



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

Jean M. Lorizio, Esq.
Chairman

DECISION

THOMAS HILL INC. D/B/A TD'S SPORTS PUB
699 GRATTAN STREET
CHICOPEE, MA 01020
LICENSE#: 00039-RS-0220
HEARD: 5/26/2021

This is an appeal of the action of the License Commission of the City of Chicopee (the "Local Board" or "Chicopee") in suspending the M.G.L. c. 138, § 12 all alcoholic beverages license of Thomas Hill Inc. d/b/a TD's Sports Pub ("Licensee" or "TD's Sports Pub") located at 699 Grattan Street, Chicopee, Massachusetts for three (3) days. The Licensee timely appealed the Local Board's decision to the Alcoholic Beverages Control Commission (the "Commission" or "ABCC"), and a remote hearing was held via Microsoft Teams on Wednesday, May 26, 2021.

The following documents are in evidence as exhibits:

1. APA Pool Regulations;
 2. APA Sign-in Sheet;
 3. Photographs (2) of COVID compliant Plexi Glass;
 4. Photograph (1) of Kitchen Equipment;
 5. Invoice for Kitchen Equipment.
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- A. Notice to Appear at Local Board Hearing on 11/19/2020;
 - B. Chicopee Police Report # 20CHI-1276-OF;
 - C. Chicopee Police Report # 20CHI-4874-OF;
 - D. Governor Baker's Executive COVID-19 Order Banning On-Premises Consumption, 3/15/2020;
 - E. Email from ABCC re: Advisory Banning On-Premises Consumption, 3/15/2020
 - F. Reopening Phase III Mandatory Safety Standards and Checklist, 7/6/2020;
 - G. Photocopy of Certified Mail Receipt and Return Signature Card;
 - H. Email from Tom Hill Requesting Copy of Governor's Order, 11/18/2020;
 - I. Postponed Hearing Notice, 12/8/2020;
 - J. Rescheduled Hearing Notice, 2/8/2021;
 - K. Attorney S. Allen's Request for Continuance, 2/24/2021;
 - L. Rescheduled Hearing Notice, 3/2/2021;

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- M. Local Board's Notice of Suspension, 3/19/2021;
- N. DVD of Local Board's Hearing.

There is one (1) audio recording of this hearing, and two (2) witnesses testified.

FINDINGS OF FACT

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

1. Thomas Hill Inc. d/b/a TD's Sports Pub holds an all-alcoholic beverages license and operates a business at 699 Grattan Street, Chicopee, MA. TD's Sports Pub has exercised a license since 6/7/2013. Thomas Hill is the sole owner of the Licensee entity and the Manager of Record. (Testimony, Commission Records)
2. On March 10, 2020, Governor Baker declared a State of Emergency in Massachusetts due to the outbreak of the 2019 novel Coronavirus (COVID-19 virus), effective immediately. (Exhibit D)
3. On March 15, 2020, Governor Baker signed an Executive Order Prohibiting Gatherings of More than 25 People and On-Premises Consumption of Food or Drink. Said Order took effect on March 17, 2020. Id.
4. On March 15, 2020, the ABCC issued an Advisory regarding the Governor's March 15, 2020 Order. (Exhibit E)
5. TD's Sports Pub stopped serving/selling alcoholic beverages at 11:45 p.m. on March 16, 2020. (Testimony)
6. On March 17, 2020, at 12:35 a.m. Chicopee Police Officers John Mikkola and Kyle Whalley conducted a property check at TD's Sports Pub. (Testimony, Exhibit B)
7. When officers arrived at the licensed premises, there were lights on inside the establishment and people were inside. There were several bottles of alcoholic beverages on the bar and on a table, as well as other various drinks in glasses. Id.
8. Mr. Hill was the only person drinking an alcoholic beverage when the Officers entered. The bartender was actively cleaning. (Testimony)
9. Detective Michael Dion of the Chicopee Police Department is the Compliance Officer assigned to the Local Board. Id.
10. On October 24, 2020, at approximately 11:00 p.m., Det. Dion responded to TD's Sports Pub. From outside the licensed premises, Det. Dion observed approximately 20 to 25 people inside, most of whom were seated at tables. (Testimony, Exhibit C)
11. Det. Dion observed a bartender working but did not observe any patrons ordering food and/or picking up food. He saw no indication of food on tables. Det. Dion did not enter the licensed premises at this time. Id.

12. Det. Dion proceeded to the rear of the licensed premises and entered the back of the establishment. He remained just inside the door and made observations without moving about the premises. Id.
13. Patrons were playing pool and were not wearing masks. Several patrons were walking around, socializing, without masks. Id.
14. Det. Dion did not go to the bar and could not see it from his vantage point. For health and safety reasons, he only stayed in the licensed premises for a brief period of time. Id.
15. Det. Dion never went into the kitchen or inquired of patrons as to their having ordered food. Id.
16. The Local Board held a hearing on March 18, 2021, regarding alleged violations of Governor Baker's COVID-19 Orders. (Exhibit L)
17. In its decision dated March 19, 2021, The Local Board found TD's Sports Pub committed violations of:

Governor Baker's COVID Order effective March 17, 2020, prohibiting on-premises consumption of alcohol commencing at 12:00 A.M.;

Governor Baker's COVID Order No. 43 guidelines Phase III, Step 1 Licensees are reminded that until Phase IV commences all licensees licensed for the sale of alcoholic beverages for on-premises consumption must provide seated food service with the sale of alcohol. The food must be prepared on-site and under a retail food permit issued by a local licensing authority pursuant to 105 CMR 590.00. Beginning tomorrow, August 11, 2020, for each customer, an item of prepared food must be ordered at the same time as an initial alcoholic beverage(s) order. One or more shareable food item(s) may be ordered as long as it/they would sufficiently serve the number of people at the table. Items such as potato chips, pretzels and other pre-packaged or manufactured foods do not constitute food "prepared on-site." Also effective tomorrow, any licensees holding private functions on their premises must limit attendance to 25 people for indoor events and 50 people for outdoor events. Food must also be served as described in the preceding paragraph.; and

Failure to ensure proper social distancing as detailed in the Safety Standards and Checklist – Require face coverings for all customers and workers at all times, except where an individual is unable to wear a face covering due to medical condition or disability. Customers must wear face coverings unless seated at tables. (Exhibit M)¹

18. The Local Board voted to impose a 3-day suspension, one day for each of the 3 counts.

¹ The Local Board also found violations re: Failure to ensure social distancing as detailed in the Safety Standards and Checklist – All other amenities and areas not employed for food and beverage service (e.g., dance floors, pool tables, playgrounds, etc.) must remain closed or removed to prevent gathering of customers, and M.G.L. Ch. 140, § 183A. The Local Board issued a Warning for these two counts, as such these counts are not before the Commission.

19. The Licensee timely appealed the Local Board's decision to the ABCC.
20. Mr. Hill worked with a representative of the Chicopee Board of Health throughout his efforts to comply with Governor Baker's COVID Orders and followed her advice as to, among other things, installing Plexi Glass and using disposable plates, utensils and the like. (Testimony, Exhibit 4)
21. Once allowed to reopen for on-premises service, the Licensee required that each patron order sharable food, specifically at least one appetizer, when ordering their first alcoholic beverage. (Testimony)
22. Mr. Hill purchased additional kitchen equipment to keep up with the increased demand for food. (Testimony, Exhibits 4, 5)
23. The Licensee hired additional staff whose primary function was to monitor patrons' compliance with the mask requirement. (Testimony)

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), for which States have especially wide latitude pursuant to the Twenty-First Amendment to the United States Constitution. Opinion of the Justices, 368 Mass. 857, 861 (1975).

Chapter 138 was "enacted . . . to serve the public need and . . . to protect the common good." M.G.L. c. 138, § 23. In order to effectuate the purpose of Chapter 138, the Commission has "general supervision of the conduct of the business of manufacturing, importing, exporting, storing, transporting and selling alcoholic beverages. . . ." M.G.L. c. 10, § 71. As part of these "comprehensive powers of supervision over licensees," Connolly, 334 Mass. at 617, the Commission has the authority to grant, revoke and suspend licenses. "[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 law is well-settled that "the responsibility of the licensee is to exercise sufficiently close supervision so that there is compliance with the law on the premises. A vendor who sells alcohol is 'bound at his own peril to keep within the condition of his license.'" Rico's of the Berkshires, Inc. v. Alcoholic Beverages Control Comm'n., 19 Mass. App. Ct. 1026, 1027 (1985) (quoting Commonwealth v. Gould, 158 Mass. 499, 507 (1893), and citing Burlington Package Liquors, Inc. v. Alcoholic Beverages Control Comm'n., 7 Mass. App. Ct. 186, 190 (1979)).

For the Commission to make a finding, there must be substantial evidence that a violation has occurred. "Substantial evidence of a violation is more than a mere scintilla. It means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." Consol. Edison Co. of New York v. N.L.R.B., 305 U.S. 197, 229 (1938); accord Charlesbank Rest. Inc. v. Alcoholic Beverages Control Comm'n., 12 Mass. App. Ct. 879 (1981).

The Local Board has the burden of producing satisfactory proof that the Licensee committed the violations that allegedly occurred on March 17, 2020, and October 24, 2020.

Count 1 Violation of Governor Baker's COVID Order effective March 17, 2020, prohibiting on-premises consumption of alcohol commencing at 12:00 A.M.

Governor Baker's Order Prohibiting Gatherings of More than 25 People and On-Premises Consumption of Food or Drink mandates that "[a]ny restaurant, bar, or establishment that offers food or drink shall not permit on-premises consumption of food or drink; provided that such establishment may continue to offer food for take-out and by delivery provided that they follow the social distancing protocols set forth in Department of Public Health guidance." (Exhibit D) The Order goes on the state, "[t]his Order is effective March 17, 2020, and shall remain in effect through April 5, 2020 unless further extended." Id.

Mr. Hill testified he was consuming an alcoholic beverage on the licensed premises on March 17, 2020 after approximately 12:35 a.m. (Testimony) Given that admission, the Commission finds the Licensee violated Governor Baker's Order prohibiting on-premises consumption of alcohol commencing at 12:00 a.m. on March 17, 2020.

Count 2 Violation of Governor Baker's COVID Order No. 43 guidelines Phase III, Step 1 Licensees are reminded that until Phase IV commences all licensees licensed for the sale of alcoholic beverages for on-premises consumption must provide seated food service with the sale of alcohol. The food must be prepared on-site and under a retail food permit issued by a local licensing authority pursuant to 105 CMR 590.00. Beginning tomorrow, August 11, 2020, for each customer, an item of prepared food must be ordered at the same time as an initial alcoholic beverage(s) order. One or more shareable food item(s) may be ordered as long as it/they would sufficiently serve the number of people at the table. Items such as potato chips, pretzels and other pre-packaged or manufactured foods do not constitute food "prepared on-site." Also effective tomorrow, any licensees holding private functions on their premises must limit attendance to 25 people for indoor events and 50 people for outdoor events. Food must also be served as described in the preceding paragraph.

Det. Dion testified as to his observations at the licensed premises on October 24, 2020, and the fact that he did not observe patrons actively eating, or ordering and/or picking up food. The Commission finds Det. Dion to be credible and professional. However, his observations were made from either outside the licensed premises or from an area by the rear door where he remained upon entering the establishment. While understandable given the circumstances, Det. Dion did not walk throughout the licensed premises, and did not speak with any patrons to inquire if they had ordered food or had already eaten food. Det. Dion did not enter the kitchen to ascertain if food was being prepared. (Testimony)

The Licensee, on the other hand, testified that as of April, when Licensees were allowed to re-open for on-premises consumption, each patron was required to order sharable food, specifically at least an appetizer, with their initial order of an alcoholic beverage. The Licensee outlined additional steps taken to comply with the Governor's COVID Orders and policies instituted to ensure compliance. Prior to reopening, the Licensee had purchased new kitchen equipment to accommodate an increase in food orders. The Licensee, at the suggestion of the Health Department, transitioned to disposable plates and utensils so that when a patron finished eating, the plates and utensils were quickly disposed of. (Testimony, Exhibits 4,5)

The Commission is not persuaded the Licensee violated Governor Baker's COVID Order No. 43.

Count 3 Failure to ensure proper social distancing as detailed in the Safety Standards and Checklist – Require face coverings for all customers and workers at all times, except where an individual is unable to wear a face covering due to medical condition or disability. Customers must wear face coverings unless seated at tables.

The Safety Standards and Checklist for Restaurants direct that licensees must "[r]equire face coverings for all customers and workers at all times, except where an individual is unable to wear a face covering, due to medical condition or disability." (Exhibit F)

The Commission was presented with direct evidence, through the testimony of Detective Dion as to his observance of patrons playing pool and otherwise standing within the licensed premises who were not wearing face coverings. The Commission is persuaded by the evidence that a violation of the face covering requirement occurred.

Based on the evidence and testimony at the hearing, the Commission approves the action of the City of Chicopee Licensing Commission in finding a violation of Counts 1 and 3. The Commission disapproves the action of the City of Chicopee Licensing Commission in finding a violation of Count 2.

The Commission finds, considering the totality of the evidence and the fact that a state of emergency was in place, that the penalty issued by the Local Board, a one day suspension for each count, was not excessive. The Commission finds that the sanction imposed by the Local Board was a reasonable exercise of the Local Board's discretion.

CONCLUSION

The Alcoholic Beverages Control Commission **DISAPPROVES** the action of the City of Chicopee in finding that Thomas Hill Inc. D/B/A TD's Sports Pub committed a violation of Count 2 - Governor Baker's COVID Order No. 43 guidelines Phase III, Step 1.

The Alcoholic Beverages Control Commission **APPROVES** the action of the City of Chicopee in finding that Thomas Hill Inc. D/B/A TD's Sports Pub committed a violation of Count 1 - Governor Baker's COVID Order effective March 17, 2020, prohibiting on-premises consumption of alcohol commencing at 12:00 A.M. and Count 3 - Require face coverings for all customers and workers at all times, except where an individual is unable to wear a face covering due to medical condition or disability. Customers must wear face coverings unless seated at tables.

The Commission **DISAPPROVES** the action of the Licensing Board of the City of Chicopee in imposing a penalty of a 3-day suspension. The Commission **REMANDS** this matter to the Local Board with the recommendation that a penalty of a 2-day suspension be imposed and that the 2-day suspension be deemed served.

ALCOHOLIC BEVERAGES CONTROL COMMISSION

Jean M. Lorizio, Chairman

Jean M. Lorizio

Crystal Matthews, Commissioner

Crystal Matthews

Deborah Baglio, Commissioner

Deborah A. Baglio

Dated: June 27, 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: Shawn Allyn, Esq.
Kevin P. Corridan, Esq.
Local Licensing Board
Frederick G. Mahony, Chief Investigator
Administration, File