



*The Commonwealth of Massachusetts*  
*Department of the State Treasurer*  
*Alcoholic Beverages Control Commission*  
*Boston, Massachusetts 02114*

*Steven Grossman*  
*Treasurer and Receiver General*

*Kim J. Gainsboro, Esq.*  
*Chairman*

**DECISION**

**TREMPE & TORRES INC. DBA MARABU CAFFE**  
**20-22 UNION STREET**  
**LAWRENCE, MA 01840**  
**LICENSE#: 059400223**

This is an appeal of the action of the Lawrence Licensing Board (the "Board") in suspending the M.G.L. c. 138, §12 all alcoholic beverages license of Trempe & Torres, Inc. dba Marabu Caffè (the "Licensee" or "Marabu"). On May 25, 2011, the Board held a hearing that resulted in a five (5) day suspension. 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 September 21, 2011.

The following exhibits are in evidence by agreement of the parties:

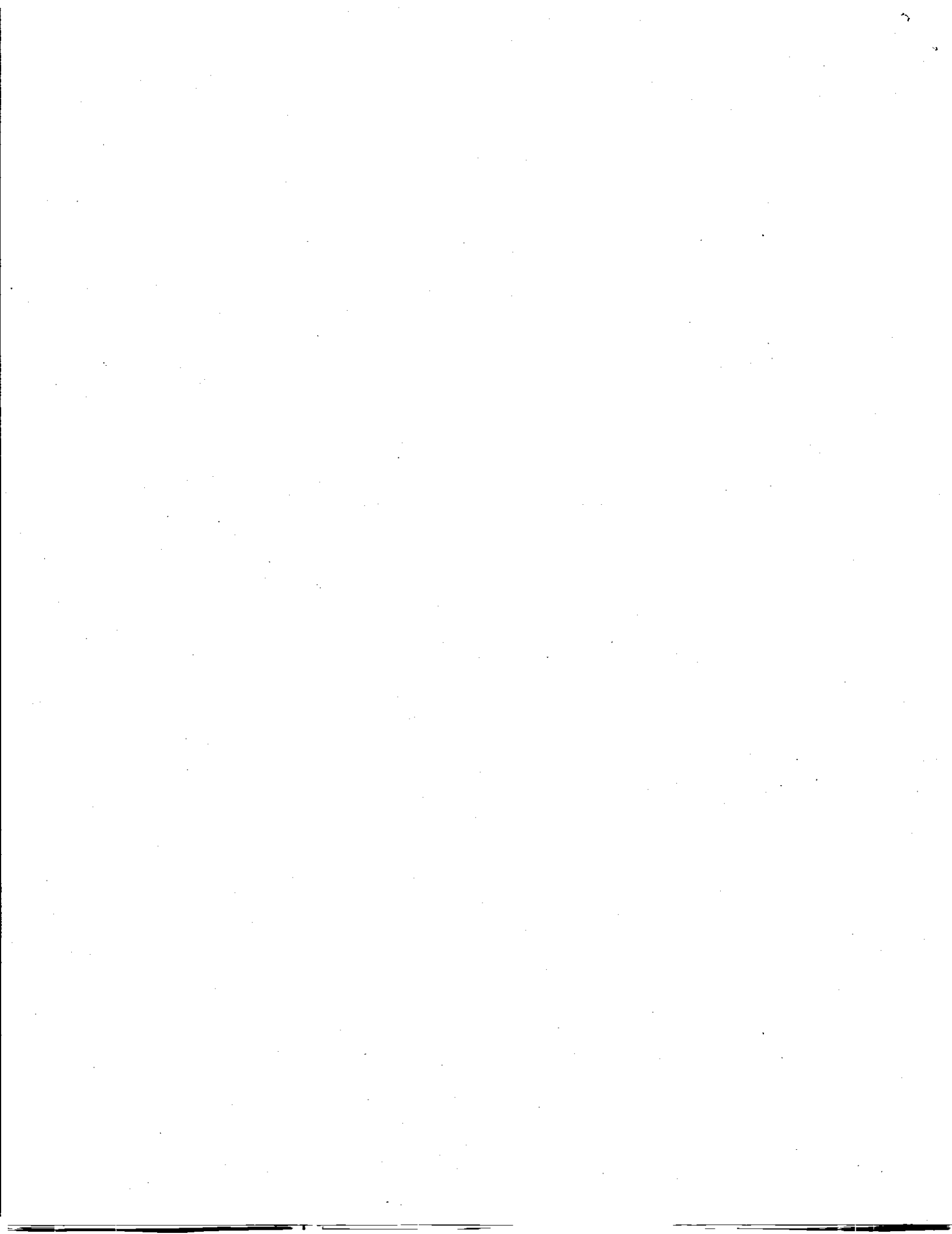
Trempe & Torres, Inc. dba Marabu Caffè

1. Stop Work Order;
2. City of Lawrence Inspection Services (5 pages);
3. ABCC Alteration of Premises Application (3 pages);
4. Plot and Floor Plan;
5. Letter From Attorney Guerrero dated July 27, 2011;
6. Permit to Build; and
7. Local Board Notice dated July 14, 2011.

Lawrence Licensing Board

- A. Licensing Board Notice dated July 14, 2011;
- B. Letter From Attorney Guerrero dated July 27, 2011;
- C. Local Board Hearing Minutes from July 13, 2011;
- D. Local Board Hearing Minutes from July 27, 2011;
- E. Local Board Hearing Agenda from May 25, 2011;
- F. Notice of Violation Stop Work Order;
- G. Local Board Letter RE: Suspension dated May 26, 2011;
- H. Photo of Patio Area;
- I. Local Board Hearing Minutes from May 25, 2011;
- J. Photo of Patio Area;
- K. Photo of Patio Area;

2772 3254



- L. Photo of Patio Area; and
- M. Licensing Board Notice dated April 28, 2011.

There is one (1) tape of this hearing.

#### FACTS

1. Marabu is the holder of a seven (7) day common victualer and all alcohol beverages license issued by the city of Lawrence.
2. Nereyda Tempe has been the president of Marabu for approximately three (3) years.
3. After issuing notice to the licensee, the Licensing Board of the City of Lawrence held a hearing and determined that the licensee had violated the provisions of General Laws, Chapter 138 and 204 CMR 2.05, Section 2.
4. It was alleged at the hearing that the licensee commenced construction of a portable stage in the exterior of the licensed premises and on May 9, 2011, the license was served with a "stop work" order by the City of Lawrence Inspectional Services Department ("ISD").
5. The Board found that the licensee did not stop work and that the licensee violated the stop work order.
6. As a result of the board's finding, the board ordered the license suspended for a period of five (5) days.
7. The licensee disputed the finding of the board, alleging that there was insufficient evidence presented to the Board to support the board's decision.
8. The licensee subsequently appealed to the ABCC.
9. This was the first disciplinary action for the licensee.
10. The licensee constructed a portable wooden stage in or around March or April of 2011.
11. In May 2011, she received notice of a violation and a "Stop Work Order."
12. The licensee denied that she performed any work on the construction of the portable stage after the stop work order was served upon her.
13. The licensee asserted that the work on the stage had ceased as a result of a discussion of between the licensee and an ISD inspector.
14. According to the licensee, since May 25, 2011, the stage had been taken apart and removed.
15. According to the licensee, she had indicated to the Board and the ISD that she had abandoned all plans to construct a portable stage and had not used the stage since that date.
16. According to the Board, the licensee began the construction of the stage without a valid building permit.



17. The Board also contended that the licensee did not give proper notification as to the change in the use of the premises and the change in the license that would subsequently result.
18. When the licensee was issued a stop work order on May 9, 2011 ordering her to stop construction on her stage and dismantle it, or apply for the necessary permits, she instead took the stage indoors.
19. The licensee applied for the permits, but failed to appear before the meeting of the local licensing board to discuss the change of use of premises.
20. A hearing was then held and the Board voted to suspend the license for five (5) days due to the licensee's failure to appear and cooperate, and for violating the stop work order.

ISSUE: Did the licensee violate Ch. 138 and 204 CMR by not filing an application for an alteration of premises? Is the penalty unreasonable?

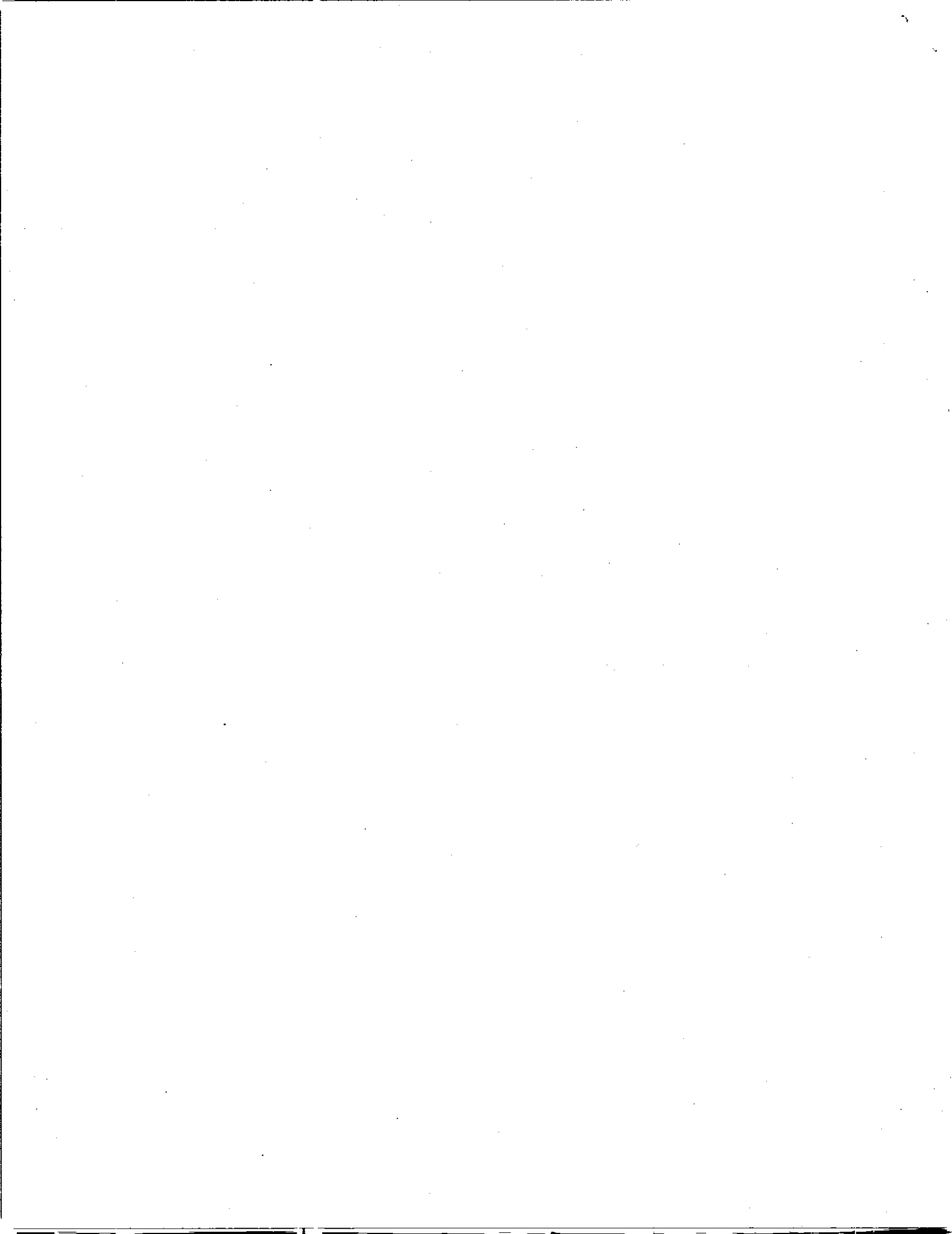
#### DISCUSSION

The law is well-settled that "under the regulation, the responsibility of the licensee is to exercise sufficiently close supervision so that there is compliance with law on the premises. A vendor who sells alcohol is "bound at his own peril to keep within the condition of his license." *Commonwealth v. Gould*, 158 Mass. 499, 507 (1893). *Burlington Package Liquors, Inc. v. Alcoholic Beverages Control Comm.*, 7 Mass. App. Ct. 186, 190 (1979). It is, thus, quite possible for a licensee to offend the regulatory scheme without scienter." *Rico's of the Berkshires, Inc. v. Alcoholic Beverages Control Commission*, 19 Mass. App. Ct. 1026, 1027 (1985)(Rescript) at 1027.

G. L. c. 138 gives the local board and commission the authority to grant, revoke and suspend licenses. Chapter 138 was "enacted . . . to serve the public need and . . . to protect the common good." G. L. c. 138, Section 23, as amended through St. 1977, c. 929, Section 7. "[T]he purpose of discipline is not retribution but the protection of the public." *Arthurs v. Board 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.*, 334 Mass. 613, 617 (1956), as well as broad authority to issue regulations.

*New Palm Gardens, Inc. v. Alcoholic Beverages Control Commission*, 11 Mass. App. Ct. 785, 788 (1981). The local board has authority to enforce the Commission regulations.

The licensee testified that she did not perform any work on the construction of a portable stage after being served with a stop work order. According to her, she had taken the stage apart, removed it and placed it in the licensed establishment. She also stated that she had no intention of constructing the stage again. When cross-examined as to the location of the stage, the licensee vacillated when answering. She stated the stage was set up in the enclosed area that was licensed by the ABCC. However, she also stated that she had commenced construction of the stage and because it was portable did not believe she needed to file a permit or seek an alteration of premises application approval from the ABCC.



After commencement of the work in April 2011, the licensee spoke with the city of Lawrence Building Inspector who informed her she needed a permit to construct a stage, albeit portable. She stated that subsequent to speaking with the Building Inspector, she ceased the operation of the stage. However, there was conflicting testimony pertaining to this. The licensee, by her own admission, continued operation of the illegal stage. In fact, photographs submitted by the Licensee depicted patrons on the stage well after the stop work order received by the licensee. Patrons from the bar were mingling outside the licensed premise and drinking alcohol.

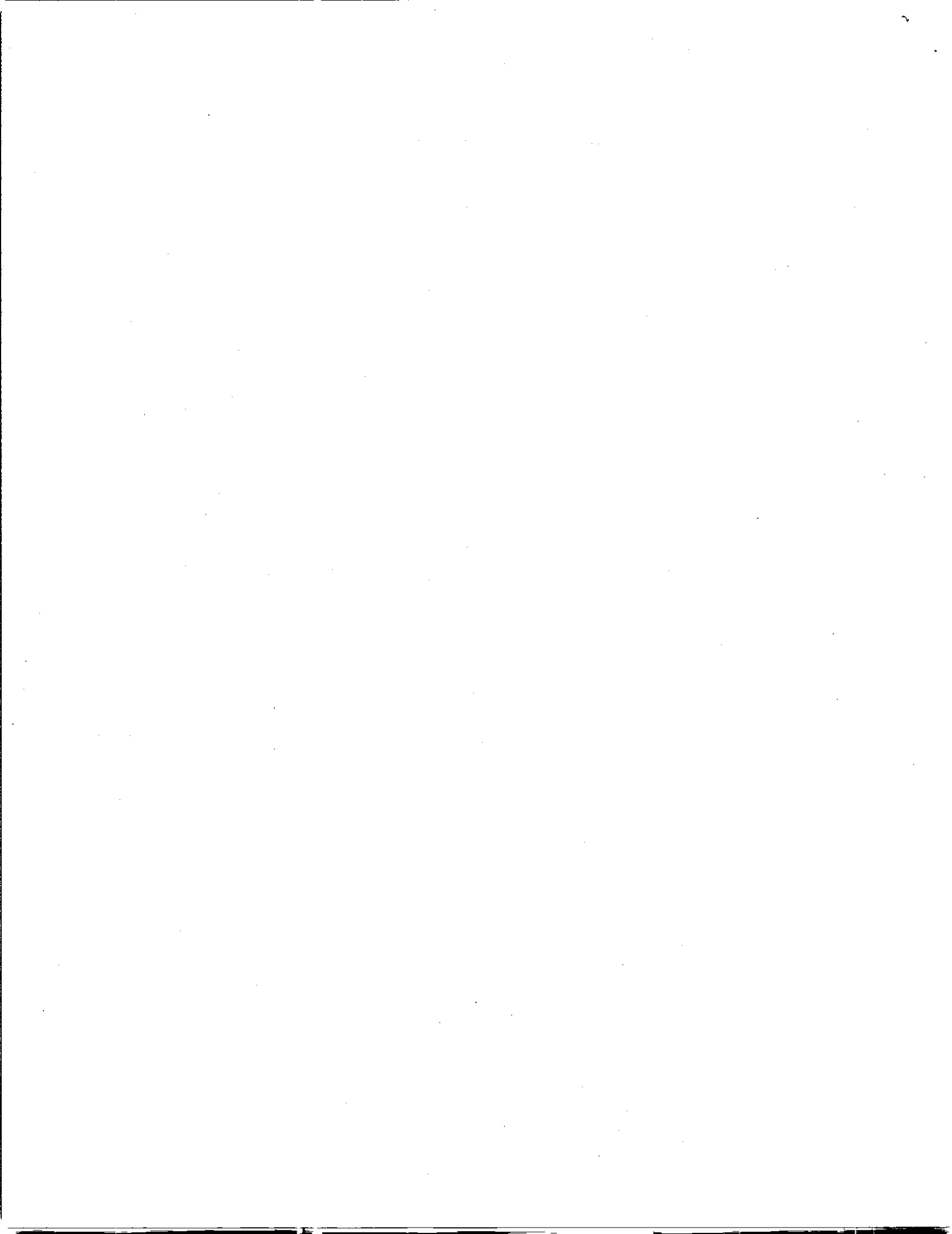
The Local Board's witnesses testified that the licensee received a letter dated April 28, 2011, informing the licensee that the stage must be removed immediately. Lt. Sean Conway from the Lawrence Police Department testified that he would frequently drive by the area and when he observed them in late May, early June, there were some changes made to the stage. The stage's legs were cut off and the wooden railings were taken down, but the illegal stage was still there. The licensee had previously told the Lieutenant that the stage was "removable."

When Lt. Conway went to meet with the licensee in May, he did not see the stage outside but once he entered the premises, he saw the stage dismantled. Lt. Conway stated that he saw the licensee several times and advised her to file the alteration of premises forms. He also stated that she was informed that there was a problem with the "stage" because occupants could pass alcohol over to others from the stage area to parking lot. She was also informed that the stage was built without an alteration of premises of the licensed premises and that since there was no control of any access point she would need to cease any activity on it.

The licensee, in testifying, stated that she had a background as a real estate developer. She also testified that she did not believe she needed a permit for this type of alteration. This is not credible for someone of her background. The licensee stated that she was not given adequate notice, which the city disputed, when told her to put the stage away.

As in *New Palm Gardens*, in this case, the local board thus "could rationally conclude that a violation of the municipal building code and the stop work order that was issued is an 'illegality' which relates to the "proper and orderly conduct of the licensed business" (G. L. c. 138, Section 24) requiring suspension. See G. L. c. 138, Sections 23, fifth paragraph, and 64.5 See *Saxon Coffee Shop, Inc. v. Boston Licensing Bd.*, 380 Mass. 919, 928 (1980); *Olitsky v. O'Malley*, 597 F.2d 295, 302 (1st Cir. 1979); cf. *Aristocratic Restaurant of Mass., Inc. v. Alcoholic Beverages Control Comm.* (No. 1), 374 Mass. at 554; *California v. LaRue*, 409 U.S. 109, 115-116 (1972); *Paris Adult Theatre I v. Slaton*, 413 U.S. 49, 58 n.8 (1973)." See *NEW PALM GARDENS, INC. Vs. ALCOHOLIC BEVERAGES CONTROL COMMISSION*, 11 Mass. App. Ct. 785, 788-789 (1981).

It is clear from the testimony presented that the licensee was given ample opportunities to comply with the stop work order and basically refused to do so. She blatantly failed to comply with repeated requests made by the city of Lawrence placing the Board in the position where enforcement was necessary and appropriate. The Commission is persuaded that the penalty the Board imposed is a fair one.

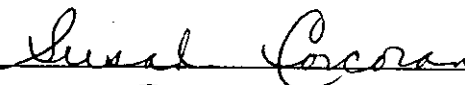




CONCLUSION

The Alcoholic Beverages Control Commission **APPROVES** the action of the Local Board in finding the violation was committed by the licensee. The Commission also **APPROVES** the action of the Board in suspending the license for five (5) days. This penalty is a reasonable exercise of the Local Board's lawful discretion.

**ALCOHOLIC BEVERAGES CONTROL COMMISSION**

Susan Corcoran, Commissioner 

Kim S. Gainsboro, Chairman 

Dated: February 16, 2012

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.

cc: File  
Local Licensing Board  
Frederick G. Mahony, Chief Investigator  
John J. Russell, Esq. via Facsimile  
Charles D. Boddy, Esq. via Facsimile  
√Administration

