



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

Jean M. Lorizio, Esq.
Chair

DECISION

**SAJJAN ENTERPRISES, LLC D/B/A COHASSET WINE AND SPIRITS
27-29 SOUTH MAIN STREET
COHASSET, MA 02025
LICENSE#: 023800015
HEARD: 3/30/16**

This is an appeal of the action of the Town of Cohasset Board of Selectmen (the "Local Board" or "Cohasset") for denying the 2016 license renewal of Sajjan Enterprises, LLC d/b/a Cohasset Wine and Spirits ("Licensee" or "Sajjan") located at 27-29 South Main Street, Cohasset, Massachusetts. The Licensee timely appealed the Local Board's decision to the Alcoholic Beverages Control Commission (the "Commission" or "ABCC"), and a hearing was held on Thursday, May 16, 2019.

The following documents are in evidence:

1. Licensee's Pre-Hearing Memorandum and Exhibits;
2. Cohasset's Pre-Hearing Memorandum and Exhibits;
3. Cohasset's Administrative Record re: Action of Renewal Application of Sajjan Enterprises LLC with exhibits 1-11;
4. Map of Cohasset;
5. Notice of All-Alcohol § 15 licenses available as of 12/4/2017;
6. Deed of Subject Property (29 South Main Street, Cohasset) to Mr. Sajjan;
7. Deed of Subject Property (807 Chief Justice Cushing Highway) to Sajjan Enterprises LLC;
8. Local Board Meeting Minutes, 11/24/2015.

There is one (1) audio recording of this hearing, and three (3) witnesses testified.

FINDINGS OF FACT

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

1. Sajjan Enterprises LLC, d/b/a Cohasset Wine and Spirits ("Sajjan" or "Licensee"), has held a § 15 all alcohol license at 27-29 South Main Street, Cohasset, since September 2013. The

manager of record is Debra Sajjan, and she is married to Joginder Sajjan. (Testimony, Exhibit 2-A)¹

2. In October 2014, Sajjan lost its lease for 27-29 South Main Street and stopped operating its licensed premises at that time. (Testimony)
3. Sajjan timely applied for renewal in November 2014. The Local Board renewed Sajjan's license at 27-29 South Main Street on December 9, 2014, despite knowing Sajjan no longer had a lease or the ability to operate at that location. (Testimony; Exhibit 2-A)
4. On November 24, 2014, Sajjan filed a transfer application to transfer its license to 807 Chief Justice Highway. (Exhibit 2-B)
5. The Local Board scheduled a hearing on the transfer application for January 20, 2015. (Exhibit 2-C)
6. Three days before the hearing Sajjan requested a continuance of sixty to ninety days so "that Sajjan can re-examine the proposed site to obtain all necessary permits from the Town Boards, as well as, a site plan to meet all requirements of the Town or consider other options for relocation of the license." (Exhibit 2-D)
7. The January 20, 2015, hearing still went forward. At the hearing, Mr. Sajjan explained that he had a purchase and sales agreement for 807 Chief Justice Cushing Highway, contingent on the transfer of location being approved. The Local Board determined that "additional information should be gathered on what the Board's options are in regard to the change of location application," so it continued the hearing to February 3, 2015. (Exhibit 2-E)
8. On January 26, 2015, Robert Egan, the Building Commissioner for Cohasset, sent a letter to the Local Board recommending that it "delay any action on [Sajjan's] application until Planning and Zoning issues have been addressed and resolved." Mr. Egan's letter raised concerns of the need to study whether there was adequate parking and safe ingress and egress at the location, and he stated that there would need to be a Planning Board site plan review before a retail business could operate in the space. (Exhibit 2-F)
9. That same month, Mr. Egan met with the Sajjans to discuss the use of the site for a retail business and informed them that the site would need a site plan review with the Planning Board. (Testimony)
10. At the February 3, 2015, Local Board hearing, Sajjan requested a continuance "so that they can re-examine the proposed site and possibly consider another location." The hearing was then continued until April 14, 2015. (Exhibit 2-G)
11. Sajjan filed another request for a continuance on April 8, 2015, for three additional months because "[p]lans are being developed and are ready for submission to the Town's appropriate Boards and Building Inspector." (Exhibit 2-H)
12. This request for a continuance was granted on April 14, 2015, at the Local Board hearing. (Exhibit 2-I)
13. On July 23, 2015, Sajjan requested another continuance of three months. It stated that "[p]lans were developed [for transfer to 807 Chief Justice Cushing Highway] however the Building Department has concerns with them. In the alternate Sajjan is looking at two additional locations and will know about them in August." (Exhibit 2-J)
14. On August 25, 2015, the Local Board granted the continuance to October 31, 2015, and "ask[ed] Mr. Sajjan to come before the Board on 9/22 for an update." (Exhibit 2-K)

¹ The Local Board's Prehearing memorandum, Exhibit 2, contains several of its own exhibits, labeled by letter. They are cited as ("Exhibit 2 - ").

15. On September 21, 2015, Sajjan filed a "Form 10 – Application for Approval of a Site Plan," which Mr. Egan had informed Sajjan it would need to proceed with a retail business at 807 Chief Justice Cushing Highway. (Exhibit 2-M)
16. The next day, Sajjan requested another continuance of the transfer application hearing. In its letter to the Local Board, Sajjan explained that "[t]he only space available is the property at 807 Chief Justice Cushing Highway. An Application for Approval of a Site Plan has been submitted to the Planning Board along with a Septic Design. . . . I would ask the Board for consideration in a further extension to give time for the review by the Planning Board. . . ." (Exhibit 2-L)
17. Mr. and Mrs. Sajjan appeared at the September 22, 2015, Local Board meeting. Mr. Sajjan explained that he was in the process of purchasing 807 Chief Justice Cushing Highway, and that Sajjan had submitted its application for approval of a site plan and septic design with the Planning Board. (Exhibit 2-N)
18. The Planning Board met on October 21, 2015. The Planning Board requested additional information from Sajjan, including a traffic study, to be submitted by November 4, 2015, so it could be considered at its November 18, 2015, meeting. (Exhibit 2-O)
19. On November 11, 2015, Sajjan applied for its license renewal for 2016, listing 27-29 South Main Street as its licensed premises. (Exhibit 2-P)
20. On November 4, 2015, Sajjan recorded the deed for 807 Chief Justice Cushing Highway. (Exhibit 6)
21. The Planning Board continued its November 18, 2015, hearing to January 6, 2016, because Sajjan had failed to file the requested documents in time. (Exhibit 2-Q)
22. At the November 24, 2015, Local Board meeting, the Local Board voted to deny Sajjan's transfer application because "more than [a] year after filing an application for transfer of location, the License Holder still did not possess a legal location to operate a retail liquor store. . . . the Licensing Authority found that substantial questions remain as to whether the License Holder would be able to acquire the proper permits in order to legally operate at his proposed site at any point in the foreseeable future." (Exhibit 2-R)
23. The Local Board then cautioned Sajjan that "[t]he Board will consider the dormancy of the current license at the upcoming annual renewals." (Exhibit 8)
24. Thirteen days later, the Local Board voted on renewals on December 8, 2015. The Local Board voted to reject Sajjan's renewal "due to lack of a legal premises." (Exhibit 2-S)
25. Sajjan had never been provided notice of the December 8, 2015, hearing. (Testimony)
26. On February 3, 2016, the Planning Board unanimously approved the application for site plan approval for renovation of an existing retail building and parking area at 807 Chief Justice Cushing Highway. (Exhibit 3)
27. Sajjan timely appealed the denial of its transfer application to the Commission. After a hearing, the Commission held that Sajjan's appeal was moot because it had not appealed the rejection of its 2016 renewal application. (Administrative File)²
28. Sajjan then appealed the Commission's decision to the Superior Court. In its ruling on the parties' motions for judgment on the pleadings, the Superior Court allowed Sajjan's motion, finding the Commission erred in finding Sajjan's appeal moot because Sajjan did not have notice that its failure to appeal the rejection of its renewal would be at issue before the Commission. The Court then remanded the matter to the Commission, with a

² The parties had no objection to the Commission taking administrative notice of its file on Sajjan.

suggestion that the Commission could “further remand to the Board to address the renewal issue” (Exhibit 2-T)

29. The Commission, following the Superior Court’s recommendation, remanded the renewal matter to the Local Board. (Exhibit 2-U)
30. As a result of the Commission’s remand to the Local Board, the Local Board gave notice of a hearing on the 2016 license denial to Sajjan on September 27, 2018. (Exhibit 2-V) In its notice of hearing, the Local Board gave two bases for the hearing: (1) whether your 2016 Off-Premises License Renewal Application should be approved or rejected and denied,” and (2) “whether any license that may exist be modified, suspended, cancelled, revoked, or declared forfeited . . . as a result of incomplete and inaccurate statements in the renewal application, failure to conduct the business, failure to exercise the license, failure to have a suitable location to conduct the business and non-compliance with the applicable alcohol licensing laws” (Exhibit 2-V)
31. The hearing commenced on October 9, 2018, and continued to November 7, 2018. The Local Board agreed to only consider the facts and circumstances as they existed in December 2015 in considering whether to renew Sajjan’s license for 2016 *nunc pro tunc*. (Exhibit 2-X, 2-Y, 3)
32. Shortly thereafter, the Local Board rejected Sajjan’s renewal application for 2016 unanimously voting “to deny the renewal application of the 2016 Retail Package Store License for failure to have a proper location from which to operate the license and, failure to conduct and operate the licensed business.” It did not reach the issue of whether the license should be cancelled. (Exhibit 2-Y)

DISCUSSION

General Laws c. 138, § 23, provides that “[e]very license and permit granted under the provisions of this chapter, unless otherwise provided in such provisions, shall expire on December thirty-first of the year of issue, subject, however, to revocation or cancellation within its term.” M.G.L. c. 138, § 23. A § 15 licensee has a prima facie right to renew its license every November, subject to certain conditions. M.G.L. c. 138, § 16A. A renewal application can be rejected for cause, however, subject to appeal under § 67. M.G.L. c. 138, § 16A.

The Local Board notified Sajjan that it would hold a hearing on two separate matters:

- 1) “whether your 2016 Off-Premises License Renewal Application should be approved or rejected and denied,” and
- 2) “whether any license that may exist be modified, suspended, cancelled, revoked, or declared forfeited . . . as a result of incomplete and inaccurate statements in the renewal application, failure to conduct the business, failure to exercise the license, failure to have a suitable location to conduct the business and non-compliance with the applicable alcohol licensing laws

(Exhibit 2-V). After the hearing, the Local Board did not act on the second ground in the notice, but instead it acted only on the first issue of renewal for 2016, unanimously voting “to deny the renewal application of the 2016 Retail Package Store License for failure to have a proper location

from which to operate the license and, failure to conduct and operate the licensed business.” (Exhibit 2-Y). Because the Local Board rejected Sajjan’s renewal application on two separate bases, each basis is addressed in turn below.

Non-Use of the License

The Local Board rejected Sajjan’s renewal application for 2016 in part for non-use of the license. Non-use of a license, a so-called “pocket license,” requires a specific procedure be followed before the license can be cancelled under M.G.L. c. 138, § 77. Town of Saugus v. Alcoholic Beverages Control Comm’n, 1884-CV-02875 (Leighton, J., August 22, 2019); EKB Corporation, Inc. d/b/a Sully C’s Bar and Grill (ABCC Decision August 16, 2018).

However, instead of following the proper procedure for cancellation, the Local Board attempted to circumvent these requirements by not technically “cancelling” the license under § 77 but instead denying the renewal of the license for cause under § 16A. A Local Board cannot sidestep the requirements of § 77 by invoking § 16A in its stead. Therefore, the Commission will evaluate whether the requirements of § 77 were met in order to conclude whether “cause” was established for the denial of Sajjan’s renewal for non-use. For the following reasons, the Commission concludes that the requirements of § 77 were not met.

“The licensing authorities may, after hearing or reasonable opportunity therefore, cancel any licensed issued under [ch. 138] if the licensee ceases to conduct the licensed business.” M.G.L. c. 138, § 77. Because the Commission reviews the cancellation as if the Board had denied the original application, M.G.L. c. 138, § 77, it will give “reasonable deference to the discretion of the local authorities” and determine whether “the reasons given by the local authorities are based on an error of law or are reflective of arbitrary or capricious action.” Great Atlantic & Pacific Tea Co., Inc. v. Bd. of License Commissioners of Springfield, 387 Mass. 833, 837, 838 (1983); accord Ballarin, Inc. v. Licensing Bd. of Boston, 49 Mass. App. Ct. 506, 512 (2000) (when reviewing the local board’s authority, court does not assess the evidence but rather “examine[s] the record for errors of law or abuse of discretion that add up to arbitrary and capricious decision-making”).

Due process requires notice and an opportunity to be heard. Notice is not a mere formality. Notice must include “adequate notice setting forth the charge which forms the basis” of the action by the local licensing authority. Konstantopoulos v. Whately, 384 Mass. 123, 135 (1981). The Supreme Judicial Court has held that a letter warning a licensee of “adverse action” if it failed to comply with a condition imposed by a local licensing authority did not meet the requirements of procedural due process where the letter relied on did not provide the licensee with the “time or place of a hearing nor did it indicate that a revocation hearing would ensue if [the licensee] failed” to comply with the local licensing authority’s conditions. Konstantopoulos, 384 Mass. at 135; accord Piona v. Alcoholic Beverages Control Commission, 332 Mass. 53 (1954).

The Local Board was correct in its 2018 decision to view the facts it had before it at the time it considered Sajjan’s renewal application in December 2015. The Local Board contends that Sajjan received notice on November 24, 2015, where, in its meeting minutes regarding Sajjan’s attempt to transfer its license to a new location, it stated that “The Board will consider the dormancy of the current license at the upcoming annual renewals.” (Exhibit 8). Because the Local Board provided

no notice of a hearing date or potential adverse action against Sajjan's license, this notice is woefully inadequate to put Sajjan on notice of potential cancellation of its license.

Instead, the Local Board first gave Sajjan proper notice of potential cancellation of its license on September 27, 2018, when it gave notice of the hearing for October 9, 2018 (Exhibit 2-V). Therefore, the clock for cancellation proceedings did not start until September 27, 2018.

"It is the ABCC's practice to allow a licensee *at least* six months from the date it is notified of its risk of cancellation to cure its non-use of the license either by using the license or filing an application to transfer the license." Town of Saugus Board of Selectmen v. Alcoholic Beverages Control Comm'n, 1884-CV-02875 (Leighton, J., August 22, 2019). "The [ABCC's] sense of fairness is forward looking and the time within which the [l]icensee must act does not begin to run until the [l]icensee is first put on notice that there is a potential enforcement of [G.L. c. 138, § 77.]" Id., quoting EKB Corporation, Inc. (ABCC Decision, August 16, 2018); accord Empresa Guanacas, Inc. d/b/a Mango Grill Fine Latin Cuisine (ABCC Decision March 13, 2009). Indeed, "[t]he Commission [is] justifiably furthering a reasonable policy of having licensees receive adequate notice of a local board's intent to cancel a valid but currently inactive license" Board of Selectmen of Saugus v. Alcoholic Beverages Control Commission, 32 Mass. App. Ct. 914, 917 (1992).

The Local Board did not afford Sajjan at least six months from its notice of potential cancellation of September 27, 2018. Accordingly, rejection of renewal based on non-use was inappropriate as Sajjan did not receive proper notice of potential non-renewal based on non-use.

Even if it had received proper notice on November 24, 2015, Sajjan was not afforded six months to exercise its license from that date. Instead, its license renewal was denied only two weeks later. For this reason also, the Local Board did not comply with the cancellation procedure.

Furthermore, while a licensee must be afforded at least six months to exercise its license, that is the floor, not the ceiling. A local licensing authority should take into consideration reasonable efforts a licensee is making to transfer the license. "[A] reasonable period of time should be afforded the licensee" "where a licensee is making good faith efforts to transfer its license" EKB Corporation, Inc. (ABCC Decision August 16, 2018); accord Town of Saugus Board of Selectmen v. Alcoholic Beverages Control Comm'n, 1884-CV-02875 at *9.

Sajjan had been making good faith efforts to transfer its license to a new location. It had purchased the property where it was seeking to transfer its license, 807 Chief Justice Cushing Highway. Sajjan was cooperating with the Planning Board's request for filing an application for approval of a site plan, and a hearing had been scheduled for early 2016 on its application for site plan review. Indeed, the Planning Board even requested that the Local Board take no action on Sajjan's transfer application until its review could be completed. Instead of granting the request,³ the Local Board acted only days later, rejecting renewal on December 8, 2015.

³ It is important to note that the Planning Board only needed until February 3, 2016, when it rendered its decision unanimously approving Sajjan's application for site plan review.

Because the proper procedure was not followed for the cancellation of a license, there was no “cause” to reject Sajjan’s renewal application on non-use grounds.

Failure to Have a Proper Location

The Local Board’s second ground for rejecting Sajjan’s 2016 renewal application was for “failure to have a proper location from which to operate the license”

It is settled that the failure to have a physical location at which to exercise a license can constitute cause to reject automatic renewal by a local licensing authority. Selectmen of Sudbury v. Alcoholic Beverages Control Comm’n, 25 Mass. App. Ct. 470 (1988); Akurigu Enterprises, Inc. d/b/a 7-Eleven (ABCC Decision August 9, 2013).

Where rejection of a renewal application has been approved because of a lack of physical premises, the local licensing authority had always warned the licensee that failure to have a physical premises could result in nonrenewal. Akurigu Enterprises, Inc. d/b/a 7-Eleven (ABCC Decision August 9, 2013); P&G Enterprises, Ind. d/b/a One Stop Chicopee (ABCC Decision June 22, 2005); Atara LLA d/b/a Atara Bistro (ABCC Decision October 17, 2003). Here, not only did the Local Board never warn Sajjan that it risked losing its license over not having a physical location, it knowingly permitted Sajjan to keep its license without a physical location for over a year, and Sajjan was never under the impression that adverse action would be taken on its license at least until the Planning Board’s determinations were made.

As with the first ground for rejection, the Local Board also decided this issue by considering only the facts it would have had before it at the time of its consideration of Sajjan’s renewal application in 2015. At that time, the Local Board had been waiving the requirement that Sajjan have a physical premises for its license for over a year. It had renewed Sajjan’s license for 2015 despite knowing that Sajjan had already lost its lease and would have no location for 2015. The Local Board then granted at least eight continuances for hearings over the course of almost a year regarding Sajjan’s attempt to transfer the license’s location, without ever warning Sajjan that it was risking nonrenewal for failure to have a premises. In fact, the first indication the Local Board was questioning Sajjan’s license status was when it informed Sajjan that Sajjan should appear at the Local Board’s September 20, 2015, meeting in order to discuss the “status” of Sajjan’s transfer application, the time of the fifth request for a continuance. But then the Local Board went on to grant at least three more continuances after Sajjan appeared at the September hearing, reflecting that it must have been, or at least appeared to be, satisfied with the progress Sajjan was making on its transfer application.

The failure to have a suitable physical location by the time Sajjan applied for its 2016 renewal was also due to the Planning Board process. The Planning Board had requested that Sajjan file for site plan review, which it did in September 2015.⁴ The Planning Board even requested that the Local

⁴ The Commission acknowledges that the Planning Board informed the Sajjans in January 2015 that it should file an application for site plan review. However, no deadline was given to Sajjan on when to file and it filed the application two months before the Local Board voted on the transfer application.

Board take no action on Sajjan's application until it had ruled on the application for site plan approval. But the Planning Board hearing on that application would not even occur until January 2016 – a month after the Local Board denied the transfer application, having ignored the Planning Board's request for delay on the transfer application vote. Once it denied the transfer application, it almost immediately rejected Sajjan's renewal for failure to have a physical location. Sajjan should not have been prejudiced in its expectation in automatic renewal of its license on these grounds.

Finally, if the Local Board believed that it did not have a proper renewal application before it, it was required to treat the application as an application for a new license. Selectmen of Sudbury, 25 Mass. App. Ct. at 471. The Local Board did not do so here.

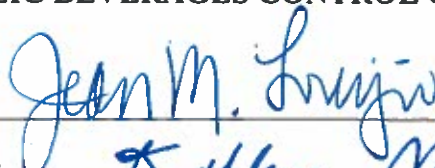
Where the Local Board has raised no valid grounds for "cause" to reject Sajjan's 2016 license renewal application, the Commission **DISAPPROVES** of the Local Board's action.

CONCLUSION

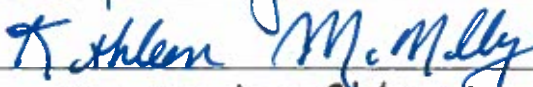
Based on the evidence, the Alcoholic Beverages Control Commission **DISAPPROVES** the action of the Local Board in rejecting the M.G.L. c. 138, § 12, license renewal application of Sajjan Enterprises, LLC and recommends that the license be issued for 2016, 2017, 2018, and 2019, *nunc pro tunc*.

ALCOHOLIC BEVERAGES CONTROL COMMISSION

Jean M. Lorizio, Chairman



Kathleen McNally, Commissioner



Elizabeth A. Lashway, Commissioner



Dated: October 3, 2019

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: Local Board
Sajjan Enterprises LLC
Administration, File