



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

**Jean M. Lorizio, Esq.**  
*Chair*

**DECISION**

**CALIFORNIA NIGHT CLUB INC. D/B/A ATTIKA  
1 MILL STREET  
LAWRENCE, MA 01840  
LICENSE#: 0594-00237  
HEARD: 8/08/2019**

This is an appeal of the action of the Licensing Board of the City of Lawrence ("Local Board" or "Lawrence") for suspending the M.G.L. c. 138, § 12 all alcoholic beverages license of California Night Club Inc. d/b/a Attika ("Licensee" or "Attika") located at 1 Mill Street, Lawrence, Massachusetts for a period of forty-five (45) days and in addition the license is suspended for a period of six (6) months, to be held in abeyance for a period of six (6) months, suspension to be imposed on and after the 45-day suspension. The Licensee timely appealed the Local Board's decision to the Alcoholic Beverages Control Commission ("Commission" or "ABCC"), and a hearing was held on Thursday, August 8, 2019.

The following documents are in evidence as exhibits:

1. Incident Reports for 6/2/2019 from Lawrence Police Department and Lawrence Fire Department;
2. Photographs of the Roof of Licensed Premises;
3. Photographs of Bagged Hookahs and Charcoal;
4. Local Board Notice of Hearing, 6/5/2019;
5. Decision of the Local Board, 6/25/2019;
6. Essex Superior Court Docket #1977-CV-920 Agreement Order, 7/2/2019;
7. ABCC Decision, 5/21/2019;
8. Local Board Decision, 8/30/2018;
9. Local Board Decision, 6/14/2018;
10. Minutes of Local Board Meeting, 6/28/2017;
11. ABCC Notice of Accepted Offer in Compromise, 1/9/2018;
12. ABCC Decision, 12/7/2017;

13. Local Board Notice of Hearing, 10/21/2015;
14. ABCC Decision, 9/1/2015;
15. Memorandum of Law with Exhibits in Support of Licensee's Motion to Essex Superior Court for Preliminary Injunction; and
16. Rules and Regulations of the Licensing Board for the City of Lawrence;
17. Licensee's Stipulation to the Facts.

There is one (1) audio recording of this hearing and four (4) witnesses testified.

### FINDINGS OF FACT

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

1. California Night Club Inc. d/b/a Attika ("Licensee" or "Attika"), holds an all alcoholic beverages license, and operates a night club and restaurant at 1 Mill Street, Lawrence, MA. Mr. Yoel Herrera is the license manager. (Testimony, Exhibit 5)
2. Attika's licensed premises consists of three floors. The first floor has two bars with a capacity of 270 people, the second floor has three bars with a capacity of 350 people, and the third floor has one bar and a capacity of 460 persons. (Testimony)
3. On June 2, 2019, at approximately 7:12 p.m., Officers from the Lawrence Fire Department responded to Attika for a fire alarm activated in the kitchen due a problem with the cooking exhaust system. Lawrence Deputy Fire Commissioner McGinnis allowed Attika to temporarily cover one smoke detector in the kitchen so that the premises could remain open. (Testimony, Exhibit 1)
4. Shortly after the Fire Department left Attika, the Lawrence Police and Fire Departments received information along with a video about Attika. It was reported that when the Fire Department initially responded for the kitchen alarm, men were on Attika's roof and appeared to be moving containers from inside Attika onto the roof. (Testimony, Exhibits 1, 2)
5. A video was submitted showing that when the Fire officials left Attika, men returned to Attika's roof and moved the same containers from the roof back inside the licensed premises. As a result of this information, officers from both the Lawrence Police and Fire Departments responded to Attika. (Testimony, Exhibits 1, 2)
6. Upon returning to Attika, Officers detected a strong smell of burnt charcoal and observed several people running up the first-floor staircase carrying hookah equipment. Fire Officials located trash bags containing hookah equipment on the stairwell leading to the roof. They discovered actively burning charcoal on Attika's roof. (Testimony, Exhibit 1)
7. Upon finding burning charcoal and hookah pipes, Lawrence Police Sergeant Simard asked Captain Delaney if the premises should be shut down, and the patrons evacuated. Captain Delaney first wanted to determine what issues existed inside the premises and he did not want to unnecessarily close the business. (Testimony, Exhibit 1)

8. Lawrence Fire and Police Officials inspected the entire premises. They found actively burning charcoal in the rear stairwell, in addition to the roof area of Attika. (Testimony, Exhibits 1, 3)
9. Mr. Yoel Herrera identified himself to fire and police officials as the manager and person in charge of Attika. Captain Delaney asked Mr. Herrera to tell the fire and police officers where the burning charcoal was located at the premises. (Testimony, Exhibits 1, 3)
10. Mr. Herrera told Captain Delaney, "It is your job, go and find it." Mr. Herrera was heard repeating this when asked for cooperation and information in finding the locations of the burning charcoal. Lawrence Police Officers also overheard someone say "hurry lock the door, don't let them in" on Attika's (employee's walkie-talkies) radios. (Testimony, Exhibit 1)
11. Captain Delaney then requested that a Deputy Fire Chief and fire apparatus with thermal imaging cameras respond to Attika to assist in finding the burning charcoal. (Testimony, Exhibit 1)
12. As Attika employees refused to cooperate, Captain Delaney made the decision to close<sup>1</sup> the business and evacuate the premises for the safety of the patrons, employees, police and fire officials, and the general public. (Testimony, Exhibits 1, 2)
13. An extensive amount of Lawrence fire and police resources were utilized to inspect Attika for additional fire hazards on this night. This precluded Lawrence public safety officials from assisting with other emergencies and public safety issues in the City of Lawrence. (Testimony)
14. A Smoke Free Workplace (M.G.L. c. 270, § 22) and the Regulations of the Lawrence Board of Health prohibit smoking of any kind on the premises. The smoking of hookahs, and the mere presence of hookah pipes of any kind (charcoal or electronic) are illegal and not permitted inside licensed establishments in the City of Lawrence. (M.G.L. c. 270, § 22, Testimony, Exhibits 15 F, 16)
15. Pursuant to Rule J 3 of the Rules and Regulations of the Licensing Board of the City of Lawrence, a license is subject to suspension, revocation, or forfeiture for breach of any of its conditions or regulations, or any law of the Commonwealth. See Rule J 3. (Exhibits 15 E, 16)
16. At the Commission hearing, Licensee Attika, stipulated<sup>2</sup> to the violation of the use of hookah pipes inside Attika. (Testimony, Exhibit 17)
17. License manager, Mr. Yoel Herrera, admitted that hookah pipes were being used inside Attika on this night, and that he knew that the use of hookah pipes was prohibited inside licensed establishments in the City of Lawrence. (Testimony)

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<sup>1</sup> Had the licensee cooperated with fire and police officials, there was a good possibility the premises could have remained open that evening. (Testimony)

<sup>2</sup> The licensee stipulated to the facts of the violation of using hookah pipes. The Licensee did NOT stipulate to the sanction imposed. (Exhibit 17) The Licensee has served two days of the 45 (forty-five) day suspension. The remainder of the suspension was stayed. The Licensee was allowed to operate the premises with the requirement of having a Lawrence Fire Department Official on the premises while Attika was operating. (Testimony, Exhibit 6)

18. The Local Board held a hearing on June 19, 2019 regarding these allegations. (Exhibit 4)
19. By decision dated June 25, 2019, the Local Board found Attika “violated laws including the Massachusetts Smoke-free Workplace Laws, the Regulations of the Lawrence Board of Health, the Regulations of the Licensing Board of the City of Lawrence, and 204 CMR 2.05, allowing an illegality to exist upon alcohol licensed premises.” (Testimony, Exhibits 4, 5, 15F, 16)
20. The Local Board voted unanimously to suspend<sup>3</sup> Attika’s license for a period of forty-five (45) days, in addition to consecutively suspending the license for an additional period of six (6) months to be held in abeyance for a period of six (6) months to be served on and after the forty-five (45) day suspension is served. (Exhibit 5)
21. Attika’s History of Prior Violations: (Exhibits 7, 8, 9, 10, 11, 12, 13, 14)
  - a. ABCC Violation decision dated May 21, 2019 - Serving more than two drinks to one person, cover charge not posted. Disposition: Warning. (Exhibit 7);
  - b. Lawrence Local Board violation decision dated August 30, 2018 - Failure to abate dangerous or unsafe conditions - charcoal hookahs stored in basement. Disposition: Warning. (Exhibit 8);
  - c. Lawrence Local Board violation dated June 14, 2018 - Permitting Illegalties – not specified. Disposition - a two-week roll back/reduction of hours, closing hour rolled back to 11:00 p.m. (Exhibit 9);
  - d. Lawrence Local Board Minutes dated June 28, 2017- violation not specified. Disposition: Warning. (Exhibit 10);
  - e. ABCC violation dated December 13, 2019 – Permitting an Illegality on the Premises - Possession of Alcohol by person under 21 years of age (2 counts). Disposition: Four (4) day license suspension, Licensee paid a fine in lieu of suspension. (Exhibit 11);
  - f. ABCC violation decision dated December 7, 2017 - Minor in Possession of Alcohol (1 count). Disposition: four (4) days suspended, held in abeyance for two years. (Exhibit 12);
  - g. Lawrence Local Board Notice of Hearing- November 18, 2015 – to discuss violations of Massachusetts law regarding hookahs, tobacco products in a liquor establishment together with the use of open flame fireworks indoor in response to complaints/videos. Disposition – not specified. (Exhibit 13);
  - h. ABCC violation dated September 1, 2015 - Delivery of more than two (2) drinks to one (1) person at a time. Disposition: Three (3) days suspended, held in abeyance for a period of two years. (Exhibit 14)

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<sup>3</sup> The Licensee served two days of the 45-day suspension, and the remainder of the penalty was stayed per order of Superior Court. As a condition of the stay of suspension, the Licensee was required to hire and pay a Lawrence Fire Department Official to perform a detail to be present at all hours whenever the Licensee is operating. (Testimony, Exhibit 6)

## 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. 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. 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, 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).

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’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 (179); 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 Commission’s “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.

In this matter, the Local Board has the burden of proving that on June 2, 2019, Attika committed the violations of 204 CMR 2.05 (2) Permitting an Illegality on the Licensed Premises, to wit: the

use and presence of hookah pipes in violation of M.G.L. c. 270, section 22, the Massachusetts Smoke-free Workplace Laws, the Regulations of the Lawrence Board of Health, and the Regulations of the Licensing Board of the City of Lawrence. The Local Board imposed the penalty of a 45 (forty-five) day suspension, in addition to a consecutive penalty of a six (6) month suspension, to be held in abeyance for a period of six (6) months to be served on and after the forty-five (45) day suspension, provided there are no additional violations committed by the Licensee. (Exhibit 5)

The Licensee stipulated to the violation during the Commission hearing that the patrons were using hookah pipes inside Attika on June 2, 2019. (Exhibit 17) However, the Licensee disputes the severity of the penalty imposed by the Local Board for this violation.

The Commission finds that the licensee committed this violation. Furthermore, this is not Attika's first violation for the use of hookah pipes. (Exhibits 8, 13) Mr. Yoel Herrera, the license manager, admitted before the Commission that hookah pipes were being used inside Attika on June 2, 2019. (Testimony) He also admitted that he knew the use and presence of hookah pipes were prohibited inside licensed establishments in the City of Lawrence. (Testimony)

Furthermore, the Commission finds that Attika seriously exacerbated this illegal situation by trying to hide the hookahs and the burning charcoal from fire and police officials. (Testimony, Exhibit 1) Attika's employees, specifically its license manager, were completely uncooperative with Lawrence safety officials who were trying to prevent a fire. (Testimony, Exhibit 1) The Commission finds that the licensee's behavior only served to complicate the jobs of Lawrence public safety officials as well as jeopardize the safety of all inside the premise on this night. (Testimony, Exhibit 1)

The Commission finds the Licensee's utter lack of cooperation, coupled with its hiding of evidence and attempts to obstruct the investigation by public safety officials, to be extremely egregious. Based on the Licensee's conduct, its knowledge that it was committing a violation, its prior history of similar hookah violations, and its uncooperative behavior, the Commission finds the sanction imposed by the Local Board to be a reasonable exercise of the Local Board's discretion. The Commission upholds the penalty issued by the Local Board.

### CONCLUSION

The Alcoholic Beverages Control Commission ("Commission") **APPROVES** the action of the Licensing Board of the City of Lawrence in finding that California Night Club Inc. d/b/a Attika, committed violations of:

- 1) 204 CMR 2.05 (2) Permitting an Illegality on the Licensed Premises, to wit: the use of hookah pipes in violation of M.G.L. c. 270, § 22, the Massachusetts Smoke-free Workplace Laws, the Regulations of the Lawrence Board of Health, and the Regulations of the Licensing Board of the City of Lawrence.

The Commission **APPROVES** the action of the Licensing Board of the City of Lawrence for imposing a penalty of a forty-five (45) day suspension, in conjunction with a six (6) months suspension to be held in abeyance for a period of six (6) months.

**ALCOHOLIC BEVERAGES CONTROL COMMISSION**

Kathleen McNally, Commissioner

*Kathleen McNally*

Jean M. Lorizio, Chairman

*Jean M. Lorizio*

Dated: November 5, 2019

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: Leonidas B. Chakolos, Esq.  
Robert F. Kelley, Esq.  
Timothy Houten, Esq.  
Local Licensing Board  
Frederick G. Mahony, Chief Investigator  
Administration, File