

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

Jean M. Lorizio, Esq.
Chairman

DECISION

**TEJAL LIQUORS INC. D/B/A MT. VERNON LIQUORS
421 SOUTH BROADWAY
LAWRENCE, MA 01843
LICENSE#: 00108-PK-0594
HEARD: 1/12/2022**

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, § 15 all alcohol license of Tejal Liquors Inc. d/b/a Mt. Vernon Liquors ("Licensee" or "Tejal") located at 421 South Broadway, Lawrence, Massachusetts. The Licensee timely appealed the Local Board's decision to the Alcoholic Beverages Control Commission ("Commission" or "ABCC"), and a remote hearing via Microsoft Teams was held on Wednesday, January 12, 2022.

The following document is in evidence as an exhibit:

A. Lawrence Police Department Incident Report #21-003180, 5/25/2021;

At the close of the January 12, 2022, hearing, the Commission left the record open for the Licensee and the Local Board to submit post-hearing memoranda. The Licensee timely submitted said memorandum, the City of Lawrence did not submit any further documents, and the record is now closed.

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. Tejal Liquors Inc. d/b/a Mt. Vernon Liquors ("Mt. Vernon Liquors" or "Licensee") holds an all-alcohol package store license and operates a business at 421 South Broadway, Lawrence, Massachusetts. (Commission Records)
2. Kinjal Patel is the sole officer, director, and shareholder of the Licensee corporation. (Testimony, Commission Records)
3. Kinjal Patel's family has owned Mt. Vernon Liquors since 2011 and in 2016, full ownership was transferred to her through a transfer of stock. Kinjal Patel has worked at the licensed premises as a manager since 2011. Id.

4. The Licensee has no history of alcohol license violations with either the City of Lawrence Licensing Board or the Alcoholic Beverages Control Commission. (Testimony)
5. On Thursday, May 20, 2021, the Lawrence Police Department along with the Lawrence Fire Department, Lawrence Inspectional Services, and various state agencies, including the State Police and ABCC, were working as part of the Governor's Covid Task Force. At the same time, based on observations that evening, Detective Lopez of the Lawrence Police conducted an enforcement investigation relating to package stores, convenience stores and grocery stores which hold alcohol licenses and the sale of alcoholic beverages to underage individuals.¹ (Testimony, Exhibit A)
6. On Thursday, May 20, 2021, Lt. Joseph Cerullo, while working in another area of Lawrence, received a telephone call from Detective Lopez. Detective Lopez reported to Lt. Cerullo as to observation made outside the licensed premises. Id.
7. As a result of his observations on May 20, 2021, Detective Lopez then conducted surveillance of Mt. Vernon Liquors over a three-day period. Id.
8. Lt. Cerullo was not involved in the surveillance of Mt. Vernon Liquors and did not interact with any patrons. (Testimony)
9. On Wednesday, June 23, 2021, the Local Board held a public hearing on the Licensee's alleged violations of Lawrence's Rules and Regulations and Public Health regulations. Id.
10. The Local Board found the Licensee in violation of Licensing Regulations and public health violations, citing the Lawrence Police Department's Incident Report #21003180, and voted unanimously to revoke its license, effective immediately. (Testimony)
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

¹ ABCC Investigator Joseph DiCicco worked with Det. Lopez on the night of May 20, 2021.

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. “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 found the Licensee in violation of “...the Rules and Regulations of the City of Lawrence Licensing Board (“Licensing Board”) and public health regulations as a result of the sale or delivery of alcoholic beverage or alcohol to a person under 21 years of age in violation of M.G.L. c. 138, § 34- sale or delivery of an alcoholic beverage to a person under twenty-one years of age. (8 counts).²

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 Lt. Cerullo but said report does not describe Lt. Cerullo’s observations as he was not present, but rather those of Detective Lopez, the officer conducting surveillance outside of Mt. Vernon Liquors. Thus, while the Commission finds Lt. Cerullo to be credible and professional, he could not provide direct evidence of any of the factors necessary to make a finding of a violation of M.G.L. c. 138, § 34. Additionally, the Local Board did not offer any other corroborating evidence.

² The Notice of Decision refers generally to “violations of the Rules and Regulations of the City of Lawrence Licensing Board (“Licensing Board”) and public health regulations” and incorporates an “...attached Police Report.” Lawrence Police Dept., Incident Report No. 21003180 indicates “Mt. Vernon will be charged with 8 counts of selling alcoholic beverages to underage individuals and will be brought before the Lawrence Licensing Board for violations...” (Exhibit A)

In this matter, the Local Board produced no eyewitnesses and no direct evidence regarding the sale or delivery of alcohol to a person under twenty-one years of age.

The evidence presented to the Commission related to sale of alcohol to minors constitutes hearsay. A decision of a board that rests entirely upon hearsay evidence cannot be sustained. See Moran v. School Committee of Littleton, supra.


For these reasons, the Commission is not persuaded and finds the Local Board has not proved by legally competent evidence that the Licensee violated M.G.L. c. 138, § 34.

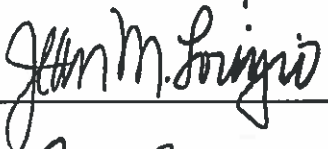
CONCLUSION

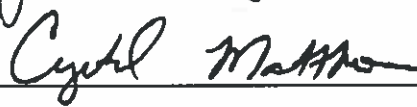
The Alcoholic Beverages Control Commission ("Commission") **DISAPPROVES** the action of the City of Lawrence Licensing Board in finding a violation of M.G.L. c. 138, §34 and for revoking the M.G.L. c.138, §15 all-alcohol license of Tejal Liquors Inc. d/b/a Mt. Vernon Liquors.

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

Deborah Baglio, Commissioner 

Jean M. Lorizio, Chairman 

Crystal Matthews, Commissioner 

Dated: June 30, 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.

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cc: Jon D. Aieta, Esq.
Steven V. Miller, Esq.
Timothy Houten, Esq.
Local Licensing Board
Frederick G. Mahony, Chief Investigator
Administration, File
