



***Commonwealth of Massachusetts
Alcoholic Beverages Control Commission
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Jean M. Lorizio, Esq.
Chairman

DECISION

**CAROLINA ALONZO D/B/A ELITE LOUNGE & GRILL
336 COMMON ST.
LAWRENCE, MA 01840
LICENSE#: 0594-00199
HEARD: 08/16/2018**

This is an appeal of the action of the City of Lawrence Licensing Board (the "Local Board" or "Lawrence") for revoking the M.G.L. c. 138, § 12 all alcoholic beverages license of Carolina Alonzo d/b/a Elite Lounge & Grill ("Licensee" or "Elite Lounge") located at 336 Common Street, Lawrence, Massachusetts for a violation of 204 CMR 2.05 to wit M.G.L. Ch. 269, s. 12E Firearm, Discharge within 500 ft. of building. The Licensee timely appealed the Local Board's decision to the Alcoholic Beverages Control Commission (the "Commission" or "ABCC"), and a hearing was held on Thursday, August 16, 2018.

At the close of the August 16, 2018 hearing, the Commission left the record open for the City of Lawrence to submit an additional exhibit. The Local Board submitted its exhibit in a timely manner. The record is now closed.

The following documents are in evidence as exhibits:

- A. Local Board's Decision [7-day suspension], dated 4/20/2017;
- B. Local Board's Decision [3-day suspension] with Lawrence Police Incident Reports, dated 1/12/2018;
- C. Local Board's Decision [Roll back of hours for 3 months] with Lawrence Police Incident Reports, dated 5/21/2018;
- D. Local Board's Notice of Revocation including Lawrence Police Incident Reports, dated 6/19/2018;
- E. Licensee's 2018 Common Victualer 7 Day All Alcoholic Beverages License;
- F. Local Board's Rules and Regulations;
- G. Photos of Licensee's Menu;
- H. List of Licensee's Employees; and
- I. Surveillance Video from Elite Lounge.¹

¹ Due to a pending criminal matter, the Commission issued an order that this video remain confidential.

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

The Commission took Administrative Notice of the Licensee's Commission file.

FINDINGS OF FACT

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

1. Carolina Alonzo d/b/a Elite Lounge & Grill ("Licensee" or "Elite Lounge") located at 336 Common Street, Lawrence, Massachusetts, holds a § 12 all alcoholic beverages license. (Commission records)
2. The Licensee has held the alcoholic beverages license since August 3, 2015. Carolina Alonzo is the sole owner and license manager of record for the license. (Commission records)
3. On April 2, 2018 at approximately 1:10:24 a.m. a male individual ("shooter") entered the front exterior door of Elite Lounge. He did not enter the interior of the premises, only the vestibule area. Eleven (11) seconds elapsed and the shooter exited the front door of Elite Lounge at 1:10:35 a.m. Outside the front door, the shooter pulled out a firearm/handgun, pointed the gun in the air, and discharged one round containing a 9mm bullet. The shooter left the area in a motor vehicle. No one was injured. (Testimony, Exhibits D, I)
4. During the investigation, Ms. Carolina Alonzo and Mr. Gomez, a licensee employee, told the Lawrence Police Officers that they did not know the identity of the shooter and denied that the shooter was an employee of the licensee. (Testimony)
5. Lawrence Police Officers were able to determine the identity of the shooter as Mr. Yoan Paniagua ("shooter"). Sergeant Cerullo determined that the shooter had been an employee of Elite Lounge based on an employee list provided by the licensee at a previous Local Board hearing in May of 2018. (Testimony, Exhibit H)
6. The Local Board held a public hearing on June 13, 2018 and "the Lawrence Licensing Board ("Board") heard testimony from the Lawrence Police Department concerning Incident Reports 18002774 and 18002290." (Exhibit D)
7. By decision dated June 19, 2018 the Local Board revoked Elite Lounge's license as "this Board has determined you violated 204 CMR 2.05 by allowing illegalities on your license premises." (Exhibit D)
8. Police Reports attached to the revocation decision *only* state, refer to, and address the violation/incident as "shots fired, Firearm, Discharge within 500 feet of building c. 269 § 12E." (Exhibit D)
9. The decision of the Local Board and the attached police reports are completely silent regarding the charge of Hindering an Investigation/providing false information to police or an agent of the Local Board.² This allegation/violation was neither charged nor addressed

² This allegation was made in the Joint Pre-hearing memorandum, via the Local Board's argument, and witness testimony but is not properly before the Commission. As such, the Commission will

in the Local Board's decision of revocation, nor in the police reports attached to the decision. The Commission is not in possession of the original hearing notice to the Licensee regarding this violation, as it was not submitted in evidence as an exhibit. (Exhibits A, B, C, D, E, F, G, H, I)

10. The Local Board decision to revoke Elite Lounge's license was based on its policy of Progressive Discipline and its concern for public safety. The factors the Local Board took into consideration were the licensee's history of prior violations, the imposition of suspensions for previous penalties, and a prior roll back of the licensee's closing hours. (Testimony, Exhibits A, B, C, D)
11. The Rules and Regulations of the Local Board are silent regarding its policy of progressive discipline. (Exhibit F)

Carolina Alonzo d/b/a Elite Lounge History of Violations

12. **1st Prior Violation:** April 20, 2017 - Local Board issued penalty of Seven (7) day license suspension for a violation of Chapter 116 of the Acts of 2010 for failure to maintain liquor liability insurance for a period of forty (40) days while in operation. Incident date: February 15, 2017 to March 27, 2017 (Exhibit A)
13. **2nd Prior Violation:** January 12, 2018 - Local Board issued penalty of Three (3) day license suspension for violations of 204 CMR 2.05 (2) to wit: sales of alcoholic beverages to minors, and patrons drinking on the premises after legal closing hour. Incident date: November 27, 2017.³ (Exhibit B)
14. **3rd Prior Violation:** May 21, 2018, after a hearing, the Local Board voted to roll back/reduce the closing hours⁴ of the licensee for three (3) months for violations of 204 CMR 2.05 (2) to wit: operating after legal closing hours and service of alcoholic beverages after legal closing hour. Incident date: March 3, 2018. (Exhibit C)

not take any action regarding a charge of Hindering an Investigation/Providing False Information to the police or an agent of the local board.

³ The Local Board decision incorrectly states in part that the violation charged is regarding 504 CMR 2.05. The Commission understands the violation charged is regarding 204 CMR 2.05 (2) as it appears in other parts of the Local Board decision.

⁴ The ABCC does not have jurisdiction regarding the roll-back of a licensee's closing hours after 11:00 p.m. See Case Loma v. Alcoholic Beverages Control Comm'n, 377 Mass. 231 (1979).

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).

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 Local Board has the burden of producing satisfactory proof that the Licensee committed a violation which occurred on April 2, 2018.

I. Permitting an Illegality/Discharge of Firearm

The Local Board alleges a violation of 204 C.M.R. 2.05(2): “No licensee for the sale of alcoholic beverages shall permit any disorder, disturbance or illegality of any kind to take place in or on the licensed premises. The licensee shall be responsible therefor, whether present or not.”

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) (table). 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 Licensee is charged with one count of violating 204 C.M.R. 2.05(2), permitting a disorder, disturbance, or illegality on the licensed premises to wit, permitting a “firearm to be discharged within 500 feet of a building, a violation of G.L. c. 269 § 12E,” on the night of April 2, 2018.

The Commission is not persuaded that the licensee permitted an illegality, as the shooter was never allowed inside the licensed premise. The Commission heard uncontroverted testimony which was corroborated by the videotape evidence. The evidence showed that the shooter went through the first/exterior front door, and remained only in the vestibule area, between the outside door and a second interior door before exiting eleven (11) seconds later. The shooter exited the front/exterior door and once outside discharged one round/bullet from a firearm he was carrying. The Commission finds the shooter was not allowed to enter the licensed premise and therefore was not a patron.

The Commission finds no violation for permitting an illegality, a violation of 204 C.M.R. 2.05(2) to wit, permitting a firearm to be discharged within 500 feet of a building, a violation of G.L. c. 269 § 12E, since there was no evidence that the shooter was ever inside the licensed premise on the night of the incident.

CONCLUSION AND DISPOSITION

The Commission **DISAPPROVES** the action of the City of Lawrence in finding that Carolina Alonzo d/b/a Elite Lounge & Grill committed the violation of Permitting an Illegality, discharging a firearm within 500 feet of a building.

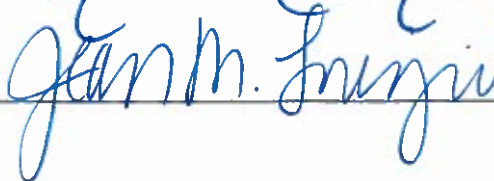
The Commission remands the matter to the Local Board with the recommendation that no modification, suspension, revocation, or cancellation of this license be ordered by the Local Board as any penalty would be discrepant with the Commission’s decision.

ALCOHOLIC BEVERAGES CONTROL COMMISSION

Kathleen McNally, Commissioner



Jean M. Lorizio, Chairman



Dated: November 9, 2018

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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