



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

Jean M. Lorizio, Esq.
Chairman

DECISION

**INTERGAS SERVICES CENTER, INC.
607 MAIN STREET
FALMOUTH, MA 02540
LICENSE # 89189-PK-0309
VIOLATION DATE: 7/12/2019
HEARING DATE: 9/21/2021**

Intergas Services Center, Inc. ("Licensee") holds an alcohol license issued pursuant to M.G.L. c. 138, § 15. The Alcoholic Beverages Control Commission ("Commission") held a remote hearing via Microsoft Teams on September 21, 2021, regarding an alleged violation of M.G.L. c. 138, § 64 – failure to comply with a Commission order and terms of suspension. Prior to the commencement of the hearing, the Licensee stipulated to the facts alleged in Investigator Velez's Violation Report.

The following documents are in evidence:

1. Investigator Velez's Violation Report;
2. Licensee's Accela License Summary, License Approved 11/10/2017;
3. ABCC Decision, 7/25/2018;
4. Town of Falmouth Decision, 12/6/2019; and
5. Licensee's Stipulation of Facts

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

FINDINGS OF FACT

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

1. The Licensee, Intergas Services Center, Inc., has held an all-alcohol § 15 retail package store license since 2017.
2. On July 25, 2018, the Commission found that the Licensee had violated 104 C.M.R. 205(2) – Permitting an illegality on the licensed premises, to wit: M.G.L. c. 138, § 34 – Sale or delivery of an alcoholic beverages to a person under twenty-one years of age.
3. The Commission suspended the license for two (2) days to be held in abeyance for a period of two (2) years provided no further violations of Chapter 138 or Commission Regulations

occur.

4. On December 6, 2019, the Town of Falmouth Board of Selectmen found that on July 12, 2019, the Licensee violated M.G.L. c. 138, § 64, “for the sale of an alcoholic beverage to a person under the age of 21 years” The Town of Falmouth issued a written warning to the Licensee.

DISCUSSION

Licenses to sell alcoholic beverages are a special privilege subject to public regulation and control, Connolly v. Alcoholic Beverages Control Comm’n, 334 Mass. 613, 619 (1956), for which States have especially wide latitude pursuant to the Twenty-First Amendment to the United States Constitution. Opinion of the Justices, 368 Mass. 857, 861 (1975). The procedure for the issuance of licenses and required conduct of licensees who sell alcoholic beverages is set out in Massachusetts General Laws, Chapter 138.

Chapter 138 gives the Commission the authority to grant, revoke and suspend licenses. Chapter 138 was “enacted . . . to serve the public need and . . . to protect the common good.” M.G.L. c. 138, § 23. “[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, 334 Mass. at 617.

The Licensee is charged with a violation of M.G.L. c. 138, § 64: Failure to comply with a Commission order and terms of suspension. In 2018, the Commission found the Licensee in violation of 205 C.M.R. 2.05(2) and M.G.L. c. 138, § 34, and imposed a suspension “for two (2) days which will be held in abeyance for a period of two (2) years provided no further violations of Chapter 138 or Commission Regulations occur.” Within that two-year period of abeyance, the Town of Falmouth found that the licensee violated “M.G.L. c. 138, § 64 for the sale of an alcoholic beverage to a person under the age of 21 years on [July 12, 2019].” (Exhibit 4) Investigator Velez’s Violation Report charges that this 2019 violation violated the terms of the 2018 Commission decision.

Inherent in that order is a requirement that the Commission must find a subsequent violation occurred in that two-year period. This finding must be supported by substantial evidence – “evidence as a reasonable mind might accept as adequate to support a conclusion.” M.G.L. c. 30A, §§ 1(6) & 14(7)(e). “Substantial evidence may be based on hearsay alone if that hearsay has ‘indicia of reliability.’” Covell v. Department of Social Services, 439 Mass. 766, 786 (2003), quoting Embers of Salisbury, Inc. v. Alcoholic Beverages Control Comm’n, 401 Mass. 526, 530 (1988). Indicia of reliability include: 1) corroboration of the hearsay statements; 2) the hearsay declarant’s motive, or lack thereof, to make false accusations; 3) the consistency and detail of the hearsay; 4) whether the hearsay was made under oath; and 5) the credibility of other witnesses contesting the hearsay declarant’s account. Covell, 439 Mass. at 786-87. The Commission can also look to “the circumstances under which” the hearsay statements are made. Edward E. v. Department of Social Services, 42 Mass. App. Ct. 478, 484, 486 (1997).

The evidence introduced to prove a subsequent violation occurred was the Town of Falmouth Decision (Exhibit 4) and the Licensee's stipulation to the facts (Exhibit 5).¹

The Town of Falmouth's decision provides no factual support for a finding of a violation. Without impugning the Town of Falmouth's decision, the Commission cannot rely solely on a local board's findings – it is the Commission's obligation to find its own facts in evaluating whether there is substantial evidence of a violation. Indeed, under M.G.L. c. 30A, § 11(8), the Commission's decision must include a "determination of each issue of fact . . . necessary to the decision" See, e.g., Registrar of Motor Vehicles v. Board of Appeal on Motor Vehicle Liability Policies and Bonds, 382 Mass. 580, 591 (1981) (Board's decision was insufficient because it did not contain adequate factual findings for the court to consider whether it was arbitrary or capricious, or there was an abuse of discretion or error of law).

Given the above, the Commission does not find substantial evidence of a second violation within two years of the Commission's 2018 decision.²

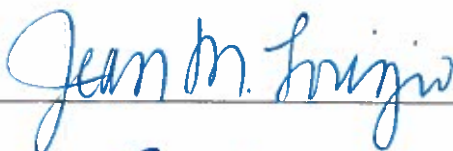
The Commission cautions that relying solely on a local board's decision without corroborating evidence of the underlying facts will likely never rise to the level of substantial evidence of a violation.

CONCLUSION

Based on the evidence, the Commission finds NO VIOLATION of M.G.L. c. 138, § 64 – failure to comply with a Commission order occurred.

ALCOHOLIC BEVERAGES CONTROL COMMISSION

Jean M. Lorizio, Chairman



Crystal Matthews, Commissioner



Deborah A. Baglio, Commissioner



Dated: August 16, 2022

¹ The Commission did not take administrative notice of the Town of Falmouth's decision and reserves for another day whether it will consider taking administrative notice of local board decisions under M.G.L. c. 30A, § 11 (5), or whether a local board decision, standing alone, can ever constitute substantial evidence of a violation.

² While the Licensee stipulated to the facts presented, as noted above there were insufficient facts introduced.

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 Licensing Board
Frederick G. Mahony, Chief Investigator
Kyle E. Gill, Esq., Associate General Counsel
Nicholas Velez, Investigator
Richard Harb, Esq.
Administration, File