



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

Jean M. Lorizio, Esq.
Chair

DECISION

**EV ENTERTAINMENT LLC D/B/A CLUB PARADISE
272 BROADWAY
LAWRENCE, MA 01841
LICENSE#: 0594-00228
HEARD: 3/28/2019**

This is an appeal of the action of the Licensing Board of the City of Lawrence (the "Local Board" or "Lawrence") for suspending the M.G.L. c. 138, § 12 all alcoholic beverages license of EV Entertainment LLC, d/b/a Club Paradise ("Licensee" or "Club Paradise") located at 272 Broadway, Lawrence, Massachusetts. 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, March 28, 2019.

At the close of the March 28th hearing, the Commission left the record open for the Lawrence Local Board to submit additional exhibits. The Local Board submitted three additional documents which are marked as Exhibits 10, 11, and 12. The Local Board submitted its exhibits in a timely manner. The record is now closed.

The following documents are in evidence as exhibits:

1. Licensee's § 12 All Alcoholic Beverages License, Common Victualer License, and Entertainment License;
2. Local Board Minutes dated November 28, 2018;
3. Local Board Minutes dated January 16, 2019;
4. Decision of the Local Board dated December 5, 2018;
5. Lawrence Board of Health violation letter, dated November 2, 2018;
6. Notice of Hearing on November 28, 2018 with attached Lawrence Fire Department reports;
7. Notice of Insurance cancellation and liquor liability declarations;
8. Photographs of tin foil and charcoal;
9. Photos of Smoke Detectors covered in plastic;
10. Rules and Regulations of the Licensing Board for the City of Lawrence;
11. ABCC Advisory for Mandatory Liquor Liability Insurance Coverage for M.G.L. c. 138, § 12 Licensees; and

12. Decision of Lawrence Local Board imposing a seven-day license suspension against Elite Lounge, a § 12 licensee, for a violation of a lapse (40 days) of liquor liability insurance while continuing to operate the business.

A. Licensee's Stipulation¹ as to the Facts.

FINDINGS OF FACT

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

1. The Licensee, Club Paradise, holds an all alcoholic beverages license and operates a business at 272 Broadway, Lawrence, MA. (Exhibit 1)
2. Club Paradise is open seven days a week with a 2:00 a.m. closing hour on Fridays, and a 1:00 a.m. closing hour the other six nights of the week. It has a capacity of 280 people on the first floor, and 115 people on the second floor, for a total occupancy of 395 persons. (Testimony, Exhibit 1)
3. On October 27, 2018, at 7:30 a.m. Captain Delaney, the Captain of Fire Prevention and Code Enforcement for the City of Lawrence, was called by Lawrence Fire Deputy Chief McGuinness to respond to Club Paradise due to an alarm activation. (Testimony, Exhibit 6)
4. Upon arrival at the premises, Captain Delaney observed that five smoke detectors on the first floor of Club Paradise were completely covered with black plastic and secured with elastic bands, resulting in them being inoperable. (Testimony, Exhibits 5, 6, 9)
5. Captain Delaney observed a fog/smoke machine on the stage, which was still plugged in and contained liquid. Near the D.J. booth, he observed remnants of tin foil and charcoal consistent with the use of charcoal hookah pipes. (Testimony, Exhibits 6, 8)
6. Fog/smoke machines are not allowed for use in any establishments in the City of Lawrence. (Exhibit 4)
7. A Fire Watch was required at the premises until all of the issues could be rectified. (Exhibit 6)
8. The City of Lawrence Board of Health issued a violation² notice to Club Paradise for using hookah pipes on the premises. (Exhibit 5)
9. The Licensee admitted that the smoke detectors were covered with black plastic, and that hookah pipes³ and a fog machine were used at the premises on the evening before Captain

¹ The stipulation is only to the facts as presented, NOT to the violations and the disposition imposed. (Exhibit A, Commission record)

² The notice was submitted to the Local Board and is incorporated into its decision. (Exhibits 4, 5)

³ The Licensee admitted that it used twelve (12) electronic hookah pipes that evening, which were operated with a charged battery and utilized vapor. (Testimony)

Delaney and the Lawrence Fire department responded to Club Paradise. (Commission records, Exhibit A)

10. The Licensee's liquor liability insurance was cancelled on July 10, 2018. (Exhibit 7)
11. In October of 2018, it was brought to the Licensee's attention that its liquor liability insurance had lapsed on July 10, 2018, while the premises remained in operation serving members of the public.⁴ The insurance remained cancelled for six more weeks, until December 7, 2018, when it was reinstated. (Exhibits 4, 7)
12. The Licensee admitted to operating its licensed business without liquor liability insurance. (Commission records, Exhibit A)
13. A hearing was held before the Local Board on November 28, 2018. The Local Board found the Licensee in violation of 204 CMR 2.05 for permitting illegalities to exist on the licensed premises: violation of 204 CMR 2.05 (2): Permitting an Illegality on the Licensed Premises to wit: deactivating/tampering with smoke detectors creating a hazardous/dangerous condition in violation of M.G.L. c. 148, § 34A (a) (2); violation of 204 CMR 2.05 (2) Permitting an Illegality on the Licensed Premises to wit: smoking hookah pipes inside a licensed premises in violation of M.G.L. c. 270, § 22; violation of 204 CMR 2.05 (2) Permitting an Illegality on the Licensed Premises to wit: using a fog/smoke machine inside a licensed premise; and operating its licensed premises while serving members of the public without mandatory liquor liability insurance in violation of M.G.L. c. 116 of the Acts of 2010 and MGL c. 138, § 12. (Exhibits 2, 4, 5, 6, 7)
14. The Local Board found the Licensee committed the aforementioned violations and imposed a penalty of a one (1) year suspension, six months to serve,⁵ and six months held in abeyance. Should there be any other incident and/or disturbance, the (6) months would be brought forward to be served. (Exhibits 3, 4)
15. 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 mere presence of hookah pipes at establishments subject to Board of Health regulations in the City of Lawrence, as well as outdoor spaces accessory to these establishments, is also prohibited. (Exhibit 5)
16. The Lawrence Local Board imposed a seven (7) day license suspension against § 12 licensee, Elite Lounge, (Carolina Alonzo) for a 40 (forty) day lapse of mandatory liquor liability insurance while the premises was operating, in violation of M.G.L. c. 116 of the Acts of 2010. (Exhibit 12)

⁴ The Licensee shut down the premises on October 30, 2018. It reopened the premises on December 7, 2018 when its insurance coverage was reinstated. (Commission records, Exhibit 7)

⁵ The Local Board imposed the suspension to be served from January 16, 2019 to July 15, 2019, forthwith. The remainder dates of July 16, 2019 through January 16, 2020 are to be held in abeyance, to be brought forward to be served should there be any other incident and/or disturbance. The Local Board did not specify a time period for the length or duration of time for which the six months are to be held in abeyance. (Exhibits 3, 4)

17. 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. (Exhibit 10)

DISCUSSION

Licenses to sell alcoholic beverages are a special privilege subject to public regulation and control, Connolly v. Alcoholic Beverages Control Comm'n., 334 Mass. 613, 619 (1956), for which States have especially wide latitude pursuant to the Twenty-First Amendment to the United States Constitution. Opinion of the Justices, 368 Mass. 857, 861 (1975).

Chapter 138 was “enacted . . . to serve the public need and . . . to protect the common good.” M.G.L. c. 138, § 23. In order to effectuate the purpose of Chapter 138, the Commission has “general supervision of the conduct of the business of manufacturing, importing, exporting, storing, transporting and selling alcoholic beverages. . . .” M.G.L. c. 10, § 71. As part of these “comprehensive powers of supervision over licensees,” Connolly, 334 Mass. at 617, the Commission has the authority to grant, revoke and suspend licenses. “[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) (emphasis supplied).

The law is well-settled that “the responsibility of the licensee is to exercise sufficiently close supervision so that there is compliance with the law on the premises. A vendor who sells alcohol is “bound at his own peril to keep within the condition of his license.” Rico’s of the Berkshires, Inc. v. Alcoholic Beverages Control Comm’n, 19 Mass. App. Ct. 1026, 1027 (1985) (quoting Commonwealth v. Gould, 158 Mass. 499, 507 (1893), and citing Burlington Package Liquors, Inc. v. Alcoholic Beverages Control Comm’n, 7 Mass. App. Ct. 186, 190 (1979)).

In order for the Commission to make a finding, there must be substantial evidence that a violation has occurred. “Substantial evidence of a violation is more than a mere scintilla. It means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.” Consol. Edison Co. of New York v. N.L.R.B., 305 U.S. 197, 229 (1938); accord Charlesbank Rest. Inc. v. Alcoholic Beverages Control Comm’n, 12 Mass. App. Ct. 879 (1981).

The Local Board has the burden of producing satisfactory proof that the Licensee committed the violations that occurred on October 27, 2018 and allowed the mandatory liquor liability insurance to lapse from July 10, 2018 until it was reinstated on December 7, 2018. The Local Board suspended the license for one year, six months to serve, six months held in abeyance, for these allegations of violations.⁶

Three of the violations alleged by the Local Board involve 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

⁶ See Note 5 supra.

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 (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.

I. Violation of 204 CMR 2.05 (2) Permitting an Illegality on the Licensed Premises to wit: Deactivating/Tampering with Smoke Detectors Creating a Dangerous Condition in violation of M.G.L. c. 148, § 34A (2):

M.G.L. c. 148, § 34A (a) (2) states in part: “Any owner, occupant, lessee or other person having control or supervision of any assembly use group building, as defined by the state building code, and who causes or permits a dangerous condition to exist on the premises at any time shall be punished by a fine of not more than \$5,000 or by imprisonment in the house of correction for not more than 2 1/2 years, or both. For the purposes of this section, “dangerous condition” shall mean: (2) the failure to maintain or the shutting off of any fire protection or fire warning system required by law...” M.G.L. c. 148, § 34A (a) (2).

The Licensee is charged with permitting the illegality of causing a dangerous condition by tampering with five (5) smoke detectors inside its premises. This tampering rendered the smoke detectors inoperable, thereby creating a dangerous condition. The Commission heard testimony from Lawrence Fire Department Captain Delaney that he responded to a fire alarm at Club Paradise. Upon entering he observed all five smoke detectors located on the first floor covered with black plastic, resulting in them being shut off/deactivated. (Testimony, Exhibits 2, 4, 9) The Licensee admitted at the Commission hearing that all five smoke detectors on the first floor of the premises were covered with black plastic. (Exhibit A) The Commission finds the Local Board’s decision of responsibility for violation of 204 CMR 2.05(2) pursuant to c. 148, § 34A (2) to be supported by substantial evidence.

The Commission considers this an egregious violation. In a prior decision, the Commission has disapproved an application for a § 12 license because the applicant committed this same (among other) violation – covered the smoke detectors with duct tape, rendering them inoperable. See Yu Hua Chen, d/b/a Ming Seafood Restaurant, (ABCC Decision March 30, 2012). The Commission finds that this was an intentional and egregious act resulting in the dangerous condition of having inoperable smoke detectors in a licensed premise, while operating with patrons and employees inside the premises.

II. Violation of 204 CMR 2.05 (2) Permitting an Illegality on the Licensed Premises to Wit: Use of a Smoke/Fog Machine:

Captain Delaney testified that upon arrival at Club Paradise, he also observed a fog/smoke machine on the stage, which was still plugged in with some liquid remaining. Fog/smoke machines are not allowed for use in any establishment in the City of Lawrence. (Testimony, Exhibit 2) The Licensee admitted at the hearing that they were using a smoke/fog machine to add ambiance for a Halloween party held the previous evening at the premises. (Commission records, Exhibit A) The Commission finds the Local Board’s decision of the Licensee’s responsibility for this violation of 204 CMR 2.05(2) to be supported by substantial evidence.

III. Violation of 204 CMR 2.05 (2) Permitting an Illegality on the Licensed Premises, to Wit: M.G.L. c. 270, section 22: Use of Hookah Pipes:

The Licensee admitted to using 12 electronic hookah pipes the evening before the fire alarms were activated. The use of hookah pipes⁷ and smoking of any kind is prohibited inside any licensed establishment in the City of Lawrence. (Exhibit 5) The Commission finds the Local Board's decision of responsibility for the Licensee's violation of 204 CMR 2.05(2) pursuant to MGL c. 270, § 22 to be supported by substantial evidence.

IV. Failure to Maintain Mandatory Liquor Liability Insurance in violation of M.G.L c. 138 Section 12:

M.G.L. c. 138, § 12 states in part: "No license shall be issued or renewed under this section until the applicant or licensee provides proof of coverage under a liquor legal liability insurance policy for bodily injury or death for a minimum amount of \$250,000 on account of injury to or death of 1 person, and \$500,000 on account of any 1 accident resulting in injury to or death of more than 1 person. Proof of the insurance coverage required by this section shall be made by filing a certificate of insurance in a form acceptable to the local licensing authority...."⁸ M.G.L. c. 138, § 12.

Club Paradise admitted that its liquor liability insurance was cancelled on July 10, 2018. The Licensee admitted that it continued to operate its premises without mandatory insurance coverage from July 10, 2018 through October 29, 2018, when the Local Board became aware that it was operating without insurance. Club Paradise then closed its premises until December 7, 2018, when its insurance policy was reinstated. (Commission records, Exhibits 7, A)

The Commission finds by substantial evidence that the Licensee committed this violation.

V. Reasonableness of Penalty Issued by Local Board:

With the Commission's finding that the Licensee permitted/committed the violations as determined by the Local Board, the Commission must determine if the penalty issued by the Local Board is appropriate. "The burden is on the licensee to prove the penalty imposed should not be approved." Metrowest Tropical Foods, Inc. (ABCC Decision Sept. 20, 2006). The required

⁷ The Commission heard testimony and saw photos of charcoal remnants and aluminum/tin foil, however, substantial evidence was not presented that the Licensee permitted, or that patrons were observed smoking charcoal hookah pipes inside the premises. The Commission was presented with substantial evidence regarding a violation for the smoking/use of other types of hookah pipes inside the premises. (Testimony, Commission records, Exhibit A)

⁸ In May of 2010 the Legislature amended M.G.L. c. 138, § 12 by requiring existing licensees and any applicants for a new alcoholic beverage licenses issued pursuant to M.G.L. c 138, § 12 to carry a minimum amount of mandatory liquor liability insurance coverage. (Policy limits of \$250,000 per person, \$500,000 per occurrence/incident.) As a result, applicants for § 12 licenses must provide proof of insurance coverage under a liquor liability insurance policy for bodily injury or death as a condition to receive or renew a § 12 license. Existing § 12 licensees, which include any entities wishing to transfer a license, must provide proof of insurance coverage under a liquor legal liability insurance policy for bodily injury or death, as a condition to renew a license. See MGL c. 138, § 12. (Exhibit 11)

conduct of licensees who sell alcoholic beverages is set out in M.G.L. c. 138. Chapter 138 was “enacted ... 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).

Local Board Rules and Regulations state that 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. (Exhibit 10) The Local Board Rules are silent regarding the length of time/period for a suspension for the violations committed. (Exhibit 10)

The Licensee argues that the penalty of a one (1) year suspension, with six months to serve/remain closed, and six months held in abeyance, to be extremely harsh for the violations committed. The Licensee argues that it had no record of prior violations until the Local Board found that Club Paradise committed these aforementioned violations.

The Local Board submitted in evidence a prior issued decision for a violation by a licensee (Elite Lounge) in Lawrence for not having mandatory liquor liability insurance for a period of approximately 40 days. (Exhibit 12) The Local Board suspended that licensee’s (Elite Lounge) license for a period of seven (7) days. That was the only violation which the Local Board found that Elite Lounge committed. (Exhibit 12)

In considering the number and types of violations charged, in particular deliberately and intentionally deactivating smoke detectors while using hookah pipes and a fog machine, in conjunction with having no mandatory liquor liability insurance for several months, while operating the premises, the Commission finds that the penalty imposed by the Local Board is appropriate. The Commission is persuaded, in the same manner as the Local Board, that these violations were intentionally committed by the Licensee, created a hazardous condition, and are extremely egregious. The Commission considered Captain Delaney’s testimony that each of these violations alone is extremely serious. However, when combining all of these violations, “this is a recipe for something very bad to happen.” (Testimony) The Commission finds that it was extremely fortunate that no serious incidents occurred at Club Paradise as a result of the Licensee’s actions. The Commission, in determining if the penalty imposed by the Local Board was reasonable, considered the statute which governs tampering with smoke detectors. The statute articulates criminal sanctions for the act of deactivating smoke detectors resulting in a dangerous condition, in violation of M.G.L. c. 148, § 34A (2).

The Commission finds, in considering the totality of the evidence, in conjunction with the number and types of violations committed by the Licensee, that the penalty issued by the Local Board was not excessive. The Commission finds that the sanction imposed by the Local Board is a reasonable exercise of the Local Board’s discretion.

CONCLUSION

The Alcoholic Beverages Control Commission ("Commission") APPROVES the action of the Licensing Board of the City of Lawrence in finding that EV Entertainment, LLC d/b/a Club Paradise, committed violations of:

- 1) 204 CMR 2.05 (2) Permitting an Illegality on the Licensed Premises, to wit: deactivating/tampering with smoke detectors creating a hazardous/dangerous condition in violation of M.G.L. c. 148, § 34A (2);
- 2) 204 CMR 2.05 (2) Permitting an Illegality on the Licensed Premises, to wit: use of hookah pipes in violation of M.G.L. c. 270, § 22;
- 3) 204 CMR 2.05 (2) Permitting an Illegality on the Licensed Premises, to wit: use of a smoke/fog machine on the premises;
- 4) operating its premises without mandatory liquor liability insurance in violation of M.G.L. c. 116 of the Acts of 2010 and M.G.L. c. 138, § 12.

The Commission **APPROVES** the action of the Licensing Board of the City of Lawrence for imposing a penalty of a one (1) year suspension, six months to serve, and six months held in abeyance.

However, the Commission **REMANDS** this matter to the Local Board with the recommendation that the six-month suspension held in abeyance, be held in a period of abeyance for two years from the date of the Local Board's December 5, 2018 Decision (Exhibit 4).

ALCOHOLIC BEVERAGES CONTROL COMMISSION

Kathleen McNally, Commissioner



Elizabeth Lashway, Commissioner



Dated: May 31, 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: Robert F. Kelley, Esq.
Eileen O'Connor Bernal, Esq.
Local Licensing Board
Frederick G. Mahony, Chief Investigator
Administration, File