



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

**Jean M. Lorizio, Esq.**  
*Chairman*

**2030 OCEAN STREET, LLC D/B/A WINE & MARKET  
86 ESSEX STREET  
HAVERHILL, MA 01832  
LICENSE #: NEW  
HEARD: 10/5/2022**

**MEMORANDUM AND ORDER ON THE LOCAL BOARD'S  
MOTION TO DISMISS APPEAL**

2030 Ocean Street LLC, d/b/a Wine & Market ("Applicant"), is an applicant for a § 15 all alcohol package store license in the City of Haverhill. On April 11, 2022, at a hearing before the Haverhill License Commission ("Local Board") on its application, the Local Board voted to deny the license as there were no available § 15 all alcohol package store licenses.

The Local Board issued a written statement of reasons the following day, April 12, 2022, and mailed a copy to the Applicant at its place of business, via certified mail. On April 15, 2002, a certified mail "green card" was signed and the mail was delivered.

On May 17, 2022, the Applicant filed a notice of appeal. The Local Board has moved to dismiss the appeal as untimely. The Applicant has filed an opposition and a hearing was held on the motion on October 5, 2022.

The Applicant has raised several grounds as to why the motion to dismiss should be denied. Each ground is addressed below.

*The Local Board's Written Statement of Reasons and Notice to Applicant Were Adequate.*

The Applicant contends that it did not receive notice of the Local Board's decision until May 16, 2022, when Daniel Newcomb opened the mail from the Local Board. Mr. Newcomb was out of state and was not the signatory on the "green card" for the certified mailing from April 15, 2022.

While Daniel Newcomb did not sign the green card, the Applicant received the notice via mail on April 15, 2022. Although the Local Board mailed the notice by certified mail, there was no requirement to do so. M.G.L. c. 138, § 23 ("Whenever the local licensing authorities deny an application for a new license . . . the licensing authorities shall mail a notice of such action to the

applicant or licensee, stating the reasons for such action . . . .”). Therefore, there was no requirement that a specific person, here Daniel Newcomb, had to sign the green card for receipt of certified mail. That the Applicant received notice at its place of business by mail is sufficient for service to trigger the five-day appeal window. To have it any other way would permit an applicant or licensee to evade the five-day appeal window by consistently refusing or otherwise evading service.

Furthermore, nothing in Chapter 138 requires the Local Board serve counsel for the Applicant.<sup>1</sup> See M.G.L. c. 138, § 23 (“Whenever the local licensing authorities deny an application for a new license . . . the licensing authorities shall mail a notice of such action to the *applicant* or licensee, stating the reasons for such action and shall at the same time mail a copy of such notice to the commission”). Certainly, service on counsel is important but failure to do so does not toll the five-day appeal window.

Relatedly, the Applicant contends that the notice from the Local Board is an insufficient statement of reasons for denial of its application because of its brevity. However, there was nothing more for the Local Board to add to its statement of reasons – the application was denied “due to no Section 15 All Alcohol Licenses available.” There is no requirement that a notice be of a certain length; it must only “stat[e] the reasons” for the denial of the application. This was adequate notice to educate the Applicant on the basis for the denial of its application.

*The Applicant’s Notice of Appeal was Untimely, Being Filed on May 17, 2022.*

The Applicant has two separate appeals pending before the Commission, both related to its § 15 license application. The first appeal, filed March 9, 2022, was an appeal from the Local Board’s failure to hold a hearing within the statutorily required time period. The Local Board then held a hearing on April 11, 2022, on the application, which it denied in writing on April 12, 2022, regarding which the applicant filed a notice of appeal on May 17, 2022. This second appeal is what is before the Commission on this motion to dismiss.

The Applicant now argues in its opposition that it timely filed a notice of appeal of the denial of its license application on April 19, 2022, when it filed a request for a procedural notice. However, this assertion is belied by the record.

A review of the April 19, 2022, “Request for Procedural Notice in Appeal of Failure to Comply with Law by HAVERHILL LICENSE COMMISSION (The Appeal’) re Application of 2030 Ocean Street, LLC dba Wine and Market ) the Applicant”) for a New, Annual, All Alcohol Section 15 License” (punctuation in original) (“Request”) indicates that it was filed in response to an earlier filed appeal, specifically an “Appeal filed on or about March 9, 2022” and that the appeal was

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<sup>1</sup> It is likely that the Applicant is relying on M.G.L. c. 30A, § 11(8), that requires service of an agency decision “to each party and to his attorney of record.” However, c. 30A does not apply to local boards, including the Local Board here. M.G.L. c. 30A, § 1(2).

related to the Local Board's failure to hold a hearing. (Request at Exhibit A) This does not constitute a notice of appeal from the April 11, 2022, decision, which was issued after a hearing was held. Nothing in the request for a procedural notice references the April 11, 2022, decision nor any indication that the request also contained a notice of appeal for the April 11, 2022, decision.

Furthermore, the Applicant cannot plausibly argue that it both filed a timely appeal on April 19, 2022, yet also posit that it did not receive notice of the adverse action until May 16, 2022, almost a month after the purported appeal was filed. Daniel Newcomb stressed in his Declaration that he did not open the notice from the Local Board until May 16, 2022 and was not aware it existed until that date. His then-counsel, Andrew Upton, also stated in his Declaration that he was not served a copy of the notice from the Local Board. Logically then, Attorney Upton did not have knowledge of the April 11, 2022 written notice of decision and could not have known to file a notice of appeal on April 19, 2022.

As discussed infra, the Applicant received the Local Board's notice on April 15, 2022. The due date to file a notice of appeal thus was April 25, 2022. The first and only notice of appeal was filed on May 17, 2022, sixteen days later. Accordingly, the notice of appeal was not timely filed.

*An Applicant Must Appeal from a Local Board's Written Notice Within Five Business Days.*

The Applicant contends that even if it did not file its notice of appeal within five business days, § 67 also permits an aggrieved party to appeal upon petition in writing, setting forth all the material facts in the case," with no time limit. This is an incorrect interpretation of § 67's jurisdictional limits.

The Applicant relies on the Commission's 2003 decision Re: Assinippi Liquors, Inc. (ABCC Decision Nov. 18, 2003) in support of its position. In that case, the Commission held that when an aggrieved party does not appeal within five business days, "[t]he analysis must continue to determine whether the Licensee complied with the statute's provision permitting an appeal to be filed 'following the expiration of said [5-day] period, upon petition in writing, setting forth all the material facts in the case'" (brackets in original).

While the Commission usually adheres to prior Commissions' interpretation of Chapter 138 to maintain consistency for the industry, it cannot hold fast to an interpretation of a section of Chapter 138 that was wrongly decided. And this prior interpretation is clearly incorrect for several reasons.

First, Assinippi was issued contrary to Supreme Judicial Court precedent and so was issued based on an error of law. M.G.L. c. 30A, § 14(7)(c). As the Supreme Judicial Court had explained:

Any person who has filed a complaint with the local licensing authorities under this section who is aggrieved by the action of such authorities in refusing to cancel a license hereunder or by *their failure to act upon such a complaint within a period of thirty days* may appeal to the commission in writing within five days following

receipt of written notice of such action *or within five days following the expiration of the thirty day period.*

Piona v. Alcoholic Beverages Control Comm'n, 332 Mass. 53, 55-56 (1954) (emphasis added); accord Marney v. Aquilio, 2006 WL 696581 at \*2 (Barnstable Sup. Ct. Feb. 7, 2006).

Second, the plain language of the statute indicates that this prior interpretation was incorrect. One situation in which a licensee or applicant can appeal is if it is aggrieved by the action of a local board within five business days of notice of the adverse action. The other time a party can appeal is when the local board “fail[s] to act within the period of thirty days . . . .” Therefore, the clause “*or following the expiration of said period*” clearly applies and relates to when a local board fails to act, meaning that an applicant can appeal within five business days of the expiration of the thirty-day window in which a local board should have – but did not – act. This is the plain unambiguous language of the statute, and it controls. eVineyard Retails Sales-Massachusetts, Inc. v. Alcoholic Beverages Control Comm'n, 450 Mass. 825, 831 (2008) (“It is well settled that a ‘statute is to be construed as written, in keeping with its plain meaning.’”) quoting Stop & Shop Supermarket Co. v. Urstadt Biddle Props., Inc., 433 Mass. 285, 289 (2001); accord Milford v. Boyd, 434 Mass. 754, 756 (2001) (“[w]here the language of a statute is clear, courts must give effect to its plain and ordinary meaning and ... need not look beyond the words of the statute itself).

Third, even if the statute is not unambiguous, the Applicant’s interpretation of the statute would result in illogical results and render the five-day appeal window superfluous. “[S]tatutory language should be given effect consistent with its plain meaning and in light of the aim of the Legislature unless to do so would achieve an illogical result.” Randolph v. Commonwealth, 488 Mass. 1, 5 (2021), quoting Commonwealth v. Wassilie, 482 Mass. 562, 573 (2019). The Applicant’s position would result in an illogical result of ultimately having no statute of limitations, because any appellant could skirt the expressly provided five-day appeal window by simply submitting a written “petition.” This would ultimately render the five-day appeal window superfluous. Commonwealth v. Rossetti, 489 Mass. 589, 605 n. 27 (2022) (“we do not interpret statutes in such a way that parts are ‘inoperative or superfluous’”); Doherty v. Civ. Serv. Comm'n, 486 Mass. 487, 492 (2020) (“none of its words is to be regarded as superfluous, and we must avoid a construction which would make statutory language meaningless”) (quotations omitted).

For the foregoing reasons, the Local Board’s Motion to Dismiss is ALLOWED.

ALCOHOLIC BEVERAGES CONTROL COMMISSION

Jean M. Lorizio, Chairman \_\_\_\_\_

*Jean M. Lorizio*

Crystal Matthews, Commission \_\_\_\_\_

*Crystal Matthews*

Deborah Baglio, Commissioner \_\_\_\_\_

*Deborah A. Baglio*

Dated: February 2, 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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cc: Thomas C. Fallon, Assistant City Solicitor  
William A. Kelley, Esq.  
Local Licensing Board  
Frederick G. Mahony, Chief Investigator  
Administration, File