

*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: 10/22/2014**

This was a reappeal to the Alcoholic Beverages Control Commission (the "Commission") from the action of the Town of Grafton Board of Selectmen (the "Local Board") for upholding its previous decision in 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 following documents are in evidence:

1. ABCC Decision dated 4/23/2014; and
2. Local Board's Decision dated 7/24/2014

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, including the record of the first appeal hearing. No new material facts occurred in the period between the date of the Commission decision on the first appeal and the hearing on reappeal. At the hearing, counsel for both parties stipulated to the facts as found by the Commission in its April 23, 2014 decision.

**FACTS**

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

1. On June 27, 2013, the Licensee sold an alcoholic beverage to an underage person during a compliance check. (Ex. 1)
2. After a hearing, on August 20, 2013, the Local Board unanimously voted to revoke Arslan's alcoholic beverages license. (Ex. 2)
3. Arslan timely appealed this decision to the Massachusetts Alcoholic Beverages Control Commission. (Commission Records)
4. The license revocation was not stayed. (Commission Records)
5. On December 10, 2013, the ABCC held an appeal hearing. Prior to the hearing, the licensee stipulated to the violation. The sole issue before the Commission was whether the penalty imposed by the Local Board was arbitrary and capricious. (Ex. 1)

6. By decision dated, April 23, 2014, the ABCC disapproved the action of the Local Board and remanded the matter with the recommendation that the license be suspended for 20 days, *nunc pro tunc*. The ABCC also recommended that Arslan submit an application for a change of manager. (Ex. 1)
7. The facts in the April 23, 2014 Commission Decision, are incorporated herein by reference as if expressly set forth. (Ex. 1)
8. On July 1, 2014, at a hearing on remand, the Local Board again voted unanimously to revoke Arslan's liquor license, upholding their prior decision and took no action on the application for change of manager. (Ex. 2)
9. Thereafter, the Licensee timely filed a Petition for reappeal. (Commission Records)
10. On Wednesday, October 22, 2014, the Commission held a hearing pursuant to M.G.L. c. 138, §67 on Arslan's reappeal from the action of the Local Board for failing to reinstate the license and denying the Licensee's application for a change of manager,. (Ex. 1)

### DISCUSSION

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." The Commission held a hearing and issued a written decision on April 23, 2014 disapproving the action of the Grafton Licensing Board.

"After receipt by the local licensing authorities of a decision from the commission ... any licensee who is aggrieved by the action of the local licensing authorities ... revoking ... a license ... may, if the said local licensing authority fails within five days after receipt of said decision to take the action recommended therein, again appeal to the commission..." *Id.* The Local Board failed to take the recommended action within five days. In fact it held a subsequent hearing on this matter on July 1, 2014, approximately two months later, and upheld its prior decision. Thereafter, the Licensee filed a request for a reappeal.

"In the event of such reappeal, the commission shall hold a hearing on such reappeal, requiring ...notice to be given to all interested parties." *Id.* The Commission held a hearing on the reappeal on October 22, 2014. During the hearing, the parties agreed upon the facts, and engaged in argument only. The Commission's objection to the penalty imposed by the Local Board remains the same.

For the reasons expressed in the prior Commission Decision dated April 23, 2014, which is incorporated herein by reference as if expressly set forth, the Commission again DISAPPROVES the action of the respondent in failing to adopt the Commission's recommendation. The Commission's decision on reappeal disapproving the action of the local licensing authorities is final. *Id.*

### CONCLUSION

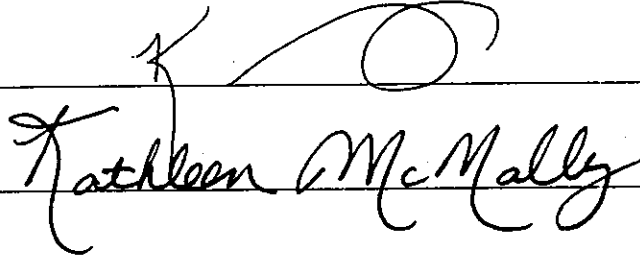
The Local Board is hereby ordered pursuant to the pertinent provisions of M.G.L. c. 138, §67 to reinstate Arslan, Inc.'s license for 2014 and issue the license on or before November 12, 2014. The Local Board shall also issue a renewal notification for 2015 simultaneously.

If the Local Board fails to issue Arslan a license for 2014, the Commission will exercise its statutory authority pursuant to the provisions of M.G.L. c. 138, § 67, paragraph 6 and issue to Arslan Inc. a license for 2014. Pursuant to M.G.L. c. 138, § 67, this license has the same force and effect as if issued by the respondent.

ALCOHOLIC BEVERAGES CONTROL COMMISSION

Kim S. Gainsboro, Chairman

Kathleen McNally, Commissioner

A handwritten signature in cursive script, reading "Kathleen McNally", is written over a horizontal line. Above this line, there is another horizontal line with a large, stylized "K" and a circle, possibly representing a stamp or a second signature.

Dated: November 5, 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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