

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

Jean M. Lorizio, Esq.
Chairman

DECISION

**FLOW LOUNGE BAR & GRILL LLC
336 COMMON STREET
LAWRENCE, MA 01840
LICENSE#: 05603-RS-0594
HEARD: 1/19/2022**

This is an appeal from the action of the City of Lawrence Licensing Board ("Local Board" or "Lawrence") in revoking the M.G.L. C. 138, § 12 all alcoholic beverages license of Flow Lounge Bar & Grill LLC ("Licensee" or "Flow Lounge") located at 336 Common Street, Lawrence, Massachusetts. The Licensee timely appealed the Local Board's decision to the Alcoholic Beverages Control Commission ("Commission" or "ABCC"), and a remote hearing was held via Microsoft Teams on Wednesday, January 19, 2022.

The following documents are in evidence as exhibits:

1. Lawrence Police Department Incident Report #21-007274, 10/17/2021;
2. Lawrence Police Department Incident Report #21-004175, 7/6/2021;
3. Notice of Hearing;
4. Local Board's Notice of Decision Statement of Reasons, 12/1/2021;

There is one audio recording of this hearing, and two (2) witnesses testified.

FINDINGS OF FACT

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

1. Flow Lounge Bar & Grill LLC ("Licensee") holds an all-alcohol license and operates a business at 336 Common Street, Lawrence, Massachusetts. Mrs. Johanny Gomez is the sole officer, director, and shareholder of the corporation.
2. On Sunday, October 17, 2021, Lawrence Police Officers Botero, Torres and Abreu responded to Flow Lounge in an effort to locate Mr. Eduardo Lara, a temporary security employee of the Licensee. (Testimony, Exhibit 1)

3. Mrs. Gomez interacted with the Lawrence Police officers when they arrived at the licensed premises. The officers asked if Mr. Lara was an employee and she answered in the affirmative. (Testimony)
4. Mrs. Gomez does not supervise the security staff at the licensed premises. Rather, her husband oversees the security staff. Id.
5. Mrs. Gomez oversees the bar, the waitresses and the patrons. When she arrived at the licensed premises on October 17, 2021, she remained in the bar area and had not gone into the kitchen prior to the officers' arrival. Id.
6. Mrs. Gomez was not aware Mr. Lara was working at the time of the officers' visit. Id.
7. Mrs. Gomez requested that only one officer come in, or in the alternative if they could wait to enter until the end of the night. Id.
8. Officers located Mr. Lara in the kitchen of Flow Lounge. Id.
9. On November 10, 2021, the Local Board held a hearing regarding violations of the Local Board's Rules and Regulations, M.G.L. Ch. 138, and ABCC Regulations. (Exhibits 3, 4)
10. By decision dated December 1, 2021, the Local Board found the Licensee in violation and voted unanimously to revoke its license, effective immediately. (Exhibit 4)
11. The Licensee timely appealed the Local Board's decision to the ABCC. (Commission Records)

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. 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.

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. 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).

In this matter, the Local Board did not produce any direct evidence. Lieutenant Cerullo testified before the Commission and was found to be professional and credible. However, he was not present at the licensed premises on the night of the incident. As a result, he does not have direct knowledge as to what occurred.

The alleged violations that are the subject of this appeal present the Commission with issues regarding the admissibility of hearsay evidence and the weight accorded hearsay during an appeal from a local board’s enforcement action. A decision of a board that rests entirely upon hearsay evidence cannot be sustained, but decisions based upon hearsay evidence that is supported and corroborated by competent legal evidence have been sustained. Moran v. School Committee of Littleton, 317 Mass. 591 (1945) (further citations omitted). The petitioner [was] entitled to have the charges dismissed unless they were substantiated by true and competent evidence, but he is not entitled to have the decision of the committee held invalid if apart from the police report there was evidence sufficient to substantiate the charges. See Graves v. School Committee of Wellesley, 299 Mass. 80, 86 (1937) (further citations omitted).

The Local Board offered the police report of Officer Jessica Botero but did not offer any evidence to corroborate said report.

For the above reasons, the Commission is not persuaded and finds the Local Board has not proved by legally competent evidence that the Licensee violated Rules and Regulations of the City of Lawrence Licensing Board, M.G.L. c. 138 and Commission Regulations.

CONCLUSION

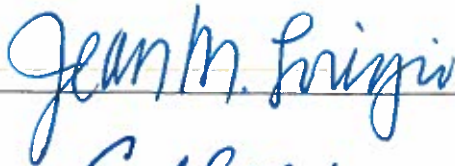
The Alcoholic Beverages Control Commission (“Commission”) **DISAPPROVES** the action of the City of Lawrence Licensing Board in finding that Flow Lounge Bar & Grill LLC committed a violation of the Rules and Regulations of the City of Lawrence, M.G.L. c. 138 and Commission Regulations.

The Commission **DISAPPROVES** the action of the City of Lawrence in revoking the license of Flow Lounge Bar & Grill LLC.

As such, the Commission remands the matter to the City of Lawrence with the recommendation that it find no violation and that no further action be taken against the Licensee, as any penalty would be discrepant with this decision.

ALCOHOLIC BEVERAGES CONTROL COMMISSION

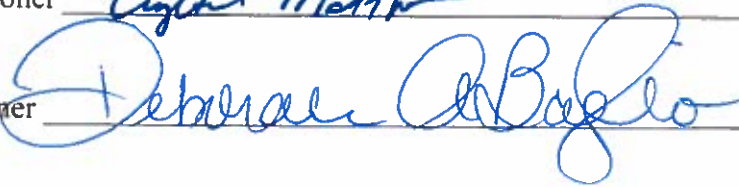
Jean M. Lorizio, Chairman



Crystal Matthews, Commissioner



Deborah Baglio, Commissioner



Dated: August 3, 2022

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.

This document is important and should be translated immediately.
Este documento es importante y debe ser traducido inmediatamente.
Este documento é importante e deve ser traduzido imediatamente.
Ce document est important et devrait être traduit immédiatement.
Questo documento è importante e dovrebbe essere tradotto immediatamente.
Το έγγραφο αυτό είναι σημαντικό και θα πρέπει να μεταφραστούν αμέσως.
这份文件是重要的，应立即进行翻译。

cc: Jennifer Ezeigwe, Esq.
Timothy P. Houten, Esq.
Local Licensing Board
Frederick G. Mahony, Chief Investigator
Administration, File