



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

Jean M. Lorizio, Esq.
Chairman

DECISION

**IRWIN ENTERPRISES LLC D/B/A EAST WEST TAVERN
27 LAFAYETTE SQUARE
HAVERHILL, MA 01832
LICENSE#: 06722-RS-0520
HEARD: 6/28/2023**

This is an appeal of the action of the City of Haverhill Licensing Commission (the "Local Board" or "Haverhill") in rolling back the closing hour to 10:00 p.m. from March 16, 2023, to April 1, 2023 of the M.G.L. c. 138, § 12 all alcoholic beverages license of Irwin Enterprises LLC d/b/a East West Tavern ("Licensee" or "East West Tavern") located at 27 Lafayette Square, Haverhill, Massachusetts. The Licensee timely appealed the Local Board's decision to the Alcoholic Beverages Control Commission (the "Commission" or "ABCC"), and a remote hearing via Microsoft Teams was held on Wednesday, June 28, 2023.

The following documents are in evidence as Joint Exhibits:

- A. January 28, 2023, Haverhill Police Report;
- B. February 18, 2023, Haverhill Police Report;
- C. March 3, 2023, Haverhill Police Report;
- D. March 8, 2023, Haverhill License Commission Meeting Notice;
- E. March 17, 2023, Haverhill License Commission Decision;
- F. March 16, 2023, Haverhill License Commission Meeting Minutes;
- G. March 23, 2023, Notice of Appeal and Supplement Notice of Appeal;
- H. March 23, 2023, Public Records Request;
- I. March 30, 2023, Public Records Response.

There is one (1) 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. Irwin Enterprises LLC d/b/a East West Tavern ("Licensee" or "East West Tavern") holds a § 12 all alcoholic beverages license operating at 27 Lafayette Square, Haverhill, Massachusetts since May 2022. (Testimony, Commission Records)

2. East West Tavern is open for business Monday through Thursday 4 p.m. to 12 a.m. midnight, Friday 4 p.m. to 2 a.m., and Saturday 12:30 p.m. to 2 a.m. Last call on Friday and Saturday evenings is at 1:30 a.m. to allow patrons to leave the parking lot by 2 a.m. (Testimony)
3. On January 28, 2023, at approximately 2:11 a.m., Haverhill Police Officer Carmen Rosato responded to the parking lot of East West Tavern for an alleged assault and battery. When Officer Rosato arrived, he observed a male individual lying on the ground. (Testimony, Exhibit A)
4. Officer Rosato neither entered the licensed premises, nor attempted to contact the Licensee on January 28, 2023. *Id.*
5. On February 18, 2023, at approximately 12:21 a.m., Haverhill Police Officer Nicholas Depina was on patrol and parked at East West Tavern. Officer Depina overheard yelling coming from the direction of East West Tavern and subsequently interacted with two women who had been asked to leave the licensed premises. (Testimony, Exhibit B)
6. Officer Depina did not enter the licensed premises on February 18, 2023. *Id.*
7. On March 3, 2023, at approximately 11:22 p.m., Haverhill Police Officer David Steed responded to the East West Tavern to assist Emergency Medical Services. Officer Steed entered the licensed premises and attended to a 60-year-old patron who had reportedly fallen off a bar stool. Officer Steed was not inside the licensed premises prior to the patron's fall. (Testimony, Exhibit C)
8. The Local Board notified the Licensee by letter dated March 8, 2023, of a show cause hearing on March 16, 2023. (Exhibit D)
9. The Local Board held a hearing on March 16, 2023, regarding alleged violations of "204 CMR 2.05(2) Permitting an illegality on the licensed premises, to wit: (2) No licensee for the sale of alcoholic beverages shall permit any disorder, disturbance or illegality of any kind to the place in or on the licensed premises. The licensee shall be responsible therefor, whether present or not", which occurred on January 18, 2023, February 18, 2023 and March 3, 2023. (Exhibit F)
10. The Local Board notified the Licensee by letter dated March 17, 2023 that it had voted for the establishment to close early, at 10 p.m., from March 16, 2023 until April 1, 2023. (Exhibit E)
11. The Licensee timely appealed the Local Board's decision to the ABCC. (Exhibit G)

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); 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)). 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).” Id.

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.” 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. See 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.

For the Commission to make a finding, there must be substantial evidence that a violation has occurred. “Substantial evidence” is “such evidence as a reasonable mind might accept as adequate to support a conclusion.” Embers of Salisbury, Inc. v. Alcoholic Beverages Control Comm’n, 401 Mass. 526, 528 (1988). 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, 710 (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, 472 (1981).

The Licensee’s obligation under 204 C.M.R. 2.05(2) to maintain control over the premises and to comply with Chapter 138 and local regulations is well-settled. The responsibility of the Licensee is to “exercise sufficiently close supervision so that there is compliance with the law on the premises.” Rico’s of the Berkshires, Inc. v. Alcoholic Beverages Control Comm’n, 19 Mass. App. Ct. 1026, 1027 (1985). A licensee who sells alcohol is “bound at his own peril to keep within the condition of his license.” Burlington Package Store, Inc. v. Alcoholic Beverages Control Comm’n, 7 Mass. App. Ct. 186, 190 (1979); accord Commonwealth v. Gould, 158 Mass. 499, 507 (1893). “It is, thus, quite possible for a Licensee to offend the regulatory scheme without scienter.” Rico’s of the Berkshires, 19 Mass. App. Ct. at 1027.

The Local Board charged the Licensee with a violation of “204 CMR 2.05(2) Permitting an illegality on the licensed premises, to wit: (2) No licensee for the sale of alcoholic beverages shall permit any disorder, disturbance or illegality of any kind to the place in or on the licensed premises. The licensee shall be responsible therefor, whether present or not,” which occurred on January 18, 2023, February 18, 2023, and March 3, 2023¹.

The Local Board has the burden of producing satisfactory proof that the Licensee committed a violation on the above-referenced three dates.

¹ In its March 17, 2023, decision the Local Board failed to specify the illegality which was allegedly permitted on the licensed premises. (Exhibit E)

Here, the Local Board presented evidence through the testimony of Haverhill Police Officers Rosato, Depina and Steed. The Commission found the officers to be professional and credible, however, neither Officer Rosato nor Officer Depina were inside the licensed premises on January 28, 2023 or February 18, 2023, and Officer Sneed only entered the licensed premises on March 3, 2023 to assist with a reported injury. The officers did not have firsthand knowledge as to the conduct of the Licensee and what took place prior to their arrival on the dates in question.

Haverhill did not present any direct evidence or percipient witnesses to support a finding of a violation at the licensed premises on January 18, 2023, February 18, 2023, or March 3, 2023.

The Commission is persuaded and finds that the Local Board has failed to produce substantial evidence to support a finding that the Licensee permitted an illegality on the licensed premises in violation of 204 CMR 2.05(2) on January 28, 2023, February 18, 2023, or March 3, 2023.

CONCLUSION

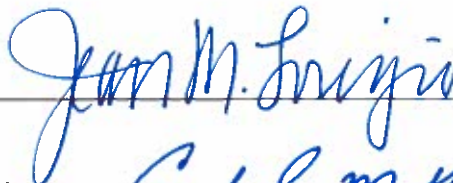
The Alcoholic Beverages Control Commission **DISAPPROVES** of the action of the City of Haverhill License Commission in finding that Irwin Enterprises LLC d/b/a East West Tavern committed a violation of 204 CMR 2.05(2) on January 28, 2023, February 18, 2023, and March 3, 2023.

Therefore, the Commission **DISAPPROVES** of the action of the City of Haverhill License Commission in rolling back the Licensee's closing hour to 10 p.m.

The Commission remands the matter to the Local Board with the recommendation 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 A. Baglio, Commissioner



Dated: April 1, 2025

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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αμέσως.

这份文件是重要的，应立即进行翻译。

यह दस्तावेज़ महत्वपूर्ण है और इसका तुरंत अनुवाद किया जाना चाहिए

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‘Đây là tài liệu quan trọng và cần được dịch ngay’

ឯកសារនេះសំខាន់ណាស់ ហើយត្រូវបកប្រែជាបន្ទាន់។

2023-000041-ad-enf

cc: Peter J. Nicosia, Esq.
Thomas C. Fallon, Esq.
Local Licensing Board
Frederick G. Mahony, Chief Investigator
Administration, File