



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

Jean M. Lorizio, Esq.
Chairman

**HARBOR VIEW HOTEL OWNER LLC D/B/A HARBOR VIEW HOTEL
131 NORTH WATER ST.
P.O.BOX 7
EDGARTOWN, MA 02539
LICENSE#: 0116-00177**

MEMORANDUM AND ORDER
ON APPELLANT'S MOTION FOR SUMMARY DECISION

The Licensee, Harbor View Hotel Owner LLC d/b/a Harbor View Hotel, has moved for summary decision on an appeal it filed with the Alcoholic Beverages Control Commission pursuant to M.G.L. c. 138, § 67. In its motion, and the sole issue on appeal, is whether the Edgartown Licensing Authority lawfully rolled back the Licensee's hours for its poolside bar to 12:00 pm – 6:00 pm. For the foregoing reasons, the Commission allows the Licensee's motion for summary decision.

BACKGROUND

Harbor View Hotel Owner LLC d/b/a Harbor View Hotel (the "Licensee" or "Harbor View Hotel") holds an all alcoholic beverages license issued pursuant to M.G.L. c. 138, § 12, located at 131 North Water Street, Edgartown, Massachusetts.

In October 2019, the Licensee applied for an alteration of premises to relocate its poolside bar.

On December 30, 2019, the Town of Edgartown Licensing Authority (the "Local Board") approved the Licensee's alteration of premises application. However, without advance notice to the Licensee, it added a condition to limit the hours of operation of the pool bar from 12:00 p.m. to 6:00 p.m. and had it printed on the Licensee's license.

The Licensee timely appealed the Local Board's rollback of hours to the Alcoholic Beverages Control Commission (the "Commission") and a hearing was scheduled for the appeal on March 26, 2020.

On March 4, 2020, the Local Board informed the Commission that it declined to appear at the

scheduled appeal hearing. The March 26th hearing was then postponed due to the Commonwealth's State of Emergency to be rescheduled to another date.

On June 15, 2020, the Licensee filed a Motion for Summary Decision on its pending appeal. The following day, counsel for the Local Board informed the Commission that it would not file any opposition to the Licensee's Motion for Summary Decision.

DISCUSSION

The only issue on appeal to the Commission, and the only issue before the Commission in the Licensee's Motion for Summary Decision, is whether the Local Board's rollback of the Licensee's hours to 12:00 pm to 6:00 pm was lawful.

It is well settled that § 12 licensees are statutorily permitted to make sales from 11:00 am to 11:00 pm and sales between those hours may not be curtailed by any licensing authorities.

Section 12 of Chapter 138 provides, in relevant part:

The hours during which sales of such alcoholic beverages may be made by any licensee as aforesaid shall be fixed by the local licensing authorities either generally or specially for each licensee; provided, however, that no such sale shall be made on any secular day between the hours of two and eight o'clock antemeridian and that, except as provided in section thirty-three, **no such licensee shall be barred from making such sales on any such day after eleven o'clock antemeridian and before eleven o'clock postmeridian**

(Emphasis supplied). Accord Casa Loma Inc. v. Alcoholic Beverages Control Comm'n, 377 Mass. 231 (1979); Herbert J. Allen, Inc. d/b/a Roy's Pub (ABCC Decision Sept. 19, 1991).

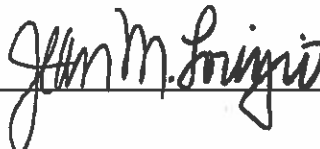
Therefore, the Local Board's rollback of hours, insofar as they were rolled back to hours between 11:00 am and 11:00 pm, was unlawful.

CONCLUSION

The Alcoholic Beverages Control Commission **ALLOWS** the Licensee's Motion for Summary Decision in its Appeal of Harbor View Hotel Owner LLC d/b/a Harbor View Hotel. Based on the above order, the Commission remands the matter to the Local Board to remove the rollback of hours and issue the Licensee a new liquor license which does not contain this restriction.

ALCOHOLIC BEVERAGES CONTROL COMMISSION

Jean M. Lorizio, Chairman



Crystal Matthews, Commissioner



Dated: June 18, 2020

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: Kevin P. O'Flaherty, Esq.
James Lampke, Esq.
Frederick G. Mahony, Chief Investigator
Local Licensing Board
Administration, File