/B/A CARIBBEAN LIQUORS
399 BROADWAY, CHELSEA, MA 02150
LICENSE#: 89252-PK-0202;**

**PRAMUKHAM CORP. D/B/A BRIDGE LIQUORS
79 WILLIAMS ST., CHELSEA, MA 02150
LICENSE#: 0202-00055;**

**SAR BROTHERS CONVENIENCE D/B/A SHOP N GO
354 WASHINGTON ST., CHELSEA, MA 02150
LICENSE#: 0202-00046**

**MEMORANDUM AND ORDER ON THE CITY OF CHELSEA'S
MOTION TO DISMISS THE APPEAL**

The Alcoholic Beverages Control Commission ("Commission" or "ABCC") issues this Memorandum and Order on the City of Chelsea's Motion to Dismiss the Appeal of eight (8) § 15 licensees. These licensees are appealing the decision of the City of Chelsea Licensing Commission banning all § 15 licensees in the city from selling 100 ml bottles of alcohol ("nips"). For the following reasons, the Commission **ALLOWS** the City of Chelsea's Motion to Dismiss.

FACTUAL & PROCEDURAL BACKGROUND

On April 12 and 19, 2018, the City of Chelsea Licensing Commission ("Local Board" or "Local Licensing Authority") published notices of a public hearing regarding a "PROPOSED BANNING OF THE SALE OF NIPS (50 ml) BY SECTION 15 LICENSED ESTABLISHMENTS CHELSEA LICENSING COMMISSION," scheduled for April 24, 2018. The hearing was "to discuss the proposed change in the City of Chelsea Licensing Commission Rules and Regulations. The proposed subject matter is banning the sale of nips."

On May 22, 2018, the Local Board, after a hearing where it took testimony and other evidence regarding the potential ban, concluded that "the sale of nips in Chelsea contributes to excessive public alcohol intoxication generating substantial human and financial costs [and] also contributes to an excessive litter problem in the City." The Local Board voted to ban the sale of bottles of alcohol smaller than 100 ml, commonly known as "nips," as of June 1, 2018. The licensees were notified of this determination by mail on May 24, 2018.

Subsequently, the Local Board published a second set of notices of public hearing on June 14 and 21, 2018, regarding a "PROPOSED BANNING OF THE SALE OF LIQUOR BOTTLES CONTAINING UP TO 250ml AND SINGLE CAN/BOTTLE MALT BEVERAGES BY SECTION 15 LICENSED ESTABLISHMENTS" with a hearing date of June 26, 2018. The purpose was "to discuss the proposed change in the City of Chelsea Licensing Commission Rules and Regulations. The proposed subject matter is banning liquor bottles containing up to (250ml) AND Single Can/Bottle Malt Beverages."

The Local Board held hearings on June 26, 2018, and August 28, 2018.¹ At the end of the hearing, after hearing testimony, the Local Board voted to amend its Rules and Regulations to prohibit to sale of 100 ml bottles, with the regulation taking effect on September 30, 2018. The Local Board then voted to extend the ban on selling 100 ml bottles until October 1, 2018, and imposed a voluntary ban on sales of containers with a sale price less than \$3.00. The Local Board sent notice to licensees on September 4, 2018.

¹ At the end of the June 26, 2018, hearing, the Local Board issued an interim order that § 15 licensees should receive training addressing second-hand sale prevention and that § 15 licensees *voluntarily* refrain from selling 100 ml containers of alcohol and any alcohol at a price of less than \$3.00.

On September 7, 2018 nine (9) § 15 all alcoholic beverages licensees from the City of Chelsea filed notices of appeal, including:

- 180 Broadway Liquor Inc., d/b/a Chelsea Liquor Mart, 180-184 Broadway, Chelsea
- Banwait Liquors Inc., d/b/a One Stop Liquors, 141 Central Ave., Chelsea
- Canadian Liquors Inc., d/b/a Broadway Variety II, 469 Eastern Ave., Chelsea
- Chelsea Liquors Inc., d/b/a Heller's Liquor Mart, 429 Broadway, Chelsea
- K B Corp. d/b/a Yogi's Variety, 698 Broadway, Chelsea
- Nilam LLC d/b/a Caribbean Liquors, 399 Broadway, Chelsea
- Pramukham Corp. d/b/a Bridge Liquors, 79 Williams Street, Chelsea
- Sar Brothers Convenience, d/b/a Shop N Go, 354 Washington Street, Chelsea
- Fine Mart, LLC, d/b/a Fine Mart, 260 Broadway, Chelsea

Attorneys for the Licensees moved to consolidate their appeals into one hearing, which the Commission allowed. During the course of the December 6, 2018 appeal hearing, the parties requested to continue the hearing for the Local Board to file a motion to dismiss, with the opportunity for the licensees to file an opposition.

By letter dated April 10, 2019, Fine Mart, LLC, withdrew from the appeal of this matter.

A hearing on the motion to dismiss the appeal with the remaining licensees was held on May 21, 2019.

DISCUSSION

Licenses to sell alcoholic beverages are a "special privilege subject to public regulation and control." Connolly v. Alcoholic Beverages Control Comm'n, 334 Mass. 613, 619 (1956). The Commission may make regulations for "clarifying, carrying out, enforcing and preventing violation of" statutory provisions for the "method of carrying on the business of any licensee," and "for the proper and orderly conduct of the licensed business." M.G.L. c. 138, § 24. The Commission exercises this authority through the promulgation of regulations. Licenses are also revocable for violation of "any regulation adopted by the commission *or local licensing authority*" (emphasis supplied), and local licensing authorities may make "reasonable requirements" with respect to "the conduct of business by any licensee." M. G. L. c. 138, § 23, Connolly at n. 1; Boston Licensing Board v. Alcoholic Beverages Control Commission, 367 Mass. 788 (1975).

The Commission does not have legislative authority to hear an appeal centered on seeking invalidation of a requirement that was imposed by a local licensing authority pursuant to its statutory authority under § 23. The Commission can only hear appeals for "any person who is aggrieved by the action of [local] authorities in modifying, suspending, cancelling, revoking or declaring forfeited the same" M.G.L. c. 138, § 67.

The requirements imposed by the Local Board are not modifications of the licensees' § 15 licenses, as the licensees claim. Modification of a license is a sanction against a specific licensee for a licensing board's finding that that licensee violated the law. RK&E Corp. v. Alcoholic Beverages Control Comm'n, 19-P-240 (slip op. April 21, 2020) (modification of a license is an appropriate sanction for violation of the law), J.C. Fenwick's Pub, Inc. (ABCC Decision Aug. 13, 2014) ("Licenses may be modified for failure to comply with G.L. c. 138"), citing Colonial Tavern, Inc. v. Boston Licensing Bd., 384 Mass. 372 (1981); Leroy's, Inc. (ABCC Decision Nov. 20, 2012)

(Commission “modified” a license by imposing a condition on the license to not possess automatic amusement devices). Indeed, the Supreme Judicial Court has upheld this power, holding that “[l]ocal licensing boards have power to make regulations governing the conduct of the licensed business, and to modify, suspend, revoke, or cancel licenses in order to enforce their regulations.” City of Revere v. Aucella, 369 Mass. 138, 145 (1975); accord Boston Licensing Bd. at 790; Christopher Columbus Italian Mutual Aid and Benevolent Society v. Alcoholic Beverages Control Comm’n, 2000 WL 1509978 at *3 (Mass. Superior Ct. Sept. 28, 2000).

Here, none of the licensees’ licenses were “modified.”² Instead, the local licensing authority, pursuant to its authority to promulgate “reasonable requirements” for the way *all* licensees conduct their business, banned the sale of 100 ml bottles of alcohol, not as a sanction for violating a law, but on considerations of public health and safety.³

While the local licensing authority has the statutory authority to pass reasonable requirements regarding the conduct of a licensed business, even if the Commission believed a local licensing authority’s requirement to be *unreasonable* on a statutorily appropriate appeal (for example, a violation appeal or a denial of a license appeal), it only has the power to not enforce the requirement on any appeal before it. See, e.g., O’Toole’s Pub, Inc. (ABCC Decision Dec. 17, 2015) (where the Commission found a rule regarding “improper management,” insufficient to give adequate notice as to what the violation was, the Commission did “not make any findings” regarding those charges and found the licensee “did not commit these violations”); see also, e.g., See, e.g., Karen McGovern, Inc. d/b/a Puffins Restaurant (ABCC Decision November 13, 2014) (Commission disapproved conditions for hours of operation imposed by Local Board because conditions violated the statute and were “illegal per se”); Abracadabra Flower & Gift Service, Inc. (ABCC Decision December 4, 2012) (Commission disapproved Local Board’s denial of a §15 retail package store license as being contrary to law and public policy, because the applicant would not accept the condition of non-transferability of the license); Donohue Holdings, Inc. d/b/a Donohue’s (ABCC Decision May 25, 2012) (Commission disapproved Local Board decision imposing conditions restricting the months/hours of alcoholic beverage sales in its outdoor seating section, as contrary to those expressly authorized by statute).

The appropriate forum for the licensees to challenge the local licensing authority’s ban on 100 ml bottles is with the Superior Court, likely in a declaratory judgment action pursuant to M.G.L. c. 231A. See Boston Licensing Bd. at 792 (“we think that judicial review of the board’s regulations by a bill for declaratory relief is not precluded . . .”). In any event, the Commission is not the appropriate forum for this challenge.⁴

² The licensees do not argue their licenses were suspended, canceled, revoked, or declared forfeited.

³ The Commission upheld the banning of “nips” and singles” as a condition of a license when it was based on concerns affecting quality of life of nearby residents, including increased public intoxication and loitering. See Fernandez Brothers Liquors, Inc. (ABCC Decision March 23, 2016).

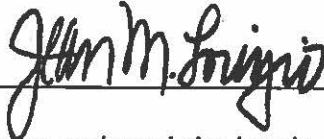
⁴ In light of the Commission’s ruling, it makes no findings on the remaining issues raised in the appellants’ appeal.

CONCLUSION

The Alcoholic Beverages Control Commission **ALLOWS** the City of Chelsea's Motion to Dismiss the Appeal.

ALCOHOLIC BEVERAGES CONTROL COMMISSION

Jean Lorizio, Esq. Chairman



I, the undersigned, hereby certify that I have reviewed the hearing record and concur with the above decision.

Crystal Matthews, Esq., Commissioner



Dated: May 26, 2020

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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cc: Louis Cassis, Esq.
Stephen Miller, Esq.
John Cloherty, Esq.
Local Licensing Board
Frederick G. Mahony, Chief Investigator
Administration, File