



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

ARSLAN, INC. DBA VILLAGE DAIRY
167 MAIN ST
GRAFTON, MA 01560
LICENSE#: 045600017
HEARD: 12/10/2013

This is an appeal of the action of the Town of Grafton Board of Selectmen (the "Local Board" or "Grafton") for revoking the M.G.L. c. 138, §15 wines & malt beverages license of Arslan, Inc. dba Village Dairy (the "Licensee" or "Arslan") located at 167 Main Street, Grafton, MA. The Licensee timely appealed the Local Board's decision to the Alcoholic Beverages Control Commission (the "Commission") and a hearing was held on Tuesday, December 10, 2013. The Licensee admitted to selling an alcoholic beverage to a person under twenty-one years of age in violation of M.G.L. c. 138 §34. As a result, the sole issue on appeal is whether the penalty imposed by the Local Board, i.e. revocation, was reasonable or, as the Licensee argues, arbitrary and capricious.

The following documents are in evidence:

1. Local Board's Decision dated 2/17/2005;
 2. Local Board's Decision dated 1/25/2008;
 3. Local Board's Decision dated 6/10/2009;
 4. Meeting Minutes and Agenda for Local Board's Meeting on 6/2/2009;
 5. Meeting Minutes and Agenda for Local Board's Meeting on 8/20/2013;
 6. Local Board's Decision dated 8/21/2013; and
 7. Grafton Police Department Incident Report # 13-250-OF dated 7/2/2013.
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- A. Letter dated 6/1/2009 from Grafton Police Department to Licensee re: Underage Drinking Compliance Check;
 - B. ABCC Decision dated 12/14/2011 for Acton Market Inc.;
 - C. Invoice from Keith J. Keady Investigations for TIPS Training;
 - D. ABCC Decision dated 10/2/2012 for DJVP Ram Corporation dba The Corner Cupboard Store; and
 - E. Letter dated 12/23/2009 from Grafton Police Department to Licensee re: Underage Drinking Compliance Check.

There is one (1) audio recording of this hearing, and one (1) witness testified.

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

FACTS

We make the following findings of fact and rulings of law:

1. On April 7, 1999, the Local Board issued Arslan, Inc., d/b/a Village Dairy located at 167 Main Street, Grafton, Massachusetts a wines & malt beverages license pursuant to M.G.L. c. 138, §15. (Commission Records)
2. Amjad M. Chaundhry is the president, director, and owner of Arslan. He is also the approved license manager. (Commission Records)
3. On June 27, 2013 members of the Grafton Police Department conducted a compliance check at Arslan. Although there are 6 off-premises establishments in Grafton, Arslan was the only premises investigated. There was no evidence that the compliance check was publicized.¹ (Ex. 7)
4. The Licensee does not dispute that at approximately 5:35 p.m. an underage volunteer working with the Grafton Police Department purchased an alcoholic beverage at its establishment, and was not asked for identification. (Ex. 7, Testimony)
5. As a result of the violation, the Local Board held a hearing on August 20, 2013, and found that Arslan sold alcoholic beverages to an individual under twenty-one years of age in violation of M.G.L. c. 138, §34. (Ex. 7)
6. Subsequently, the Local Board unanimously voted to revoke Arslan's wines & malt beverages license and issued a written decision revoking Arslan's license to sell alcoholic beverages. (Exs. 5, 6)
7. The disciplinary history for Arslan is as follows: (Ex. 7)
 - a. On January 13, 2005, Arslan violated M.G.L. c. 138 §34. After a hearing, the Local Board noted that this was the Licensee's first offense for selling alcohol to a minor and issued a written warning. The Board also ordered the Licensee to make all of its employees attend a certified TIPS program and to submit a certificate to the Board of Selectmen within 90 days indicating that its employees had successfully completed the program. (Ex. 1)
 - b. On December 21, 2007, Arslan violated MGL c. 138, §34. After a hearing, the Local Board imposed a 2 day suspension of the license. The Board ordered that all alcohol be removed from the shelves. The Local Board also ordered the Licensee to send all of its employees to a certified TIPS program. The Licensee was required to submit a certificate to the Board of Selectmen within three to six months illustrating that the employees had successfully completed the program. (Ex. 2)
 - c. On April 11, 2009, Arslan violated MGL c. 138, §34. This was the result of a compliance check. After a hearing, the Local Board imposed a 10 day license suspension.² In addition, the Local Board ordered the Licensee to send all of its

¹ There was no evidence presented that Grafton has written compliance check guidelines. As the Licensee has not challenged the process surrounding the "sting operation", the Commission will not address any possible improprieties or discrepancies with the Commission's Sting Guidelines. The Appeals Court has held that where a "sting operation was conducted in accordance with published guidelines designed to insure that such operations were conducted fairly, the Commission could properly rely on this evidence." Fran's Lunch, 45 Mass. App. Ct at 665.

² At the hearing, Grafton Liquors was also found in violation of MGL c. 138, §34. Their penalty was a 3-day license suspension. (Ex. 4)

employees to a certified TIPS program. Further, the Licensee was required to submit a certificate to Police Chief Crepeau within 60 days documenting that the employees had successfully completed the program. All alcoholic beverages were to be removed from the shelves. (Ex. 3)

- d. It should be noted that on June 1, 2009, and subsequently on December 23, 2009, Arslan passed two separate compliance checks. (Exs. A, E)
8. The Local Board's position is that Arslan, while under the management of Amjad Chaundhry, has a history of selling alcohol to minors, including two prior violations which resulted in disciplinary action by the Local Board. The Board determined that in order to ensure the safety of the community, a permanent revocation of Arslan's liquor license was appropriate. (Ex. 6)

DISCUSSION

Licenses to sell alcoholic beverages are a special privilege subject to public regulation and control for which States have especially wide latitude pursuant to the Twenty-First Amendment to the United States Constitution. Connolly v. Alcoholic Beverages Control Commn., 334 Mass. 613, 619 (1956), Opinion of the Justices, 368 Mass. 857, 861 (1975). M.G.L. chapter 138 gives the local board and 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. chapter 138, §23, as amended through St. 1977, c.929, §7. "[T]he purpose of discipline is not retribution but the protection of the public." Arthurs v. Board of Registration in Medicine, 383 Mass. 299, 317 (1981). The Commission is given 'comprehensive powers of supervision over licensees,' Connolly v. Alcoholic Beverages Control Comm., 334 Mass. 613, 617 (1956), as well as broad authority to issue regulations. The Local board has authority to enforce Commission regulations. New Palm Gardens, Inc. v. Alcoholic Beverages Control Commission, 11 Mass. App. Ct. 785, 788 (1981).

M.G.L. c. 138, §67, provides that "[a]ny person who is aggrieved by the action of the local licensing authorities in modifying, suspending, cancelling, revoking or declaring forfeited their license, may appeal therefrom to the Commission If the Commission approves the action of the local licensing authorities it shall issue notice to them to that effect, but if the Commission disapproves of their action it shall issue a decision in writing advising said local authorities of the reasons why it does not approve (said action) and shall then remand the matter to the said local authorities for further action."

As noted above, the Licensee does not challenge the Local Board's finding that a violation occurred. Therefore, the Commission must review whether the penalty imposed by the Local Board for this violation was reasonable. In assessing penalties for violations occurring solely as the result of a "sting," penalties imposed should never be draconian. See Applebee's Northeast, Inc. dba Applebee's Neighborhood Bar & Grill, Suffolk Superior Court C.A. No. 03-610-A (Sikora, J.), See Epicure Package Store, Inc. (ABCC decision dated 01/31/2007). The Commission has consistently held that [t]he policy behind a "sting" operation should be the education of licensees in the risks associated with selling alcoholic beverages without requesting proof of age. In re: Assinippi Liquors, Inc., Wareham (ABCC decision dated 06/08/2004), Epicure Package Store, supra. (ABCC decision dated 01/31/2007), See Saba Foodmarket, Inc., dba Bradford Shell (ABCC decision dated 05/16/2012).

While small suspensions may further that purpose by imposing a consequence for taking a risk, a heavy handed suspension does not. See Assinippi Liquors, supra. (ABCC decision dated 06/08/2004 where Commission held that a twenty (20) day suspension of the alcoholic beverages license for a compliance check was unreasonable. The Commission found that a suspension of that length steps over the line of measured education and becomes unreasonably punitive.), See Saba Foodmarket, supra. (ABCC decision dated 05/16/2012 where the Commission held that a revocation of the alcoholic beverages license for a compliance check was unreasonable.)

In 2007 and again in 2012, the Commission faced the same issue as in this case, regarding a license revoked as a result of a failed compliance check. Epicure Package Store, supra., Saba Foodmarket, supra. In both instances, the Commission held that the penalty of revocation or cancellation of a license for a violation occurring solely as the result of a "sting" is draconian and unfair. Id. As such, the Commission finds that the penalty imposed by the Local Board in this matter is unreasonable.

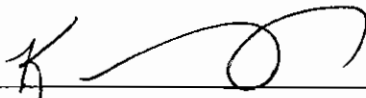
CONCLUSION

Based on the evidence and rulings above, the Alcoholic Beverages Control Commission **DISAPPROVES** the action of the Local Board in revoking the M.G.L. c. 138 §15 wines & malt beverages license of Arslan, Inc. dba Village Dairy and remands the matter to the Local Board with the recommendation that the license be suspended for twenty (20) days *nunc pro tunc*.

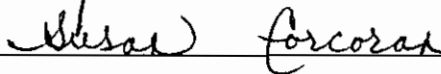
Further, the Commission recommends that the Licensee submit an application for change of manager, with another individual possessing experience with a section 15 alcoholic beverages license, applying as the license manager. The Commission anticipates that such an application would be granted by the Local Board, and then submitted to the Commission for its consideration of approval in the usual administrative process.

ALCOHOLIC BEVERAGES CONTROL COMMISSION

Kim S. Gainsboro, Chairman



Susan Corcoran, Commissioner



Dated: April 23, 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.

cc: David L. Rubin, Esq. via fax 888-872-5560
Ginny Kremer, Esq. via fax 978-371-2296
Frederick G. Mahony, Chief Investigator
Administration
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