



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

Deborah B. Goldberg
Treasurer and Receiver General

Kim J. Gainsboro, Esq.
Chairman

DECISION

MOKSH LLC D/B/A DACEY'S MARKET
345 LINCOLN STREET
FRANKLIN, MA 02038
LICENSE#: 043000044
HEARD: 10/28/2015

This is an appeal of the action of the Town of Franklin Town Council (the "Local Board") for suspending the M.G.L. c. 138, §15 all alcohol license of Moksh LLC d/b/a Dacey's Market (the "Licensee" or "Daceys") located at 345 Lincoln Street, Franklin, MA, for a period of seven (7) days of which four (4) days will be served and three (3) days will be held in abeyance. The applicant timely appealed the Local Board's decision to the Alcoholic Beverages Control Commission (the "Commission") and a hearing was held on Wednesday, October 28, 2015.

The following documents are in evidence as exhibits:

1. Local Board's Decision dated 7/10/2015 with Swetal Patel's Handwritten note requesting the appeal;
2. Commission Notice of Appeal Hearing dated 08/20/2015;
3. Local Board's Motion to Dismiss dated 08/28/2015; and
4. Local Board's Pre-Hearing Memorandum dated 09/30/2015.

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

The Commission took Administrative Notice of the Licensee's Commission files.

FACTS

1. Moksh LLC d/b/a Dacey's Market is a Massachusetts corporation with a principal office located at 345 Lincoln Street, Franklin, MA. The company lists manager, signatory, and registered agent as Swetal Patel. (Secretary of the Commonwealth, Corporations Division website)

2. Moksh was approved for a \$15 retail package store all alcoholic beverages license transfer on March 1, 2010. (Commission Records)
3. On July 8, 2015, the Local Board found the licensee committed a violation of M.G.L. ch. 138, section 34, sale of alcoholic beverages to a minor, which occurred on June 19, 2015. (Local Board minutes, Pre-Hearing Memorandum)
4. For this violation, the Local Board imposed a sanction of a seven day license suspension, with four days to serve and three days held in abeyance for a period of two years. (Local Board minutes, Pre-Hearing Memorandum)
5. The Applicant timely appealed the Local Board's decision to the Commission. (Exhibit 1)
6. The Commission sent a Notice of Appeal Hearing to the Licensee and the Local Board.
7. On approximately September 22, 2015, Town Counsel Mark Cerel contacted the Commission concerning the joint pre-hearing memorandum. Counsel Cerel had not heard from Mr. Patel despite several attempts to contact him. (Commission records)
8. The Commission's assistant, Ms. Patricia Hathaway, testified before the Commission on the scheduled hearing date regarding communications with the licensee. (Testimony)
9. Ms. Hathaway had contacted Mr. Patel via telephone concerning the joint pre-hearing memorandum. (Testimony)
10. Mr. Patel advised the Commission's assistant that he would be consulting an attorney, and that his attorney would then submit the Licensee's part of the pre-hearing memorandum after Thursday, September 24, 2015. (Testimony)
11. The Commission received the Town of Franklin's part of the pre-hearing memorandum but it never received any such memorandum from the Licensee. (Commission records)
12. The Commission did not receive any written or verbal notice from the Licensee withdrawing his appeal request. (Testimony, Commission Records)
13. The Commission's assistant contacted Mr. Patel via telephone on the scheduled hearing date to inquire as to his absence. (Testimony)
14. Mr. Patel stated that he had sent a letter withdrawing his appeal, several weeks earlier. (Testimony)
15. On Wednesday, October 28, 2015, an appeal hearing was held as scheduled. (Commission Records)
16. The Commission hearing was scheduled for 1:30 p.m. The Commission waited until 2:12 p.m. prior to commencing the hearing. (Commission Records)
17. The Licensee did not contact the Commission and failed to appear at the hearing. (Commission Records)
18. The Licensee sent a handwritten note after the hearing was concluded, via facsimile, on October 29, 2015 at 2:37 p.m., withdrawing the appeal. (Commission records)

CONCLUSION

The Licensee or an authorized representative failed to appear and pursue this appeal. The Licensee withdrew his appeal subsequent to the scheduled hearing. Therefore, this matter is **DISMISSED WITH PREJUDICE FOR FAILURE OF THE APPELLANT TO APPEAR.**

ALCOHOLIC BEVERAGES CONTROL COMMISSION

Kathleen McNally, Commissioner

Kathleen McNally

Elizabeth A. Lashway, Commissioner

Elizabeth A. Lashway

Dated: November 12, 2015

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cc: Mark Cerel, Esq. via email
Local Licensing Board
Frederick G. Mahony, Chief Investigator
Swetal Patel
File