



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

Jean M. Lorizio, Esq.
Chair

DECISION

**LAS PUPUSAS DEL CHINO INC.
92 WASHINGTON AVENUE
CHELSEA, MA 02150
LICENSE#: 00078-RS-0202
HEARD: 1/19/2022**

This is a reappeal to the Alcoholic Beverages Control Commission (the "Commission" or "ABCC") from the action of the City of Chelsea Licensing Board ("Local Board") for upholding its previous decision in revoking the § 12 wines and malt beverages license of Las Pupusas Del Chino Inc. ("Licensee") located at 92 Washington Avenue, Chelsea, MA. The Licensee timely appealed the Local Board's decision to the ABCC and a remote hearing via Microsoft Teams was held on Wednesday, January 19, 2022.

The following documents are in evidence as exhibits:

1. ABCC Decision 12/8/2021;
2. Local Board's Decision, 12/17/2021.

At the hearing, both parties stipulated to the facts as found by the Commission in its December 8, 2021, decision.

There is an audio recording of this hearing.

FINDINGS OF FACT

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

1. On March 5, 2020, an underage driver was involved in a motor vehicle accident. The driver stated he may have been drinking at Las Pupusas del Chino, Inc.
2. The Local Board charged the Licensee with violations of:
 - (a) Count One: M.G.L. c. 138, § 34, and City of Chelsea Licensing Commission Rule Section 2.08(f) and (i), regarding sale or delivery of an alcoholic beverage to a person under twenty-one (21) years of age;
 - (b) Count Two: M.G.L. c. 138, § 69, and City of Chelsea Licensing Commission Rule Section 2.08(p), regarding sale or delivery of an alcoholic beverage to an intoxicated person; and

- (c) Count Three: City of Chelsea Licensing Commission Rule 2.09(h), failing to maintain for thirty days video surveillance footage of the licensed premises.
3. After a hearing on June 18, 2020, the Local Board found the Licensee in violation of all three counts charged and voted to revoke the Licensee's license.
 4. The Licensee timely appealed the Local Board's decision to the Commission.
 5. On December 9, 2020, the Commission held an appeal hearing.
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6. By decision dated December 8, 2021, the Commission disapproved the action of the Local Board regarding Counts One and Two, and approved of the Local Board action regarding Count Three. The Commission remanded the matter with the recommendation that the license be suspended for three (3) days.
 7. On December 9, 2021, at a hearing on remand, the Local Board upheld their prior decision to revoke the Licensee's license, voted to appeal the Commission decision to Superior Court, and voted to deny the Licensee's request to operate while the appeal is pending.
 8. On December 14, 2021, the Licensee timely filed a petition for reappeal.
 9. The Local Board issued its written decision from its December 9, 2021, hearing on December 17, 2021.
 10. On Wednesday, January 19, 2022, the Commission held a hearing pursuant to M.G.L. c. 138, § 67, on the Licensee's reappeal from the action of the Local Board for failing to reinstate its license.

DISCUSSION

M.G.L. c. 138, § 67, provides that:

[a]ny person who is aggrieved by the action of the local licensing authorities in modifying, suspending, cancelling, revoking or declaring forfeited their license, may appeal therefrom to the Commission. . . . If the Commission approves the action of the local licensing authorities it shall issue notice to them to that effect, but if the Commission disapproves of their action it shall issue a decision in writing advising said local authorities of the reasons why it does not approve (said action) and shall then remand the matter to the said local authorities for further action.

The Commission held a hearing and issued a written decision on December 8, 2021, disapproving the action of the Local Board regarding Counts One and Two, and its ultimate decision to revoke the Licensee's license.

“After receipt by the local licensing authorities of a decision from the commission . . . any licensee who is aggrieved by the action of the local licensing authorities . . . revoking . . . a license . . . may, if the said local licensing authority fails within five days after receipt of said decision to take the action recommended therein, again appeal to the commission...” *Id.* The Local Board failed to take the recommended action within five days. Indeed, it held a subsequent hearing on this matter on December 9, 2021, and upheld its prior decision. Thereafter, the Licensee filed a request

for a reappeal.

The Commission held a reappeal hearing pursuant to M.G.L. c. 138, § 67, on January 19, 2022. During the hearing, the parties agreed upon the facts found by the Commission in its December 8, 2021, decision. The only matter in dispute was whether the Commission erred in finding that the Local Board was not entitled to an adverse inference that surveillance video, which was missing in admitted violation of Local Rule 2.09(h), would show the Licensee serving alcohol to a minor who displayed objective indicia of intoxication. The Local Board contends that with these adverse inferences, ~~there would be substantial evidence of violation of Counts One and Two, and~~ revocation of the Licensee's license would therefore be appropriate.

The Commission has considered the parties' arguments regarding alleged spoliation made at the reappeal hearing. For the reasons expressed in the prior Commission Decision dated December 8, 2021, which is incorporated herein by reference as if expressly set forth, the Commission again DISAPPROVES the action of the Local Board in failing to adopt the Commission's recommendation of a three-day suspension for violation of Count Three. The Commission's decision on reappeal disapproving the action of the local licensing authorities is final. M.G.L. c.138, § 67; Town of Grafton v. Alcoholic Beverages Control Commission, 1485 CV 02171 (Curran, J., Worcester) (Memorandum of Decision, Nov. 6, 2015).

CONCLUSION

The Local Board is hereby ordered pursuant to the pertinent provisions of M.G.L. c. 138, § 67, to retroactively reinstate Las Pupusas Del Chino Inc.'s license for 2020. The Local Board shall also issue renewals for 2021 and 2022 simultaneously.

If, after Las Pupusas properly renews its license, the Local Board fails to issue the license for 2022, the Commission will exercise its statutory authority pursuant to the provisions of M.G.L. c. 138, § 67, paragraph 6 and issue to Las Pupusas Del Chino Inc. a license for 2022. Pursuant to M.G.L. c. 138, § 67, this license would have the same force and effect as if issued by the Local Board.

ALCOHOLIC BEVERAGES CONTROL COMMISSION

Deborah Baglio, Commissioner Deborah A. Baglio

Jean M. Lorizio, Chairman Jean M. Lorizio

Crystal Matthews, Commissioner Crystal Matthews

Dated: February 16, 2022

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: Lawrence Christopher, Esq.
Strephon Treadway, Esq.
Local Licensing Board
Frederick G. Mahony, Chief Investigator
Administration, File