

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

ARSLAN, INC. D/B/A VILLAGE DAIRY
167 MAIN ST
GRAFTON, MA 01560
LICENSE#: 045600017
HEARD: 6/1/2016

This is an appeal under M.G.L. c. 138, § 67 by Arslan, Inc. d/b/a Village Dairy ("Licensee" or "Arslan") located at 167 Main Street, Grafton, Massachusetts of the action of the Town of Grafton Board of Selectmen (the "Local Board" or "Grafton") for refusing to renew Arslan's M.G.L. c. 138, § 15 wines and malt beverages license. The Alcoholic Beverages Control Commission (the "Commission") held a hearing on the appeal on Wednesday, June 1, 2016.¹

The following documents are in evidence:

1. Letter from David Rubin, Esq. to the Alcoholic Beverages Control Commission, 1/29/16, with attached renewal application;
2. Memorandum from the Town of Grafton to Liquor Licensee, 10/24/14;
3. Article, "Post Office Pub and Bridge Street Bistro Cited in Grafton Liquor Sting;"
4. Letter from the Alcoholic Beverages Control Commission to David Rubin, Esq., 2/27/15, with attached 2015 license and letter from Ralph Sacramone to the Town of Grafton, 2/26/15;
5. Worcester County Superior Court, 1485CV02171, Clerk's Notice, 10/22/15;
6. Worcester County Superior Court, 1485CV02171, Judgment on the Pleadings, 11/16/15;
7. Worcester County Superior Court, 1485CV02171, Memorandum of Decision and Order on Plaintiff's Motion for Judgment on the Pleadings, 11/6/15; and
8. Letter from Timothy McInerney to Arslan, 11/6/15.

¹ On January 29, 2016, Arslan sent a letter to the Commission, and copied Grafton's Town Counsel and others, asking the Commission to reinstate and renew its license and indicating that it did not timely file a renewal application with the Local Board because Grafton refused to send it the renewal application for 2016. The Commission has treated that letter as a notice of appeal of Grafton's refusal to renew Arslan's license. (Exhibit 1)

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.

FINDINGS OF FACT

The Commission makes the following findings of fact:

1. In 1999, Grafton issued Arslan, Inc. d/b/a Village Dairy ("Licensee" or "Arslan") located at 167 Main Street, Grafton a wine and malt beverages license under M.G.L. c. 138, § 15. (Commission Records)
2. Amjad Chaundhry is the owner of Arslan and became the manager of record in 2002. (Commission Records)
3. On August 20, 2013, the Local Board unanimously voted to revoke Arslan's alcoholic beverages license on the basis that Arslan sold an alcoholic beverage to an underage person during a compliance check. (Commission Records)
4. Arslan timely appealed that decision to the Commission. (Commission Records)
5. The license revocation was not stayed. (Commission Records)
6. By decision dated, April 23, 2014, the Commission 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*. (Commission Records)
7. On July 1, 2014, at a hearing on remand, the Local Board again voted unanimously to revoke Arslan's liquor license, upholding its prior decision. (Commission Records)
8. Thereafter, the Licensee timely filed with the Commission a Petition for re-appeal. (Commission Records)
9. On November 5, 2014, the Commission ordered the Local Board pursuant to M.G.L. c. 138, § 67 to reinstate Arslan's license for 2014 and issue a renewal notification for 2015 simultaneously. The Commission stated that if the Local Board failed to issue Arslan a license for 2014, the Commission would exercise its statutory authority pursuant to the provisions of M.G.L. c. 138, § 67, ¶ 6 and issue to Arslan a license for 2014. (Commission Records)
10. The facts in the April 23, 2014 and November 5, 2014 Commission Decisions are incorporated herein by reference as if expressly set forth. (Commission Records)
11. On or about February 13, 2015, the Commission received a letter from Arslan's attorney informing the Commission that the Local Board had not issued the license as ordered by the Commission. (Exhibit 4; Commission Records)
12. By letter dated February 26, 2015, the Commission informed the Local Board that it was exercising its statutory authority pursuant to the provisions of M.G.L. c. 138, § 67 and issued Arslan a § 15 license for 2015. (Exhibit 4)
13. On July 20, 2015, the Local Board filed an action in the Worcester County Superior Court for judicial review pursuant to M.G.L. c. 30A, § 14. (Exhibit 7)
14. On October 22, 2015, the Superior Court denied Grafton's motion for judgment on the pleadings and upheld the Commission's decision. (Exhibit 7)

15. In late October 2015, when the Local Board mailed renewal applications to licensees, it did not mail such a renewal application to Arslan. (Testimony)
16. The Local Board sent Arslan a letter on November 6, 2015 returning a change of manager application Arslan had submitted on the basis that the Local Board was not the one that approved Arslan's liquor license. The Local Board suggested that Arslan send the change of manager application directly to the Commission. (Exhibit 8)
17. In November 2015, Chaudhry called Grafton about renewing Arslan's license and was told that Grafton could not renew Arslan's license because Grafton was not the one that issued the license. (Testimony)
18. Chaudhry obtained a renewal package online, completed it, and submitted it to the Local Board on December 28, 2015. (Testimony; Exhibit 1)
19. Arslan did not submit a renewal package to the ABCC. (Testimony)
20. Arslan continued operating through the end of December 2015 and has not operated in 2016. (Testimony)
21. On January 29, 2016, Arslan, through its counsel, sent a letter to the Commission, and copied Grafton's Town Counsel and others, asking the Commission to reinstate and renew its license. Attached to the letter was a copy of the December 28, 2015 renewal application that Arslan had filed with Grafton. (Exhibit 1)

DISCUSSION

General Laws c. 138, § 23, provides that “[e]very license and permit granted under the provisions of this chapter, unless otherwise provided in such provisions, shall expire on December thirty-first of the year of issue, subject, however, to revocation or cancellation within its term.” M.G.L. c. 138, § 23. General Laws c. 138, § 16A, confers upon § 15 licensees, the prima facie right to renew the license every November, subject to certain conditions. “Licenses issued under section twelve or fifteen shall be *automatically renewed* for the next annual license period upon application by the holder thereof during the month of November. . . If the application does not meet the conditions hereunder, it shall be treated as an application for a new license and all the procedures set forth under section fifteen A shall be applicable thereto.” M.G.L. c. 138, § 16A (emphasis added). Under General Laws c. 138, § 16B, “[a]pplications for licenses . . . to be granted by the commission shall be granted or dismissed not later than thirty days after the filing of the same, and, except as provided in section sixteen A, applications for licenses authorized to be granted by the local licensing authorities . . . shall be acted upon within a like period.” M.G.L. c. 138, § 16B. When a local board declines to act on a license application, G.L. c. 138, § 67 allows for an appeal to the Commission. As provided in Section 67, “[a]ny applicant for a license [who] is aggrieved by the [local board’s] . . . failure to act within the period of thirty days limited by section sixteen B, . . . may appeal therefrom to the commission within five days following notice of such action or following the expiration of said period, upon petition in writing, setting forth all the material facts in the case.” M.G.L. c. 138, § 67.

Here, the Local Board refused to send Arslan a renewal package in 2015, and therefore, the Licensee was unable to file a renewal application by the end of November 2015. (Testimony; Exhibit 1). Indeed, the Local Board instructed Arslan that if it attempted to renew with the Local Board, its efforts would be futile. (Testimony). Still, in an effort to renew before the end of 2015, Arslan took it upon itself to locate a blank renewal application online, complete it, and submit it to the Local Board on December

28, 2015. (Testimony; Exhibit 1). In accordance with the terms of §§ 16B and 67, Arslan then waited thirty days for a response from the Local Board, and when Arslan received none, it filed the instant appeal two days later with the Commission, on January 29, 2016. (Exhibit 1); see G.L. c. 138, §§ 16B, 67. Meanwhile, the 2015 license expired with the close of that year, and therefore, Arslan has not operated in 2016. See M.G.L. c. 138, § 23; (Testimony).

The Local Board argues that it “did not send out a license renewal application to [Arslan] in 2015 because it had not issued a license to [Arslan] in 2015. Thus, the [Local Board] had no license to ‘renew.’ . . . The ABCC issued the 2015 license, and thus if the ABCC wishes to renew that license, it has the authority to do so.” (Joint Pre-Hearing Memorandum, at 5).

The Local Board’s reasoning is flawed and does not comply with the terms or spirit of Chapter 138. Indeed, the Commission issued Arslan its 2015 license following the re-appeal and the Local Board’s refusal to issue the license.² The Commission issued the 2015 license pursuant to Section 67, which provides that the Commission “may itself, after such reappeal, issue such license to a party to the appeal or perform such act, *with the same force and effect as if issued or performed by the local licensing authorities.*” M.G.L. c. 138, § 67 (emphasis added). Contrary to the Local Board’s blanket assertions, the Commission, in and of itself, is not authorized by Chapter 138 to renew § 15 licenses. That renewal process is performed by local boards pursuant to Section 16A. See M.G.L. c. 138, § 16A (“A person whose [renewal] application has so been rejected by the *local licensing authorities* . . .”) (emphasis added); see also, e.g., Pamela Avedisian, d/b/a Avedisian’s, Saugus (ABCC Decision Feb. 10, 2010) (“If a *local licensing authority* fails to automatically renew a license, it must be for cause, and they must provide notice and an opportunity to be heard . . .”) (emphasis added); Winh Wah Co., Inc. d/b/a Winh Wah Restaurant, Freetown (ABCC Decision Sept. 1, 2004) (*local licensing authority* must automatically renew retail license unless it rejects the application for cause) (emphasis added), citing Piona v. Selectmen of Canton, 333 Mass. 510, 511 (1956). The fact that the Commission, as opposed to the Local Board, reissued the § 15 license is of no consequence in terms of the renewal process. As § 67 states, when the Commission issues a license under § 67, the license has “the same force and effect as if issued or performed by the local licensing authorit[y].” M.G.L. c. 138, § 67. Consequently, the only way to renew was through the Local Board.

However, the Local Board refused to let Arslan renew when it took steps to withhold a renewal application from Arslan. The only way for a licensee to renew its license annually is by completing a renewal form. By deliberately withholding a renewal application from Arslan, the Local Board precluded Arslan from timely and properly renewing its application. A local board cannot pick and choose which licensees to renew. The renewal process should be “automatic,” in most circumstances. See M.G.L. c. 138, § 16A. The Commission admonishes the Local Board for refusing to comply with the Commission’s and the Superior Court’s orders that it reissue Arslan’s license and then, after the Commission reissued the license pursuant to G.L. c. 138, § 67, refusing to renew Arslan’s license under 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 . . . [o]nce licenses are issued, . . . their continued

² The Local Board’s refusal to reinstate the license was contrary to the Commission’s two prior decisions as well as the Superior Court’s order denying the Local Board’s motion for judgment on the pleadings and upholding the Commission’s decision. (Commission Files; Exhibit 7).

possession may become essential in the pursuit of a livelihood.” Atara LLC d/b/a Atara Bistro (ABCC Decision Oct. 17, 2003) (quoting Konstantopoulos v. Whatley, 384 Mass. 123, 132 (1981)).

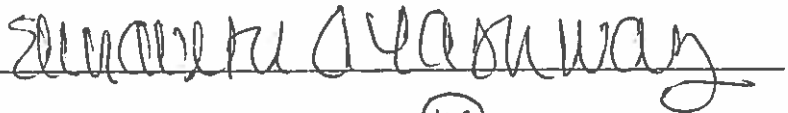
G.L. c. 138 § 16A requires licensees to renew during the month of November, without exception. M.G.L. c. 138 § 16A. Unfortunately, Arslan did not complete and file a renewal form until December 28, 2015, which was a month late. As such, the statute does not permit Arslan to obtain equitable relief on the issue of an automatic renewal. M.G.L. c. 138 § 16A. However, when the Local Board received Arslan’s late renewal application, it should have treated that late renewal application as a new application pursuant to the terms of G.L. c. § 16A. See M.G.L. c. 138, § 16A (providing that “if the [renewal] application does not meet the conditions hereunder, it shall be treated as an application for a new license and all the procedures set forth under section fifteen A shall be applicable thereto).

CONCLUSION

Based on the evidence and testimony at the hearing, the Commission disapproves the action of the Local Board in not issuing Arslan a renewal application and subsequently not acting on its late renewal application. Therefore, the Commission remands the matter to the Local Board with the recommendation that the license be treated as a new license under G.L. c. 138, § 16A.

ALCOHOLIC BEVERAGES CONTROL COMMISSION

Elizabeth A. Lashway, Commissioner



Kathleen McNally, Commissioner



Dated: September 21, 2016

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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