

*Commonwealth of Massachusetts
Department of the State Treasurer
Alcoholic Beverages Control Commission
239 Causeway Street
Boston, MA 02114
Telephone: 617-727-3040
Facsimile: 617-727-1510*

Jean M. Lorizio, Esq.
Chairman

DECISION

**LOCAL VINES & GOURMET, LLC
132 CHIEF JUSTICE CUSHING HIGHWAY
COHASSETT, MA 02025
LICENSE#: NEW
HEARD: JULY 12, 2017**

This is an appeal from the action of the Town of Cohasset Board of Selectmen ("Cohasset Local Board") for denying without a hearing, the application of Local Vines & Gourmet, LLC ("Local Vines" or the "Applicant") for an all alcoholic beverages § 15 package store license. The Licensee timely appealed the Local Board's decision to the Alcoholic Beverages Control Commission (the "Commission") and a hearing was held on Wednesday July 12, 2017.

The following documents have been entered in evidence as exhibits:

1. Application of Local Vines & Gourmet, LLC;
2. Notice from the Cohasset Local Board, dated September 15, 2016;
3. ABCC Decision, dated August 9, 2016 for Sajjan Enterprises;
4. Local Vines Notice of Appeal, dated October 21, 2016;
5. Notice from Town Manager to Applicant's Counsel, dated October 15, 2016;
6. Docket Sheet re: Sajjan Enterprises, LLC v. ABCC, Suffolk Superior Court CA # 16-84CV02564.

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

FINDINGS OF FACT

The Commission makes the following findings of fact and rulings of law based on the evidence presented at the hearing.

1. Local Vines and Gourmet, LLC ("Applicant" or "Local Vines"), filed an application for an all alcoholic beverages § 15 package store license with the Board of Selectmen for the Town of Cohasset ("Cohasset Local Board") on or about August 24, 2016. (Exhibit 1, Testimony)
2. On September 15, 2016, counsel for Local Vines received a letter from Jennifer Brennan Oram, Assistant to the Town Manager of Cohasset, stating, "As you know . . . there are no G.L. c. 138, § 15 All Alcohol licenses available in the town as the one license that might

become available in the future is presently being held up by an Appeal of an ABCC decision to Superior Court. We will keep your application on file in this office.” (Exhibit 2)

3. A few weeks later, on October 5, 2016, counsel for Local Vines received a letter from Christopher Senior, the Town Manager of Cohasset, reaffirming that, “Town Counsel has advised the Town that there are currently no such available [§ 15 all alcohol] licenses, as the one which you reference remains encumbered by active litigation. I appreciate that you have a different opinion, but until such time as I am instructed otherwise by Town Counsel or the ABCC, my office’s position remains that there are currently no available all alcoholic beverage package store licenses in the Town of Cohasset.” (Exhibit 5)
4. In its letters to Local Vines, the Cohasset Local Board, through the Town Manager’s office, was referring to the § 15 all alcoholic beverages package store license at issue in Sajjan Enterprises LLC, d/b/a Cohasset Wine and Spirits vs. Alcoholic Beverages Control Comm’n, 1684-CV-02564. (Exhibit 6)
5. On December 9, 2015, Sajjan Enterprises, LLC, d/b/a Cohasset Wine and Spirits (“Sajjan”) had appealed to the Commission the denial of an application to transfer its § 15 package store license by the Local Board. (Exhibit 3)
6. During the pendency of Sajjan’s appeal to the Commission, Sajjan attempted to renew its license on November 11, 2015. This renewal was denied by the Cohasset Local Board sometime in the end of 2015. Sajjan never appealed this denial of its renewal application to the Commission. (Exhibit 3)
7. On August 9, 2016, the Commission held that Sajjan’s appeal was moot because it did not have a valid and active license since it did not appeal the Cohasset Local Board’s denial of its renewal application for 2016. Sajjan Enterprises, LLC, d/b/a Cohasset Wine & Spirits, Cohasset (ABCC Decision Aug. 9, 2016). (Exhibit 3)
8. Sajjan has appealed the Commission’s determination to Superior Court, where it is currently pending. (Exhibit 6)
9. Sajjan has not sought a stay of the Commission’s decision with either the Commission, or with the Superior Court. (Commission files, Exhibit 6)
10. Local Vines appealed the Cohasset Local Board’s failure to act on its application and failure to schedule a hearing on its application on October 21, 2016. (Exhibit 4)

DISCUSSION

This matter is before the Commission for the appeal filed by Local Vines and Gourmet, LLC (“Local Vines” or “Applicant”), on the failure to act on its application for a § 15 all alcoholic beverages package store license by the Board of Selectman for the Town of Cohasset (“Cohasset Local Board”), and the Cohasset Local Board’s failure to hold a hearing on the application. The issue which Local Vines raises before the Commission is whether the applicant should have been afforded a hearing before the Cohasset Local Board when the Cohasset Local Board believed it did not have any § 15 all alcoholic beverages licenses to issue.

When a Local Board receives an application for a § 12 or § 15 retail license, the Local Board must act on the application, either granting or dismissing the application, within thirty (30) days. M.G.L. c. 138, §16B. However, a hearing MUST be afforded before the granting or dismissal of an application. M.G.L. c. 138, § 15A (“No application shall be acted upon by the local licensing authorities except after hearing thereon . . .”). Failure to act on an application, including the failure to hold a hearing, within thirty days constitutes the denial of the application and the applicant may appeal to the Commission. M.G.L. c. 138, § 67 (“Any applicant for a license who is aggrieved by the action of the local licensing authorities in refusing to grant the same, or by their failure to act within the period of thirty days . . . may appeal therefrom to the commission . . .”).

As Local Vines was not afforded a hearing on its application, Local Vines appealed to the Commission pursuant to § 67. The Cohasset Local Board contends that a hearing would have been futile because it has no relevant licenses available to issue. Local Vines, on the other hand, argues that one § 15 all alcoholic beverages license is available, that of Sajjan Enterprises, LLC (“Sajjan”), License Number 023800015.

Section 15A is clear: before a Local Board takes any action on an application, the applicant MUST be afforded a hearing. There is no exception to this requirement for futility. The Cohasset Local Board in this matter should have afforded Local Vines a hearing on its application, even if it believed that such a hearing would be fruitless.

Furthermore, a hearing before the Cohasset Local Board would not necessarily be in vain because, as the Commission held in Sajjan Enterprises, LLC, d/b/a Cohasset Wine & Spirits, (ABCC Decision Aug. 9, 2016), Sajjan does not hold a § 15 license because it was not renewed for license/calendar year 2016.

The Cohasset Local Board denied Sajjan’s application to transfer its license on November 24, 2015. Sajjan appealed this decision to the Commission. Pending its appeal to the Commission, Sajjan’s renewal application for 2016 was denied. However, Sajjan never appealed the denial of its renewal application. Since Sajjan never appealed this denial of its renewal application, its license expired on December 31, 2015. M.G.L. c. 138, § 23.

On August 9, 2016, the Commission held that Sajjan’s appeal was moot because it did not have a valid and active license for license/calendar year 2016. Sajjan Enterprises, LLC, d/b/a Cohasset Wine & Spirits, Cohasset (ABCC Decision Aug. 9, 2016); see Zelman v. Alcoholic Beverages Control Comm’n, 335 Mass. 515 (1957) (a licensee’s appeal becomes moot when the licensee fails to effectively renew its license).

Sajjan has appealed the Commission’s determination that it does not have a § 15 license to the Superior Court. Even though this appeal is pending in the Superior Court, the Commission’s determination that Sajjan has no § 15 license is a binding and controlling legal determination by the Commission.

Adjudicatory decisions by administrative agencies, including the Commission, are not automatically stayed pending Superior Court resolution. M.G.L. c. 30A, § 14(3). Sajjan has not sought a stay of the Commission’s decision with the Commission or with the Superior Court, based

on a review of the Superior Court docket.¹ Id. Unless “either the [Commission] or the reviewing court grants a stay of enforcement, the [Commission’s] decision will be enforced, and the person seeking judicial review is required to comply with the [Commission’s] decision even while his civil action for judicial review is still pending and not acted upon by the court.” Cella, Alexander, Massachusetts Practice: Administrative Law & Practice, § 1555 (1986). Accord id. at n. 6 (1986) (“The better policy for a party aggrieved or adversely affected by a final decision of an agency in an adjudicatory proceeding is undoubtedly to seek a stay of enforcement in order to preserve the *status quo* and eliminate the burdens of compliance pending judicial review of the agency’s decision”). Therefore, unless and until Sajjan obtains a stay from either the Commission or the Superior Court, the Commission’s decision regarding Sajjan, that it is not a current § 15 licensee, remains in full force and effect.

CONCLUSION

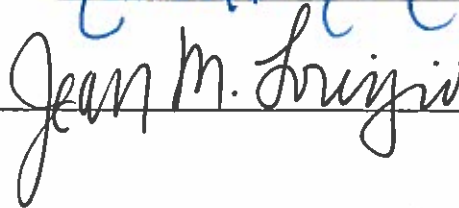
For the foregoing reasons, the Local Board’s denial of Local Vines and Gourmet, LLC’s, application for an all alcoholic beverages § 15 package store license without a hearing is **DISAPPROVED**. The Commission remands this matter to the Cohasset Local Board to hold a hearing regarding the application for an all alcoholic beverages § 15 package store license filed by Local Vines and Gourmet, LLC as required pursuant to M.G.L. c.138, § 15A.

ALCOHOLIC BEVERAGES CONTROL COMMISSION

Kathleen McNally, Commissioner



Jean Lorizio, Chairman



Dated: September 15, 2017

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.

¹ The Superior Court docket in Sajjan Enterprises LLC, d/b/a Cohasset Wine and Spirits vs. Alcoholic Beverages Control Comm’n, 1684-CV-02564, reflects that a hearing is scheduled for November 1, 2017, on the parties’ cross-motions for judgment on the pleadings.

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cc: John Connell, Esq.
Kimberly Saillant, Esq.
Local Licensing Board
Frederick G. Mahony, Chief Investigator
Administration, File