



The Commonwealth of Massachusetts

Department of the State Treasurer
 Alcoholic Beverages Control Commission
 Boston, Massachusetts 02114

Deborah B. Goldberg
 Treasurer and Receiver General

Kim S. Gainsboro, Esq.
 Chairman

DECISION

GRAN CHIMU INC. D/B/A LAS PALMAS RESTAURANT
44-48 CENTRAL AVE
CHELSEA, MASSACHUSETTS 02150
LICENSE#: 020200074
HEARD: 08/12/2015 and 08/13/2015

This is an appeal of the action of the Licensing Board for the City of Chelsea (the "Local Board" or "Chelsea") for revoking the M.G.L. c. 138, §12, all alcoholic beverages license of Gran Chimu Inc. dba Las Palmas Restaurant (the "Licensee" or "Las Palmas") located at 44-48 Central Avenue, Chelsea, MA. The Licensee timely appealed the Local Board's decision to the Alcoholic Beverages Control Commission (the "Commission") and a hearing was held on Wednesday, August 12, 2015, and Thursday, August 13, 2015.

The following documents have been entered in evidence as exhibits:

1. License Alcoholic Beverages
2. Local Board's Notice of Hearing (4/9/2015)
 - a. Letter to LLA from Captain Houghton dated April 7, 2015
 - b. Incident Report 15-1283-OF Dated April 9, 2015 Officer Hammond
 - c. Arrest Report 15-380-AE dated April 3, 2015 Officer Chodrick and Sergeant Farden;
3. Minutes of the Local Board's Meeting 4/28/2015;
4. Local Board's Decision 6/4/2015;
5. Audio Recording of the 911 Call 4/3/2015;
6. Public Sign-in Sheet for Hearing 4/28/2015;
7. Chelsea City Councillor Matt Frank's Letter 4/28/2015;
8. Chelsea Fire Department Deputy Chief Wayne Ulwich's Letter 4/27/2015;
9. Local Board's Notice of Meeting 2/3/2015;
10. Minutes of the Local Board's Meeting 2/3/2015;
11. Licensee's Appeal 6/9/2015 of Local Board's Decision;
12. Forty- Seven (47) Photographs of Licensed Premises;
13. License Rules and Responsibilities;
14. Chelsea Police Report 4/3/2015;
15. Richard Rosetti Police Report 4/3/2015;

16. Exterior photograph of the Location of where shell casings found;
17. Press Release about Conducting Inspections dated 4/22/14;
18. Picture of the kitchen inside premises;
19. Photos downloaded from the website: <https://br.enjooy.com/photos/lp-lounge-bar/hookah-party-thursday/3672095>;
20. Exterior picture of the lock on the gate of the back door;
21. Interior picture of the back bar and the back door of premises;
22. Interior picture of premises and front door;
23. Interior picture of back bar;
24. Exterior picture of man standing inside door with gate half down;
25. Interior picture of man closing the gate half;
26. Mr. Rossi's letter (4/23/2014) re: employee list;
27. Exterior picture of the front of the restaurant from across the street;
28. Exterior picture of premises back door from corner;
29. Exterior picture of man closing front door gate;
30. Interior picture of kitchen showing location of telephone.

There is one (1) audio recording of this hearing, and eleven (11) witnesses testified.

The Commission took Administrative Notice of the Licensee's Commission file.

FINDINGS OF FACT

The Commission makes the following findings of fact based on the evidence presented:

1. Gran Chimu Inc., d/b/a Las Palmas ("Licensee" or "Las Palmas"), operates a bar/nightclub at 44-48 Central Avenue, Chelsea, and holds an all-alcoholic beverages license issued pursuant to M.G.L. c. 138, §12. (Commission records, Testimony)
2. Liliana Rivera is the sole officer, director, shareholder, and owner of Gran Chimu Inc., d/b/a Las Palmas. The alcohol license was transferred to Gran Chimu Inc. thirteen (13) years ago. (Commission records, Testimony)
3. Rivera's son, Anthony Rivera, is the license manager of record. (Commission records, Testimony)
4. On April 9, 2015, the Chelsea Licensing Commission ("Local Board") issued a violation notice ("Notice") of a public hearing to the Licensee "to consider a proposal to suspend, revoke, and/or modify the Restaurant/All Alcoholic Beverages License . . . of Gran Chimu, Inc., d/b/a Las Palmas Restaurant, located at 44-48 Central Ave., Chelsea, MA, relative to alleged violations, as per the attached April 7, 2015 communication of Captain Keith E. Houghton of the Chelsea Police Department." (Ex. 2)
5. Captain Houghton's letter listed five violations of local rules and regulations, while expressly leaving open the possibility of additional charges: (1) 2.10 Inspections and Investigations – subsections a and b; (2) 2.06 Physical Premises – subsections a and d; (3) 2.09 Environs of Licensed Premises – subsection a, b, c, and e; (4) 2.13 Illegal [A]ctivity on Licensed Premises – subsections a, 1, 4, 5 and b; (5) 2.15 Other Causes for Revocation, Suspension and/or Modification – subsection a. (Ex. 2)

6. On April 27, 2015, the Local Board held a hearing on Gran Chimu's license. (Testimony, Ex. 2, 4)
7. On June 4, 2015, the Local Board issued its decision revoking the Licensee's all alcoholic beverages § 12 license. (Ex. 4)
8. In its decision, the Local Board revoked the license based on a single violation of 204 C.M.R. 2.05(a), permitting any disorder, disturbance, or illegality on or in the licensed premises. (Ex. 4)
9. The Local Board based its revocation on the testimony of Chelsea Police Officers at the hearing "in connection with inspections and investigations, physical premises, environs of licensed premises, and illegal activity on licensed premises . . ." (Ex. 4)
10. In the Joint Pre-Hearing Memorandum received July 16, 2015, for this appeal to the Commission, the parties agreed that there were actually fourteen (14) violations on appeal:
 - a. M.G.L. c. 138, § 63A: Hindering an investigation;
 - b. Licensing Rules 2.10(a) & (b): Inspections and Investigations;
 - c. Licensing Rules 2.06(a) & (d): Physical Premises;
 - d. Licensing Rules 2.09(a), (b), (c), & (e): Environs of Licensed Premises;
 - e. Licensing Rules 2.13(a)(1-4, 5) & (b): Illegal Activity of License Premises;
 - f. Licensing Rule 2.15(a): Other causes for revocation, suspension, and/or modification;
 - g. Licensing Rule 2.02(a): Availability of rules and regulations;
 - h. Licensing Rule 2.15: Ensuring all personnel are familiar with the rules and regulations;
 - i. Licensing Rule 2.10(c): Inspections and Investigations;
 - j. Licensing Rule 2.06(f): Physical Premises;
 - k. Licensing Rule 2.04(d): Admissions to the Premises (cover charges);
 - l. M.G.L. c. 138, § 23, Unlawful purchase of alcoholic beverages from any source other than a distributor;
 - m. 204 C.M.R. 2.08(c)(2): Delivery of more than two drinks to one person; and
 - n. 204 C.M.R. 2.07(b): Requiring licensee to keep employee, contract for goods, and cash transaction records for a period of three years.

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." United Food Corp. v. Alcoholic Beverages Control Comm'n, 375 Mass. 238, 240 (1978). 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. See, e.g. Devine v. Zoning Bd. of Appeal of Lynn, 332 Mass. 319, 321 (1955); Josephs v. Bd. of Appeals of Brookline, 362 Mass. 290, 295 (1972); Dolphino Corp. v. Alcoholic Beverages Control Comm'n, 29 Mass. App. Ct. 954, 955 (1990). 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. “[T]he purpose of discipline is not retribution but the protection of the public.” New Palm Gardens, Inc. v. Alcoholic Beverages Control Comm’n, 11 Mass. App. Ct. 785, 788 (1981); quoting 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. 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.” M.G.L. c. 30A, §1(6). 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, 710 (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).

In this matter the Local Board had the burden of producing satisfactory proof that the Licensee committed a violation of 204 C.M.R. 2.05(2). The Local Board revoked Las Palmas’ alcoholic beverages license for this single violation.

While the Licensee never argued it before the Commission, the Commission is compelled to address the irregularities between the Notice of Violation Hearing provided to the Licensee for the hearing before the Local Board (“Notice”), the Local Board’s decision, and the charges the parties agree are now before the Commission. This confusion, created by the Local Board, now generates uncertainty as to what is being appealed to the Commission.

The Local Board in its April 9, 2015, Notice incorporated by reference a document from Captain Keith Houghton of the Chelsea Police Department with a list of five (5) violations of the Local Rules and Regulations that would form the basis of the April 23, 2015, violation hearing:

- 1) 2.10 Inspections and Investigations – subsections a and b;
 - 2) 2.06 Physical Premises – subsections a and d;
 - 3) 2.09 Environs of Licensed Premises – subsection a, b, c, and e;
 - 4) 2.13 Illegal [A]ctivity on Licensed Premises – subsections a, 1, 4, 5 and b;
 - 5) 2.15 Other Causes for Revocation, Suspension and/or Modification – subsection a. (Ex2)
- These violations were accompanied by police reports and related documents. (Ex 2).

However, after the violation hearing the Local Board found a single violation of 204 C.M.R. 2.05(2) – a violation not mentioned in the Notice provided to the Licensee or contained anywhere else in the record before the Commission. The Local Board’s limited reasoning was that the violation was based on Chelsea Police Officers’ testimony “in connection with inspections and investigations, physical premises, environs of licensed premises, and illegal activity on licensed premises” (Ex. 4). No dates or specific conduct were associated with this finding other than this one sentence.

Then, in the Parties Joint Pre-Hearing Memorandum submitted to the Commission and received July 16, 2015, the parties represented that there were fourteen (14) violations on appeal:

- 1) M.G.L. c. 138, § 63A, Hindering an investigation;
- 2) Licensing Rules 2.10(a) & (b), Inspections and Investigations;
- 3) Licensing Rules 2.06(a) & (d), Physical Premises;
- 4) Licensing Rules 2.09(a), (b), (c) & (e), Environs of Licensed Premises;
- 5) Licensing Rules 2.13(a)(1-4, 5) & (b), Illegal Activity of License Premises;
- 6) Licensing Rule 2.15(a), Other causes for revocation, suspension, and/or modification;
- 7) Licensing Rule 2.02(a), Availability of rules and regulations;
- 8) Licensing Rule 2.15, Ensuring all personnel are familiar with the rules and regulations;
- 9) Licensing Rule 2.10(c), Inspections and Investigations;
- 10) Licensing Rule 2.06(f), Physical Premises;
- 11) Licensing Rule 2.04(d), Admissions to the Premises (cover charges);
- 12) M.G.L. c. 138, §16, Unlawful purchase of alcoholic beverages from any source other than a distributor;¹
- 13) 204 C.M.R. 2.08(c)(2), Delivery of more than two drinks to one person; and
- 14) 204 C.M.R. 2.07(b), Requiring licensee to keep employee, contract for goods, and cash transaction records for a period of three years.

This list adds nine (9) more violations from the Local Board’s April 9, 2015 Notice, which only listed the first five (5) violations, and omits altogether the actual violation found of 204 C.M.R. 2.05(2) found in the Local Board’s Decision (Ex. 2).

Because neither list matches the violation found in the Local Board’s Decision, the Commission need not reach any potential due process argument the Licensee could have raised regarding notice where the Local Board added nine violations that were not originally noticed to the Licensee or reach conclusions on all fourteen charges listed in the Pre-Hearing Memorandum. Only findings of violations by a Local Board may be appealed to the Commission. And here, there is only a single finding of a violation by the Local Board, and it is a violation of 204 C.M.R. 2.05(2), permitting a disturbance, disorder, or illegality (Ex. 4).

The Local Board is required to provide reasons for finding a violation: “[w]henver the local licensing authorities . . . revoke . . . a license . . . the licensing authorities shall . . . stat[e] the reasons for such action” M.G.L. c. 138, § 23. Here, the Local Board revoked the Licensee’s license for a single violation of 204 C.M.R. 2.05(2). The Local Board did not fulfill its legal

¹ The correct charge for purchasing alcohol other than those purchased from a Licensee under § 18 or § 19 or from a holder of a special license under § 22A is M.G.L. c. 138 § 23.

obligation to state its reasons for the revocation on a single violation of 204 C.M.R. 2.05(2). At best the Local Board issued a generic statement that the violation was “in connection with inspections and investigations, physical premises, environs of licensed premises, and illegal activity on licensed premises” (Ex. 4). This solitary sentence is insufficient because the Commission is left to guess what evidence introduced at the *de novo* hearing applied to this singly charged violation. It is even less clear to the Commission why 204 C.M.R. 2.05(2) was never charged in the Notice sent to the Licensee, nor was it included in the list of charged violations agreed upon in the Joint Pre-Hearing Memorandum.

A review of the record before the Commission sheds no further light on the matter. In the minutes of the Local Board hearing, a large volume of potential violations were introduced at the hearing occurring on multiple nights outside of April 3 and 9, 2015, several of which are not part of the fourteen charged violations the parties believe are before the Commission, including: changing the name of the establishment without Local Board approval (Ex. 3 at p. 2, 6), construction being performed without a permit (Ex. 3 at p. 2), patrons drinking in the street in front of the establishment, presumably with alcohol purchased inside (Ex. 3 at p. 3), alcohol bottles being refilled (Ex. 3 at p. 5), and a promotion that indicated the establishment serves free champagne (Ex. 3 at p. 6). But when Chairwoman Guzman testified before the Commission, she testified that she voted for revocation of the license because the Licensee had purchased several bottles of alcohol from §15 retailers in violation of M.G.L. c. 138, § 23.² She gave little weight as to the other allegations from April 3, 2015. Without knowing what evidence is applicable to the violation of 204 C.M.R. 2.05(2), the violation could also be for one of events addressed before the Local Board, but for which no evidence was introduced on appeal before the Commission.

Short of knowing what disturbances, disorders, or illegalities are the predicate for a violation of 204 C.M.R. 2.05(2), other than the ambiguous notation from the Local Board, the Commission is left to guess which of the incidents introduced over the two days of testimony and multiple exhibits constituted the factual basis for the finding of a violation. See, e.g., Yerardi’s Moody Street Restaurant v. Bd. of Selectmen of Randolph, 19 Mass. App. Ct. 296, 301 (1985) (in reviewing a Local Board’s reasoning, an “affidavit stating what the [board] members ‘had in mind’ [as reasoning] hardly explains their decision of Yerardi’s case; and the statement that the reasons set out were ‘not all of our reasons’ teases a court without enlightening it”).

With the plethora of potential violations before the Commission, and without more specificity as to what conduct the violation of 204 C.M.R. 2.05(2) relates to, the Commission does not find it appropriate to guess or assume that every piece of evidence – which consisted of numerous potential violations of both state and municipal law not even included in the fourteen (14) charges discussed in the Pre-Hearing Memorandum – discussed over two (2) full days of testimony relates to this one (1) charge on appeal. As the Commission has stated before, “[t]he failure to issue [a] written statement of reasons, as required by law, is fatal” to the Local Board on appeal.” Indian Meadows Golf Corp., Westborough (ABCC Decision May 14, 2003), citing Bursaw Oil Corp., Middleton (ABCC Decision March 26, 2003), and Jonathan Marra d/b/a Aficionados, Lee (ABCC Decision March 19, 2003). As can be seen here, the requirement under § 23 for a Local Board to write a clear decision is not an empty formality.

² See Footnote 1, *supra*.

Although the Commission can readily envision a situation where the title of the charge in and of itself is specific enough such that the Local Board's findings may not need to be detailed (for example, a § 12 bar purchasing alcohol from a § 15 package store in violation of § 23), a generic charge of permitting an illegality or disturbance must be supported by at least minimal facts such that the Commission – and the licensee – can understand the nature of the charges being appealed before the Commission at a *de novo* hearing. Cf. Langlitz v. Bd. of Reg. of Chiropractors, 396 Mass. 374, 377-378 (1985) (where charge was of violation regarding the content in an advertisement in the yellow pages for a chiropractor's services, the Board did not need to include further facts for the charge because the charge was apparent on its face).

Therefore, while the Commission does not condone the Licensee's apparent recalcitrance in complying with the alcoholic beverages licensing laws at both the municipal and state level, it is constrained to find that there is no substantial evidence of a violation of 204 C.M.R. 2.05(2) where nothing in the record specifies what conduct applies to the charge.

CONCLUSION

The Alcoholic Beverages Control Commission finds that the evidence presented at the hearing was insufficient to prove that the Licensee committed a violation of 204 C.M.R. 2.05(2), permitting a disturbance, disorder, or illegality on or in the licensed premises.

The Alcoholic Beverages Control Commission **DISAPPROVES** the action of the Chelsea Licensing Commission in finding a violation and revoking the alcoholic beverages license of Gran Chimu, Inc.

ALCOHOLIC BEVERAGES CONTROL COMMISSION

Kim S. Gainsboro, Chairman

Kathleen McNally, Commissioner

Dated: December 16, 2015

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。

- cc: Local Licensing Board
- Frederick G. Mahony, Chief Investigator
- Joseph J. Machera, Esq. via email
- Amy Lindquist, Esq. via email
- Administration
- File