



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

**Jean M. Lorizio, Esq.**  
*Chairman*

**DECISION**

**JOEST LLC DBA IL RISTORANTE MASSIMO OF LEGACY PLACE  
400 LEGACY PLACE  
DEDHAM, MA 02026  
LICENSE#: 04516-RS-0274  
HEARD: 05/01/2024**

This is an appeal of the action of the Town of Dedham Board of Selectmen (the "Local Board" or "Dedham") in suspending the M.G.L. c. 138, § 12 Retail All Alcoholic Beverages on Premises License of Joest LLC d/b/a IL Ristorante Massimo of Legacy Place ("Licensee", "Joest" or "IL Ristorante Massimo") located at 400 Legacy Place, Dedham Massachusetts for three (3) days. The Licensee timely appealed the Local Board's decision to the Alcoholic Beverages Control Commission (the "Commission"), and a remote hearing was held via Microsoft Teams on Wednesday, 05/01/2024.

The following documents are in evidence as exhibits:

1. ABCC 2023 Compliance Check Guidelines;
2. Town of Dedham Compliance Check Protocols;
3. Dedham Police Department Public Notice;
4. Notice to Joest of Warning, 01/28/2022;
5. Notice to Joest of License Suspension, 08/22/2022;
6. Hearing Notice, 01/05/2024, Police Report, 11/08/2023, Notice of License Suspension, 02/14/2024.

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:

1. Joest LLC d/b/a IL Ristorante Massimo of Legacy Place ("Licensee", "Joest" or "IL Ristorante Massimo") located at 400 Legacy Place, Dedham, Massachusetts, holds a § 12 Retail All Alcoholic Beverages on Premises License. (Testimony, Commission Records)
2. The Town of Dedham has its own Compliance Check Protocols. (Testimony, Exhibit 2)

3. The Town of Dedham's Compliance Check Protocol No. 1 states "Notification that compliance check will be taking place will be made in the media prior to the start date." (Exhibit 2)
4. The Town of Dedham's Compliance Check Protocol No. 11 states, "If asked for identification, the underage person should present their own valid driver's license." Id.
5. Notice that compliance checks would be conducted in 2023 was published in The Dedham Times on January 20, 2023. Notice was also posted to the Dedham Police Department's social media page. (Testimony, Exhibit 3)
6. The notice published in the Dedham Times provided, "As part of these compliance checks, the Dedham Police may have underage operatives without any valid identification attempt to purchase alcohol. Alternatively, underage operatives may present a valid Driver's License which reflects that the operative is under 21 years of age, to be sure that liquor license holders are actually checking the license and understand what they are looking for." (Exhibit 3)
7. On November 8, 2023, at approximately 5:30 p.m., Dedham Police conducted a compliance check at the licensed premises. An underage operative entered the licensed premises in possession of his valid "under 21" vertical Massachusetts driver's license. (Testimony, Exhibit 6)
8. The underage operative had been instructed to produce his true Massachusetts Driver's License if asked for identification. (Testimony, Exhibit 2)
9. Upon entering the premises, the underage operative went directly to the bar and ordered a Bud Light beer. (Testimony, Exhibit 6)
10. The underage operative was asked by the Licensee's employee to produce identification, and he provided his valid "under 21" Massachusetts driver's license. The Licensee's employee examined the license and served the underage operative an alcoholic beverage. Id.
11. The underage operative notified Dedham Police after being served the alcoholic beverage. A detective entered the licensed premises to speak with the bartender and manager. Id.
12. The Local Board held a hearing on January 18, 2024 regarding the compliance check. Id.
13. On February 8, 2024, the Local Board voted and found Joest violated M.G.L. c. 138, § 34, 204 CMR 2.05(2), and Rule #21 of the Rules and Regulations for Holders of Alcoholic Beverage Licenses in the Town of Dedham. The Local Board further voted to issue a three (3) day suspension, with two (2) days to be held in abeyance for a period of one (1) year, and one (1) day to be served on Wednesday, February 28, 2024. 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.

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), as well as broad authority to issue regulations. The Local Board has authority to enforce Commission regulations. New Palm Gardens, Inc. v. Alcoholic Beverages Control Comm’n, 11 Mass. App. Ct. 785, 788 (1981).

These “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. In addition, the Local Board has the burden of producing satisfactory proof that the licensee violated or permitted a violation of any condition thereof, or any law of the Commonwealth. M.G.L. c. 138, §§ 23, 64.

The Commission’s decision must be based on substantial evidence. See Embers of Salisbury, Inc. v. Alcoholic Beverages Control Comm’n, 401 Mass. 526, 528 (1988). “Substantial evidence” is “such evidence as a reasonable mind might accept as adequate to support a conclusion.” *Id.* Evidence from which a rational mind might draw the desired inference is not enough. See Blue Cross and Blue Shield of Mass. Inc. v. Comm’r of Ins., 420 Mass. 707 (1995). Disbelief of any particular evidence does not constitute substantial evidence to the contrary. New Boston Garden Corp. v. Bd. of Assessor of Boston, 383 Mass. 456, 467 (1981).

The Local Board charged the Licensee with violating M.G.L. c. 138, § 34 Sale or Delivery of alcohol to a person under 21 years of age, 204 C.M.R. 2.05(2): “permitting any disorder, disturbance or illegality of any kind to take place in or on the licensed premises,” and Rule No. 21 of the Rules and Regulations for Holders of Alcoholic Beverage Licenses in the Town of Dedham - Sale or Delivery of alcohol to a person under the age of 21 years is prohibited. (Exhibit 6)

Massachusetts General Law Chapter 138 provides a comprehensive scheme for the regulation of alcoholic beverages. Pursuant to M.G.L. c. 138, § 34 the sale of alcoholic to minors is prohibited, and imposes both criminal and civil sanctions. M.G.L. c. 138, § 34 provides, “Whoever makes a sale or delivery of any alcoholic beverages or alcohol to any person under 21 years of age, either for his own use or for the use of his parents or any other person...or whoever furnishes any such beverages or alcohol for a person under 21 years of age shall be punished by a fine of not more

than \$2,000 or by imprisonment for not more than one year or both.” The Appeals Court has stated that “the purpose of the statute [is] to protect the welfare of children from the danger of alcohol,” See Tobin v. Norwood Country Club, Inc., 422 Mass. 126, 133-134 (1996); Fran’s Lunch, Inc. v. Alcoholic Beverages Control Comm’n, 45 Mass.App.Ct. 663, 664 (1998). To enforce the provisions of M.G.L. c. 138, § 34, both the Commission and local licensing authorities commonly perform compliance checks on licensed establishments.

The legality of the use of a minor to conduct sting operations was decided in Fran’s Lunch, Inc. v. Alcoholic Beverages Control Comm’n, 45 Mass. App. Ct. 663 (1998). The Appeals Court held that in permitting a person under twenty-one (21) years of age to purchase alcoholic beverages in a “sting” operation at a licensed premises, neither the Alcoholic Beverages Control Commission nor a municipal police department, violated M.G.L. c. 138, § 34A, the statute prohibiting a person under the age of twenty-one (21) years old from purchasing alcoholic beverages. The Court’s rationale was that the purchase of alcoholic beverages by the under-age operative was made to ferret out violators of the Liquor Control Act, M.G.L. c. 138, and as a result promoted the purpose of the statute. The Appeals Court further held that where a “sting operation was conducted in accordance with published guidelines designed to insure that such operations were conducted fairly, the commission could properly rely on this evidence.” Fran’s Lunch, 45 Mass. App. Ct. at 665.

In this matter, the Licensee does not dispute the underage operative was served an alcoholic beverage by an employee at the licensed premises. However, Joest argues the compliance check was not properly conducted as the underage operative, when asked for identification by the Licensee’s employee, presented his Massachusetts driver’s license. Joest asserts that the underage operative’s actions were not in compliance with Commission Compliance Check Guidelines.

The Commission has recognized, in True Flavors LLC (ABCC Decision, dated May 31, 2017) that there is no statutory requirement a local licensing authority adopt the Commission’s Compliance Check Guidelines. Rather, a local licensing authority is required to conduct compliance checks in strict compliance with published guidelines, whether their own or the Commission’s. Here, Dedham had Compliance Check Protocols in place, advertised upcoming compliance checks as mandated in Protocol No. 1 and went so far as to specify in its notice that an underage operative may produce his or her valid driver’s license, as provided for in Protocol No. 11. (Exhibits 2, 3)

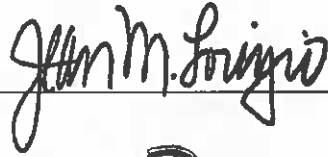
The Commission finds that Dedham conducted the compliance check fairly and in conformity with its guidelines. The Commission further finds the imposition of a 3-day suspension, with 1 day to be served and 2 days to be held in abeyance for 2 years, a reasonable exercise of the Local Board’s discretion.

### CONCLUSION

Based on the evidence and rulings above, the Alcoholic Beverages Control Commission **APPROVES** the action of the Town of Dedham Board of Selectmen in suspending the license of Joest LLC d/b/a IL Ristorante Massimo of Legacy Place for three (3) days

ALCOHOLIC BEVERAGES CONTROL COMMISSION

Jean M. Lorizio, Chairman



Deborah Baglio, Commissioner



Dated: April 4, 2025

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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Το έγγραφο αυτό είναι σημαντικό και θα πρέπει να μεταφραστούν  
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这份文件是重要的，应立即进行翻译。

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2024-000030-ad-enf

cc: Amanda Cascione, Esq.  
Brian Riley, Esq.  
Local Licensing Board  
Frederick G. Mahony, Chief Investigator  
Administration, File