

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

Jean M. Lorizio, Esq.
Chairman

DECISION

**AFONSO COSTA OF USA, INC. D/B/A REPUBLICAN CLUB
1600 NORTH MAIN STREET
FALL RIVER, MA 02720
LICENSE#: 00060-CL-0388
HEARD: 4/14/2021**

This is an appeal of the action of the City of Fall River Licensing Board (the "Local Board" or "Fall River") for suspending the § 12 all-alcohol license of Afonso Costa of USA, Inc. d/b/a Republican Club located at 1600 North Main Street, Fall River MA, for a total of 83 days. The Licensee timely appealed the Local Board's decision to the Alcoholic Beverages Control Commission (the "Commission" or "ABCC"), and a remote hearing via Microsoft Teams was held on Wednesday, April 14, 2021.

The following documents are in evidence:

1. Report of Fall River Police Detective B. Cordeiro, Incident #20-646-OF, 10/4/2020;
2. City of Fall River's Food Inspection Report, 10/4/2020;
3. Fall River's Licensing Board Rules & Regulations, Revised 6/7/2000;
4. Local Board Decision, 12/7/2020;
5. Atty. Brilhante's Email to Local Board, 1/12/2021;
6. Licensee's Appeal to ABCC, 1/4/2021.

There is one (1) audio recording of this hearing.

FINDINGS OF FACT

1. Afonso Costa of USA, Inc. d/b/a Republican Club located ("Licensee" or "Republican Club") holds a § 12 all alcoholic beverages club license. The Licensee is located at 1600 North Main Street, Fall River, Massachusetts. (Commission Records)
2. On October 4, 2020, Fall River Police Detective Brian Cordeiro and City of Fall River Health Inspector Robert Cloutier ("Inspectors") conducted an inspection of Republican Club. (Exhibit 1)

3. On December 3, 2020, the Local Board held a hearing regarding an alleged violation on October 4, 2020 of Rule #7 of the Fall River Licensing Board Rules and Regulations. (Exhibit 4)
4. The Local Board noted that the Republican Club was on probation from a prior incident in which its license had been suspended for 30 days, seven (7) days of which had been served in September 2020 and the balance of 23 days held in abeyance. *Id.*
5. The Local Board voted to suspend the Republican Club's license for 60 days for the October 4, 2020 violation and to add the 23 days from the prior suspension. As such, the Board voted to impose an 83-day suspension. *Id.*
6. The Licensee timely appealed the Local Board's decision to the Commission. (Exhibit 6)
7. Attorney Gregory Brilhante, Counsel for the Licensee, appeared at the Commission hearing.
8. No representative from the Local Board of the City of Fall River appeared at the Commission hearing.
9. At the Commission hearing, Atty. Brilhante made an oral motion for the Commission to find in favor of Appellant due to failure of the Local Board to participate.

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). 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.

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, 710 (1995). "The Local Board has the burden of producing satisfactory proof to the Commission that the licensee committed the alleged violations." Jaman Corp., d/b/a Crossroads (ABCC Decision Nov. 4, 2010).

The Local Board has the burden of producing satisfactory proof before the Commission that the Licensee committed the alleged violation of the Fall River Licensing Board Rules and Regulations on the date of October 4, 2020.

The Local Board has both the burden of proof and the burden of production regarding these charges. No representatives from the City of Fall River Local Board appeared at the Commission hearing. The Commission finds that there was no evidence presented as to the Licensee

committing these violations. As a result, the Commission makes a finding of No Violation of the Local Board Rules and Regulations committed by the Licensee on October 4, 2020, as alleged by the Local Board.

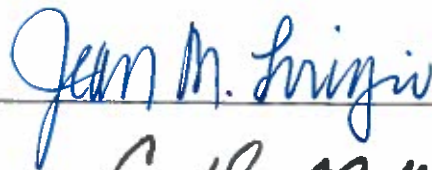
CONCLUSION

Based on the findings and rulings above, the Alcoholic Beverages Control Commission ("Commission") **DISAPPROVES** the action of the Local Board in finding the Licensee committed a violation of the Fall River Licensing Board Rules and Regulations on October 4, 2020.

Therefore, the Commission **DISAPPROVES** the action of the Local Board in ordering a 60-day suspension. The Commission remands the matter to the Local Board with the recommendation that no further action be taken against the Licensee as any penalty would be discrepant with the Commission's decision.

ALCOHOLIC BEVERAGES CONTROL COMMISSION

Jean M. Lorizio, Chairman



Crystal Matthews, Commissioner



Deborah A. Baglio, Commissioner



Dated: April 28, 2021

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: Gregory Brilhante, Esq.
Frederick G. Mahony, Chief Investigator
Local Licensing Board
Administration, File