



*Commonwealth of Massachusetts
Alcoholic Beverages Control Commission
95 Fourth Street, Suite 3
Chelsea, Massachusetts 02150-2358*

Jean M. Lorizio, Esq.
Chairman

DECISION

**OMAHI REALTY LLC D/B/A BOSTON ROAD MARKET & LIQUOR
871 BOSTON ROAD
GROTON, MA 01450
LICENSE#: 00009-PK-0476
HEARD: 5/11/2022**

This is an appeal from the action of the Town of Groton Licensing Board (the “Local Board” or “Groton”) for suspending the § 15 all alcoholic beverages package store license of Omahi Realty LLC d/b/a Boston Road Market & Liquor (“Licensee” or “Boston Road Market”) located at 871 Boston Road, Groton, MA, for three (3) days. The Licensee timely appealed the Local Board’s decision to the Alcoholic Beverages Control Commission (the “Commission” or “ABCC”), and a remote hearing was held via Microsoft Teams on Wednesday, May 11, 2022.

At the conclusion of the May 11, 2022, hearing, the Commission left the record open until the close of business on May 18, 2022, for the Licensee and Local Board to submit additional documents. The Licensee and Local Board submitted their documents in a timely manner and the record is now closed.

The following documents are in evidence as exhibits:

1. Licensee’s Notice of Appeal;
2. Documents re: Security System Upgrade;

- A. Groton Select Board Decision, 11/9/2021;
- B. Groton Select Board Decision, 3/9/2022;
- C. Groton Select Board Meeting Minutes, 3/7/2022.

There is one audio recording of this hearing and 5 witnesses testified.

FINDINGS OF FACT

The Commission makes the following findings based on the evidence presented at the hearing:

1. Omahi Realty LLC d/b/a Boston Road Market & Liquor (“Licensee” or “Boston Road Market”) holds an all-alcoholic beverages license and operates a business at 871 Boston Road, Groton, Massachusetts. Piyush Patel is President, Treasurer, and Clerk of the corporation. (Commission Records)
2. On February 4, 2022, at approximately 6:00 p.m., Groton Police Sergeant Kevin Henehan conducted a routine inspection of Omahi Realty LLC d/b/a Boston Road Market & Liquor. (Testimony, Exhibit B)
3. Sgt. Henehan pulled into Boston Road Market’s parking lot and observed a youthful-looking male individual exit his vehicle and enter the establishment. Id.
4. Sgt. Henehan parked his vehicle behind that of the youthful-looking male. Sgt. Henehan ran a registration check on the vehicle and the results indicated one of the owners’ date of birth was 5/12/2001 (age 20). Sgt. Henehan looked at the registry photo of that individual and noted it was the same male he saw walk into the licensed premises moments earlier. Id.
5. Approximately 5 minutes after Sgt. Henehan observed the male enter the licensed premises, he observed him exit the establishment in possession of alcoholic beverages, a 12 pack of Happy Dad Hard Seltzer. The male put the alcoholic beverages in his trunk and shut the trunk. Sgt. Henehan then rolled down his window and spoke to the male; he identified himself and asked the male for his date of birth. The underage individual admitted he was not yet 21 years of age. He provided to Sgt. Henehan his true identification, and a fraudulent identification which Sgt. Henehan confiscated. Id.
6. Within approximately 10 to 15 minutes of the male exiting the store with the alcoholic beverages, Sgt. Henehan entered the licensed premises and spoke to Brian Bellew, the clerk on duty. Sgt. Henehan inquired about the sale to the underage individual and asked if Mr. Bellew had requested identification from him. Sgt. Henehan requested that Mr. Bellew inform the Licensee to save the store’s video surveillance to present to the Local Board. Id.
7. Mr. Bellew’s practice is to request identification from every patron who appears to be under 30 to 32 years of age. He had requested identification from the last 5 to 6 patrons who came into the store prior to Sgt. Henehan but did not specifically recall the male who purchased the 12 pack of Happy Dad Hard Seltzer. (Testimony)
8. Mr. Bellew relayed Sgt. Henehan’s message to the Licensee regarding saving his video surveillance to present to the Local Board. The Licensee was unable to retrieve the video surveillance from February 4, 2022. Id.
9. On Monday, March 7, 2022, the Local Board held a virtual hearing on the Licensee’s alleged violation of 204 CMR 2.05 (2) Permitting an Illegality on the Licensed Premises, to wit: Ch. 138, § 34 – Sale or delivery of an alcoholic beverage to a person under 21-years of age which occurred on February 4, 2022. (Testimony, Exhibit B)

10. The Local Board previously found the Licensee in violation of Ch. 138, § 34 as a result of a sale of alcoholic beverages which occurred October 22, 2021. The Local Board issued a warning for said violation. (Testimony, Exhibit A)
11. By decision dated March 9, 2022, the Local Board found the Licensee in violation and given this was the 2nd violation within 4 months, voted to suspend its license for a period of three (3) days. Id.
12. The Licensee timely appealed the Local Board's decision to the ABCC. (Exhibit 1)

DISCUSSION

Pursuant to M.G.L. Ch. 138, §67, “[t]he ABCC is required to offer a de novo hearing, that is to hear evidence and find the facts afresh. As a general rule the concept of a hearing de novo precludes giving evidentiary weight to the findings of the tribunal from whose decision an appeal was claimed.” Dolphino Corp. v. Alcoholic Beverages Control Comm’n, 29 Mass. App. Ct. 954, 955 (1990) (citing United Food Corp. v. Alcoholic Beverages Control Comm’n, 375 Mass. 240 (1978)). The findings of a local licensing board are “viewed as hearsay evidence, [and] they are second-level, or totem pole hearsay, analogous to the non-eyewitness police reports in Merisme v. Bd. of Appeals on Motor Vehicle Liab. Policies and Bonds, 27 Mass. App. Ct. 470, 473 – 476 (1989).” Dolphino, 29 Mass. App. Ct. at 955.

Both the local board and the Commission have the authority to grant, revoke, and suspend licenses. Their powers were authorized “to serve the public need and . . . to protect the common good.” M.G.L. c. 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. Bd. 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’n, 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 Comm’n, 11 Mass. App. Ct. 785, 788 (1981).

These “comprehensive powers” are balanced by the requirement that the local board and the Commission provide notice to the licensee of any violations, as well as an opportunity to be heard. M.G.L. c. 138, §64. In addition, the local board has the burden of producing satisfactory proof that the licensee violated or permitted a violation of any condition thereof, or any law of the Commonwealth. M.G.L. c. 138, §§ 23, 64.

The Commission's decision must be based on substantial evidence. See Embers of Salisbury, Inc. v. Alcoholic Beverages Control Comm’n, 401 Mass. 526, 528 (1988). “Substantial evidence” is “such evidence as a reasonable mind might accept as adequate to support a conclusion.” Id. Evidence from which a rational mind might draw the desired inference is not enough. See Blue Cross and Blue Shield of Mass. Inc. v. Comm’r of Ins., 420 Mass. 707 (1995). Disbelief of any particular evidence does not constitute substantial evidence to the contrary. New Boston Garden Corp. v. Bd. of Assessor of Boston, 383 Mass. 456, 467 (1981).

The Licensee was charged with a violation of 204 CMR 2.05 (2) Permitting an Illegality on the Licensed Premises, to wit: Ch. 138, § 34 – Sale or delivery of an alcoholic beverage to a person

under 21-years of age. General Laws Chapter 138, § 34 provides, in part, that “[w]hoever makes a sale or delivery of any alcoholic beverages or alcohol to any person under 21 years of age, either for his own use or for the use of his parent or any other person, ...shall be punished.” M.G.L. c. 138, § 34.

Here, the Local Board presented eyewitness testimony from a police officer who observed a person, later determined to be under 21 years of age, enter the licensed premises and shortly thereafter, exit the licensed premises in possession of alcoholic beverages.

The Licensee acknowledged the sale but argued that his employee checked the identification of the underage individual and explained the difficulty of determining whether an identification is fraudulent or legitimate.

General Laws chapter 138, § 34B provides, in pertinent part, that [a]ny licensee, or agent or employee thereof, under this chapter who reasonably relies on such a liquor purchase identification card or motor vehicle license issued pursuant to section eight of chapter ninety, or on an identification card issued under section 8E of chapter 90, or on a valid passport issued by the United States government, or by the government, recognized by the United States government, of a foreign country, or a valid United States issued military identification card, for proof of a person's identity and age shall not suffer any modification, suspension, revocation or cancellation of such license, nor shall he suffer any criminal liability, for delivering or selling alcohol or alcoholic beverages to a person under twenty-one years of age. Any licensee, or agent or employee thereof, under this chapter, who reasonably relies on such a liquor purchase identification card, or an identification card issued under section 8E of chapter 90, or motor vehicle license issued pursuant to said section eight, for proof of a person's identity and age shall be presumed to have exercised due care in making such delivery or sale of alcohol or alcoholic beverages to a person under twenty-one years of age. Such presumption shall be rebuttable. M.G.L. c. 138, § 34B

M.G.L. c. 138, § 34B offers protection from license revocation or criminal penalties to license holders who reasonably rely on one of the six forms of identification as specified in the statute. In order to invoke the protection accorded to a license holder under §34B, a license holder must obtain proof of age prior to the purchase of alcoholic beverages through reliance on one of the six legislatively approved forms of identification.

The Commission is persuaded and finds by substantial evidence that the Licensee sold alcoholic beverages to a person under 21 years of age in violation of M.G.L. c. 138 § 34.

The Commission finds that the Licensee is not afforded the protection of M.G.L. c. 138, § 34B as there was no evidence that one of the acceptable forms of identification was presented prior to the sale of alcoholic beverages to the underage individual.

The Commission finds that the imposed suspension was not arbitrary and capricious but rather was a reasonable exercise of the Local Board's lawful discretion and supported by the record.

CONCLUSION

The Alcoholic Beverages Control Commission (“Commission”) **APPROVES** the action of the Groton Select Board in finding a violation of 204 CMR 2.05 (2) Permitting an Illegality on the Licensed Premises, to wit: Ch. 138, § 34 – Sale or delivery of an alcoholic beverage to a person under 21-years of age. The Commission **APPROVES** the action of the Groton Select Board in suspending the license for 3-days.

ALCOHOLIC BEVERAGES CONTROL COMMISSION

Jean M. Lorizio, Chairman 

Crystal Matthews, Commissioner 

Deborah Baglio, Commissioner 

Dated: July 11, 2023

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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2022-000032-ad-enf

cc: Piyush Patel
Local Licensing Board
Frederick G. Mahony, Chief Investigator
Administration, File