



*The Commonwealth of Massachusetts*  
*Department of the State Treasurer*  
*Alcoholic Beverages Control Commission*  
*Boston, Massachusetts 02114*

*Steven Grossman*  
*Treasurer and Receiver General*

*Kim J. Gainsboro, Esq.*  
*Chairman*

**MEMORANDUM AND ORDER ON**  
**FRAMINGHAM'S BOARD OF SELECTMEN**  
**MOTION IN LIMINE**

**EL MANAHRI THE HERMIT, INC.**  
**d/b/a NOBSCOT CONVENIENCE & DELI**  
**908 EDGELL ROAD**  
**FRAMINGHAM, MA 01701**  
**LICENSE#: NEW**  
**HEARD: 7/30/2014**

El Manahri, The Hermit, Inc. d/b/a Nobscot Convenience & Deli (the "Licensee") and the Framingham Board of Selectmen ( the "Appellee") appeared before the Commission on July 30, 2014 for a hearing on a Motion In Limine, filed by the Appellee. The Appellee sought to exclude from admission both a prior decision by the Alcoholic Beverages Control Commission (the "Commission") dated March 4, 2003, and meeting minutes of the Licensing Authority dated August 7, 2003. The Appellee argued that said exhibits are irrelevant and any probative value would be outweighed by the prejudicial effect which is a standard applied in Massachusetts Courts, not administrative agencies.

Under M.G.L. c. 30A §14.1, the State Administrative Act, agencies need not observe the rules of evidence.<sup>1</sup> The only evidence inadmissible is that which is privileged See Morriss v. Board of Registration and Medicine, 405 Mass 103, 107-108, 539 NE2d 50, 52-53 (1989).

An agency, such as the Commission, has wide latitude in rulings of evidentiary matters and the admission of evidence. See Massachusetts Automobile Rating & Accident Prevention Bureau v. Commissioner of Insurance, 401 Mass 282, 285-286, 516 ne2d 1132, 1134-1135 (1987); Planning Board of Braintree v. Department of Public Utility, 420 Mass. 22, 30-31, 647 ne2d 1186, 1192, Massachusetts Commission Against Discrimination, 31 Mass App 84, 88, 575 NE2d 77 (1991), (hearing commissioner has discretion to admit evidence, even if it would be inadmissible under rules of evidence if it bears indicia of reliability).

<sup>1</sup> §14.1 (2) Unless otherwise provided by any law, agencies need not observe the rules of evidence observed by courts, but shall observe the rules of privilege recognized by law. Evidence may be admitted and given probative effect only if it is the kind of evidence on which reasonable persons are accustomed to rely in the conduct of serious affairs. Agencies may exclude unduly repetitious evidence, whether offered on direct examination or cross-examination of witnesses.

(4) All evidence, including any records, investigation reports, and documents in the possession of the agency of which it desires to avail itself as evidence in making a decision, shall be offered and made a part of the record in the proceeding, and no other factual information or evidence shall be considered, except as provided in paragraph (5) of this section. Documentary evidence may be received in evidence in the form of copies or excerpts, or by incorporation by reference.

In the case before the Commission, the prior decision of the ABCC would be part of the complete record of the licensee, and the Commission would take administrative notice of it. The Commission would, as a matter of course, review prior decisions involving the Licensee. Although the Commission may not deem the prior decision relevant to the matter before the Commission, the decision would be admissible because it is part of the Licensee's administrative record. The weight which this will be given will be determined by the Commission upon deliberation.

The Appellee argues that to allow its introduction would preclude the Town from receiving a fair, independent, and impartial hearing. The Commission is aware of the date of the decision, is and would, presumably, hear evidence regarding the current circumstances in the Town. Pursuant to M.G.L. c. 30A §11 (2), while the Commission does not observe the rules of evidence observed by Massachusetts Courts, it observes the rules of privilege recognized by law. Under this statute, agencies are given discretion to exclude unduly repetitious evidence. The minutes of the August 7, 2003 Selectmen's meeting were not unduly repetitious in nature, and dealt with an issue regarding the withdrawal due to the lack of a manager. While the Appellee argues that the minutes pertaining to this issue are not relevant to the matter at hand, the Commission has the authority to allow its introduction, and the weight with which it will be afforded.

#### CONCLUSION

Therefore, the Commission **DENIES** the Appellee's Motion In Limine.

#### **ALCOHOLIC BEVERAGES CONTROL COMMISSION**

Susan Corcoran, Commissioner, \_\_\_\_\_

Kathleen McNally, Commissioner \_\_\_\_\_

Dated: September 10, 2014

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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Frederick G. Mahony, Chief Investigator  
Administration  
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