



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

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: 1/10/2023**

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 20 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 Tuesday, January 10, 2023.

The following documents are in evidence as exhibits:

- A. Chicopee Police Reports Regarding Alleged Incidents;
 - B. Joint Pre-Hearing Memorandum.
-
- 1. Record of Prior Violations;
 - 2. Recording of Hearing before LLA.

There is one (1) audio recording of this hearing, and four (4) 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 exercised at 699 Grattan Street, Chicopee, MA. Thomas Hill is the sole owner of the Licensee entity and the Manager of Record. (Testimony, Exhibit B)
2. On Thursday, June 16, 2022, at approximately 11:12 p.m. Chicopee Police Officers Berit Bjerkadal and Alexander Trusiewicz ("Officers") responded to TD's Sports Pub after the bartender called police to report an incapacitated female patron who had vomited at the bar. (Testimony, Exhibit A)
3. Upon arrival at the licensed premises, Officer Bjerkadal observed the female seated at the bar and slumped over. She had a beer in front of her. Officers were able to wake the female patron

and observed she was disoriented, with blurry eyes and slurred speech. The female did not know where she was and believed she was at home. The female patron was eventually taken into protective custody and transported to Holyoke Medical Center. Id.

4. Officer Bjerkadal spoke with the bartender, A. Laflamme, who had served the female patron and had called 911. Ms. Laflamme was cooperative with Officer Bjerkadal. Id.
5. Ms. Laflamme interacted with the female patron when she entered the licensed premises and found her to be walking and talking normally. They held a conversation, and the female patron looked the bartender in the eye. Ms. Laflamme did not observe any signs of intoxication. She served the patron a beer and shortly thereafter, the patron appeared to be asleep. Ms. Laflamme talked to her in an attempt to wake her. The patron began foaming at the mouth and twitching, made odd movements and her eyes rolled into the back of head prompting the bartender to call 911 for assistance. (Testimony)
6. The female patron had been at the licensed premises for approximately one-half hour and had been served one beer which she only partially consumed. Id.
7. On Wednesday, June 22, 2022, at approximately 12:23 a.m., Officers Zachary Smola and Lindsey Beshara ("Officers") were dispatched to TD's Sports Pub for a combative male patron attempting to fight with people in the parking lot. (Testimony, Exhibit A)
8. Upon arrival Officer Beshara observed a male outside of the licensed premises who was yelling and cursing loudly while attempting to fight with another male. He attempted to get into his Jeep and was stopped by officers. Neighbors were observed looking out their window. Officers arrested the male for disorderly conduct, handcuffed him, and placed him in the back seat of the police cruiser. Id.
9. Officer Beshara entered the licensed premises and spoke with the bartender, Ms. Laflamme, who had served the male patron and had called 911. Ms. Laflamme was cooperative with Officer Beshara. Id.
10. Ms. Laflamme interacted with the male when he entered the licensed premises. He held a conversation with her and some patrons he knew at the bar. Ms. Laflamme did not observe any signs of intoxication. The male made eye contact with her and ordered four shots, one for himself and three for the patrons he knew at the bar. Shortly thereafter, the male seemed to get offended by another patron's laughter and he got loud. Ms. Laflamme asked the male to leave the licensed premises and he willingly complied. Approximately thirty to forty minutes later, someone entered the licensed premises and informed her that there was a man in the parking lot causing problems. Ms. Laflamme called 911 to report the activity outside. (Testimony)
11. The Local Board held a hearing on August 25, 2022, regarding the alleged violations on June 16, 2022, and June 22, 2022. (Exhibit 2)

12. The Local Board found TD's Sports Pub committed violations of c. 138, section 69 (2 counts), and Ch. 140, section 183A (2 counts).¹ Id.
13. The Local Board imposed a 10-day suspension for the violations of c. 138, § 69 and a 10-day suspension for the violations of c. 140, for a total of 20-days to be served. Id.
14. The Licensee timely appealed the Local Board's decision to the ABCC. (Commission Records)

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. 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. Dolphino Corp. v. Alcoholic Beverages Control Comm'n, 29 Mass. App. Ct. 954, 955 (1990) citing United Food Corp. v. Alcoholic Beverages Control Comm'n, 375 Mass. 240 (1978). 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.

Chapter 138 was "enacted . . . to serve the public need and . . . to protect the common good." M.G.L. c. 138, § 23. 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, as amended through St. 1977, c. 929, § 7. [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 Commission is given "comprehensive powers of supervision over licensees..." Connolly v. Alcoholic Beverages Control Comm'n, 334 Mass. 613, 617 (1956).

The "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.

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).

Here, the Licensee was found in violation of M.G.L. c. 138, § 69, "No alcoholic beverages shall be sold or delivered on any premises licensed under this chapter to an intoxicated person." M.G.L. c. 138, § 69. The Local Board has the burden of producing satisfactory proof that the Licensee committed the violations that allegedly occurred on June 16, 2022, and June 22, 2022. M.G.L. c. 138, §§ 23, 64.

¹ The Commission does not have jurisdiction over licenses issued pursuant to M.G.L. c. 140. As such, the only matters for consideration in this appeal are the alleged violations of M.G.L. c. 138, § 69.

To prove the alleged violations of § 69, the following must be shown: (1) an individual was intoxicated on the licensed premises; (2) an employee of the Licensee knew or should have known that the individual was intoxicated; and (3) after the employee knew or should have known the individual was intoxicated, the employee sold or delivered an alcoholic beverage to the intoxicated individual.

June 16, 2022

The Local Board presented direct evidence only as to the female being inside the licensed premises. The Chicopee police were able to establish, through information obtained from the Licensee, that the female patron had been served one beer. The Local Board failed to produce any evidence of the female patron exhibiting signs of intoxication while inside the licensed premises, and no evidence that the Licensee knew or should have known that the female was intoxicated prior to being served an alcoholic beverage.

June 22, 2022

The Local Board produced direct evidence of the male patron being observed outside of the licensed premises. Again, through information obtained from the Licensee, the Chicopee Police were able to establish that the male patron had been inside the licensed premises and had been served one shot.² The Local Board failed to produce any evidence of the male patron exhibiting signs of intoxication while inside the licensed premises, and no evidence that the Licensee knew or should have known that the male was intoxicated prior to being served an alcoholic beverage.

The Chicopee Police Officers who testified were found to be professional and credible. However, on June 16, 2022, Officer Bjerkadal was not inside the licensed premises until responding to the bartender's 911 call. On June 22, 2022, Officer Beshara only observed the male outside of the licensed premises. Neither officer had firsthand knowledge of any of the elements necessary to support a finding of a violation of M.G.L. c. 138, § 69.

On the other hand, the Licensee offered direct evidence through the testimony of the bartender who interacted with and served the female patron on June 16, 2022, and the male patron on June 22, 2022. The bartender remembered these patrons and the fact that she had interacted with them and had not observed any signs of intoxication prior to serving them an alcoholic beverage.

Based on the evidence and testimony at the hearing, the Commission disapproves the action of the City of Chicopee Licensing Commission in finding a violation.

Further, the Local Board is reminded of the Licensee's right to due process, which includes being allowed to present witnesses at hearing, as well as to cross-examine adverse witnesses. The Commission suggests Chicopee consider reassessing any policies to the contrary.

² The male patron purchased four shots but direct evidence, by way of testimony from the bartender, indicated he purchased one for himself and three for other patrons at the bar.

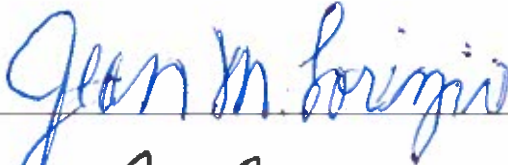
CONCLUSION

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 M.G.L. c. 138, § 69.

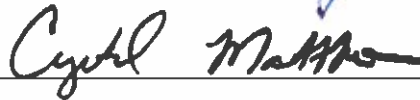
The Commission remands the matter to the Local Board with the recommendation that no modification, suspension, revocation, or cancellation of this license be ordered by the Local Board as any penalty would be discrepant with the Commission's decision.

ALCOHOLIC BEVERAGES CONTROL COMMISSION

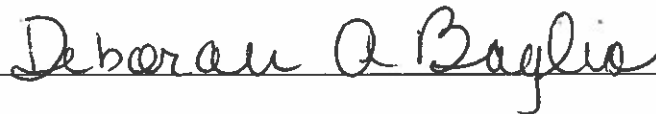
Jean M. Lorizio, Chairman



Crystal Matthews, Commissioner



Deborah Baglio, Commissioner



Dated: May 30, 2024

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。
यह दस्तावेज़ महत्वपूर्ण है और इसका तुरंत अनुवाद किया जाना चाहिए
Dokiman sa a enpòtan epi li ta dwe tradwi touswit
'Đây là tài liệu quan trọng và cần được dịch ngay'
ឯកសារនេះសំខាន់ណាស់ ហើយត្រូវបកប្រែជាបន្ទាន់។

2022-000162-ad-enf

cc: Shawn P. Allyn, Esq.
Kevin Q. Corridan, Esq.
Local Licensing Board
Frederick G. Mahony, Chief Investigator
Administration, File