



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

Jean M. Lorizio, Esq.
Chairman

DECISION

**BEACHLIGHT LLC D/B/A SEAL PUB
703 MAIN STREET
HARWICH, MA 02645
LICENSE#: 05411-RS-0506
HEARD: 6/22/2022**

This is an appeal from the action of the Town of Harwich Licensing Board (the "Local Board" or "Harwich") in suspending the § 12 all alcoholic beverages license of Beachlight LLC d/b/a Seal Pub ("Licensee" or "Seal Pub") located at 703 Main Street, Harwich, MA, for one (1) day. 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, June 22, 2022.

The following documents are in evidence as agreed-upon exhibits:

- A. Memorandum to Board of Selectmen from Joseph F. Powers, Town Administrator, 12/10/2021;
- B. Notice of Appeal;
- C. Select Board Meeting Minutes for 12/14/2021;
- D. Select Board Meeting Minutes for 12/20/2021;
- E. Town of Harwich Liquor License Regulations;
- F. Town of Harwich Police Reports re: violations, dated 5/25/2021, 6/2/2021, 6/7/2021, 6/28/2021, & 8/30/2021;
- G. December 16, 2021 Warning and Disciplinary Action Letter;
- H. ABCC Decision re: Port Restaurant & Bar, Inc., 12/6/2018.

There is one audio recording of this hearing and six (6) witnesses testified.

FINDINGS OF FACT

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

1. Beachlight LLC d/b/a Seal Pub ("Licensee" or "Seal Pub"), holds a Ch. 138, § 12 all-alcoholic beverages license issued January 23, 2020, and operates a business at 703 Main Street, Harwich, Massachusetts. (Commission Records)
2. On Saturday, June 5, 2021, at approximately 12:49 a.m., Detective Sergeant Brackett of the Harwich Police responded to the Seal Pub to follow up on a complaint received by

Harwich Police Dispatch and as a result wrote a report which was submitted to David J. Guillemette, Chief of Harwich Police. (Testimony, Exhibit F)

3. On Saturday, June 26, 2021, at approximately 12:19 a.m., Det. Sgt. Brackett inspected the operation of Seal Pub. As a result, Sgt. Brackett wrote a report which was submitted to Chief Guillemette. Id.
4. On Wednesday, August 25, 2021, at approximately 10:28 p.m., Harwich Patrol Officer Thomas Griffiths Jr. was dispatched to Seal Pub to follow up on a complaint. As a result, Officer Griffiths wrote a report which was submitted to Chief Guillemette. Id.
5. Chief Guillemette wrote memoranda, dated June 7, 2021, June 28, 2021, and August 30, 2021, to the Board of Selectmen and Joseph Powers, Town Administrator regarding alleged violations at the Seal Pub. (Exhibit F)
6. Mr. Joseph Powers, Town Administrator, is the appointed hearing officer for the Board of Selectmen. (Testimony)
7. Mr. Powers held hearings regarding the alleged violations included in Chief Guillemette's memoranda on July 8, 2021, July 27, 2021 and October 21, 2021. (Exhibit A)
8. In a memorandum, dated December 10, 2021, to the Board of Selectman, Mr. Powers outlined the alleged violations, and provided his findings and recommendations. Id.
9. Mr. Powers' listing of the alleged violations cited dates and charges. The charges cited included "noise" and "outdoor entertainment", amongst other things. There were no statutes or regulations cited. Id.
10. On Tuesday, December 14, 2021, the Local Board held a virtual hearing regarding the Licensee's alleged violations which occurred on June 5, 2021, June 26, 2021, and August 25, 2021. (Testimony, Exhibit C)
11. The Local Board at its hearing affirmed the "findings and determinations" of the Town Administrator. Id.
12. The Local Board issued a decision dated December 16, 2021. (Exhibit G)
13. For alleged violations of "Noise" which occurred on June 5, 2021 and June 26, 2021, and an alleged violation of "Noise - outdoor entertainment" on August 25, 2021, the Local Board suspended the license for one day to be served. Id.
14. The Licensee timely appealed the Local Board's decision to the ABCC. (Exhibit B)

DISCUSSION

Pursuant to M.G.L. c. 138, §67, "[t]he ABCC is required to offer a de novo hearing, that is to hear evidence and find the facts afresh." United Food Corp. v. Alcoholic Beverages Control Comm'n, 375 Mass. 238, 240 (1978). 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. See

Devine v. Zoning Bd. of Appeal of Lynn, 332 Mass. 319, 321 (1955); Josephs v. Bd. of Appeals of Brookline, 362 Mass. 290, 295 (1972); Dolphino Corp. v. Alcoholic Beverages Control Comm'n, 29 Mass. App. Ct. 954, 955 (1990). 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. Board 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. “[T]he purpose of discipline is not retribution but the protection of the public.” New Palm Gardens, Inc. v. Alcoholic Beverages Control Comm'n, 11 Mass. App. Ct. 785, 788 (1981) (quoting 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. New Palm Gardens, Inc. v. Alcoholic Beverages Control Comm'n, 11 Mass. App. Ct. 785, 788 (1981).

These “comprehensive powers” are balanced by the requirements in M.G.L. c. 138, § 64 which states that “[t]he licensing authorities after notice to the licensee and reasonable opportunity for him to be heard by them, may modify, suspend, revoke or cancel his license upon satisfactory proof that he has violated or permitted a violation of any condition thereof, or any law of the commonwealth.” 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 of the license, or any law of the Commonwealth. M.G.L. c. 138, §§ 23, 64.

Here, the Local Board referred allegations of violations to its appointed hearing officer who conducted hearings and thereafter made findings and recommendations. The Local Board held a hearing and adopted said findings and recommendations. The Licensee was notified that the Local Board voted to impose discipline “per the recommendation of the Town Administrator relating to liquor license violations of Seal Pub’s Liquor License on May 22, 2021, June 5, 2021, June 26, 2021 and August 25, 2021.”¹

The Board issued a “...One Day Liquor License Suspension that will be upheld on Friday, June 3, 2022 for Liquor License Violations that occurred on June 5, 2021, June 26, 2021 and August 25, 2021.” (Exhibit G)

Both the Town Administrator’s Findings and Local Board’s Decision fail to state which law and/or regulation the Licensee violated. (See Exhibits A, G) At the hearing before the Commission, the Local Board argued the Licensee created “noise” but the record in this matter is completely devoid of any cite to a particular statute or regulation the Licensee is alleged and/or found to have committed. As such, the Commission is unable to make a finding and cannot approve the Local Board’s findings.

¹ Only the alleged violations of June 5, 2021, June 26, 2021 and August 25, 2021 are the subject of the appeal before the Commission.

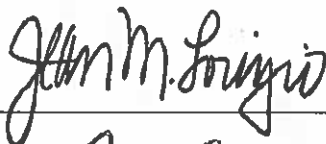
CONCLUSION

The Alcoholic Beverages Control Commission ("Commission") **DISAPPROVES** the action of the Town of Harwich in finding Beachlight LLC d/b/a Seal Pub in violation. Therefore, the Commission **DISAPPROVES** the imposition of a one (1) day suspension.

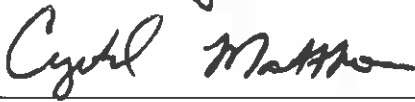
As such, the Commission remands the matter to the Town of Harwich with the recommendation that it find no violation and that no further action be taken against the Licensee, as any penalty would be discrepant with this decision.

ALCOHOLIC BEVERAGES CONTROL COMMISSION

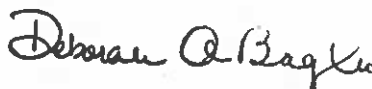
Jean M. Lorizio, Chairman



Crystal Matthews, Commissioner



Deborah Baglio, Commissioner



Dated: November 15, 2024

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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cc: David V. Lawler, Esq.
Jeffrey Blake, Esq.
Local Licensing Board
Frederick G. Mahony, Chief Investigator
Administration, File