



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

Steven Grossman
Treasurer and Receiver General

DECISION

Kim J. Gainsboro, Esq.
Chairman

TAVERN MANAGEMENT CORPORATION
30 WESTERN AVE
GLOUCESTER, MA 01930
LICENSE#: 045000050
HEARD: 5/11/2011

This is an appeal of the action of the licensing board of the City of Gloucester (the "Local Board") in denying the renewal of Tavern Management Corporation (the "Tavern" or the "Licensee") all alcoholic beverages license for calendar year 2011. On January 18, 2011, the Local Board held a hearing that resulted in the revocation and removal of the license. The Licensee timely appealed the Local Board's decision to the Alcoholic Beverages Control Commission (the "Commission") and a hearing was held on May 11, 2011.

The following exhibits are in evidence by agreement of the parties:

1. June 26, 2008 Local Board Notification of Hearing;
 2. July 21, 2008 Local Board Reply for Continued Hearing;
 3. August 12, 2008 Minutes of Local Board and Tavern Hearing;
 4. August 29, 2008 Local Board Reply for Issuing a Decision for the Hearing;
 5. September 09, 2008 Minutes of Local Board and Tavern Hearing;
 6. October 28, 2008 Local Board Reminder for Continued Hearing;
 7. November 18, 2008 Minutes of Local Board and Tavern Hearing;
 8. November 10, 2009 Minutes of Local Board and Tavern Hearing;
 9. December 8, 2009 Minutes of Local Board and Tavern Hearing;
 10. January 18, 2011 Minutes of Local Board and Tavern Hearing;
 11. January 11, 2011 Local Board Hearing Notice;
 12. January 11, 2011 Local Board Correspondence;
 13. Tavern License with Expiration Date of January 27, 2011;
 14. January 20, 2011 Local Board Decision; and
 15. Tavern Request for a Commission Appeal Hearing.
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- A. License issued to the Tavern;
 - B. April 4, 1988 Letter from Local Board to Tavern managers informing them of failure to operate;
 - C. March 27, 1989 Letter from Tavern agreeing to extend hours;
 - D. March 30, 1989 Letter from Local Board regarding extend hours;
 - E. October 22, 1992 Letter from the Local Board regarding noise complaint;
 - F. August 3, 1992 Correspondence regarding noise complaint;
 - G. August 10, 1993 Noise Complaint;

- H. June 11, 1993 List of Functions to be held;
- I. July 8, 2008 Local Board Meeting Correspondence;
- J. August 12, 2008 Local Board Meeting Correspondence;
- K. May 8, 2008 Local Board Correspondence for Informational Hearing;
- L. May 16, 2008 Tavern Response for Informational Hearing Postponement;
- M. April 22, 2008 Local Board Reply for Granting Postponement of Hearing;
- N. June 4, 2008 Tavern Response for Informational Hearing Postponement;
- O. June 26, 2008 Local Board Notification of Hearing;
- P. July 21, 2008 Local Board Reply for Continued Hearing;
- Q. August 29, 2008 Local Board Reply for Issuing a Decision for the Hearing;
- R. October 28, 2008 Local Board Reminder for Continued Hearing;
- S. November 17, 2008 Withdrawal of Appearance by Tavern Attorney, John E. Coyne;
- T. December 12, 2008 Tavern Letter to the Local Board;

There is one (1) tape of this hearing.

FACTS

1. In November 1987, the Local Board granted and the Commission approved the Licensee's application for an all alcoholic beverages license.
2. There is no dispute that the Licensee filed a timely application to renew its license for the Calendar year 2011, pursuant to M.G.L. c. 138§16A.
3. The renewal was for the same type of license and the same premises as licensed in 2010.
4. The Local Board accepted the application and the licensee fee, but never issued the license.
5. The Local Board did not hold a hearing to determine whether it should deny the Licensee's application for renewal.
6. In January, the Licensee asked the Local Board about the status of its license.
7. On January 18, 2011, the Local Board voted to "remove and revoke the license for non-use."
8. The Licensee filed an appeal of the Local Board's decision.

DISCUSSION

M.G.L. c. 138, §16A controls the license renewal process of alcoholic beverages licenses and confers upon such licensees a prima facie right to renewal. A timely filed renewal application may still be rejected for cause by a local licensing authority, subject to certain constitutional principles. See Piona v. Selectmen of Canton, 333 Mass. 510, 511 (1956); M.G.L. c. 138, § 16A. The holder of a license is clothed "with a constitutionally protected interest of which he may not be deprived without procedural due process." Konstantopoulos v. Whately, 384 Mass. 123, 132 (1981).

In Konstantopoulos, the Supreme Judicial Court held, "[o]nce licenses are issued, ... their continued possession may become essential in the pursuit of a livelihood. Suspension of issued licenses ... involves state action that adjudicates important interests of the licensees. In such cases the licenses are not to be taken away without that procedural due process required by the Fourteenth Amendment" Konstantopoulos, 384 Mass. at 132 quoting Barry v. Barchi, 443 U.S. 55, 69-70 (1979)(Brennan, J., concurring in part).

Procedural due process requires "adequate notice setting forth the charge which forms the basis" of the action by the local licensing authority, a hearing and "an opportunity to call witnesses and cross-examine the opposing witnesses, if any, in a reasonable fashion." Konstantopoulos, 384 Mass. at 135 citing Foster from Gloucester, Inc. v. City Council of Gloucester, 10 Mass. App. 284 (1980). The Supreme Judicial Court has held that a letter warning a licensee of "adverse action" if it failed to comply with a condition imposed by a local licensing authority did not meet there requirements of procedural due process where the letter relied on did not provide the licensee with the "time or place of a hearing nor did it indicate that a revocation hearing would ensue if [the licensee] failed" to comply with the licensing authority's condition. Id.

This Commission has been found to be in error when it rejected an appeal by a licensee of an action taken by a local board that had failed to provide required notice. In Piona v. Alcoholic Beverages Control Commission, 332 Mass. 53 (1954), the Supreme Judicial Court held that in "failing to allow an appeal from a local board which had omitted to provide notice required by statute ... '(the commission) countenanced and gave effect to the error which the board had committed.'" Board of Selectmen of Barnstable v. Alcoholic Beverages Control Commission, 373 Mass. 708, 717, note 14 (1977). In reaching its decision, the Supreme Judicial Court also cited to M.G.L. c. 30A, § 14(8)(d), that authorizes a reviewing court to overturn an agency action when the court finds that the agency action was "[m]ade upon unlawful procedure."

In this case, the Local Board did not give the Licensee proper notice and a reasonable opportunity to be heard on the question of whether or not the license would be renewed for calendar year 2011. As such, the Local Board failed to comply with M.G.L. c. 138, §16A by not automatically renewing the license.

CONCLUSION

The Commission disapproves the action of the Local Board in denying the renewal of the license of Tavern Management Corporation dba the Tavern ("the Licensee") for calendar year 2011. Therefore, the Commission remands the matter to the Local Board with the recommendation that the license be renewed effective January 1, 2011, nunc pro tunc, and issued forthwith.

ALCOHOLIC BEVERAGES CONTROL COMMISSION

Kim S. Gainsboro, Chairman

Susan Corcoran, Commissioner

Dated: May 12, 2011

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.

cc: John E. Coyne, Esq. via Facsimile, Suzanne Egan, Esq. via Facsimile
Frederick G. Mahony, Chief Investigator, File