



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

Jean M. Lorizio, Esq.
Chairman

DECISION

**PROVENZA RESTAURANT LLC
130 UNION STREET
LYNN, MA 01902
LICENSE#: 07838-RS-0638
VIOLATION DATE: 04/15/2024
HEARD: 08/07/2024 and 08/21/2024**

This is an appeal of the action of the City of Lynn Licensing Board (the "Local Board" or "Lynn") for suspending the M.G.L. c. 138, § 12 all alcoholic beverages license of Provenza Restaurant LLC ("the "Licensee" or "Provenza") located at 130 Union Street, Lynn, Massachusetts 01602 for thirty (30) days. The Licensee timely appealed the Local Board's decision to the Alcoholic Beverages Control Commission (the "Commission" or "ABCC"), and remote hearings via Microsoft Teams were held on Wednesday, August 7, 2024, and on Wednesday, August 21, 2024.

The following documents are in evidence as exhibits:

Licensee's Exhibits:

1. Decision of the Licensing Commission for the City of Lynn, 5/28/24;
2. Notice of May 21, 2024, Public Hearing dated 04/30/2024;
3. Published Agenda for May 21, 2024, Public Hearing of Local Board, 05/16/2024;
4. Licensee's Common Victualler License;
5. Licensee's Liquor Liability Insurance;
6. Licensee's Contract with Top Notch Protective Services, LLC;
7. Lynn Police Incident Report of Officer J. Ricupero and Sgt. M. Nerich (#24027412), 04/27/2024
8. License Commission's Legal Counsel's Letter, 04/22/2024;
9. Licensee's Landlord's Letter, 4/16/2024;
10. Lease;
11. Agenda for the June 18, 2024, Meeting of Local Board;
12. Menu;
13. Licensee's Common Victualler License.

City of Lynn's Exhibits:

- A. City of Lynn Licensing Board Rules & Regulations;
- B. Email from Lorelee Shinnick to Jim Lamanna, 05/01/2024;

- C. Lynn Police Incident Report of Officer R. Fucci (#24024677), 04/15/2024;
- D. Letter from Local Board to Licensee re: Armed Security Personnel, 04/22/2024;
- E. List -City of Lynn Violations, 2023;
- F. Letter from 124 Union Street LLC to Licensee, 04/16/2024.

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

FINDINGS OF FACT

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

1. Provenza Restaurant LLC d/b/a Provenza Restaurant holds § 12 All Alcoholic Beverages License and operates a business at 130 Union Street, Lynn, MA 01902. The Licensee's Common Victualler with Liquor License was approved on December 14, 2023. (Testimony, Exhibit 4, Exhibit 13)
2. Estefani Orellana-Garcia ("Orellana-Garcia") is the manager of record of Provenza. (Id.)
3. On April 14, 2024, Provenza held its grand opening event. (Id.)
4. Provenza did not have liquor liability insurance coverage on the night of its grand opening. (Testimony, Exhibit 5)
5. On April 14, 2024, Orellana-Garcia supervised a staff of twenty-three employees, including "Chris" who supervised security and assisted with managerial duties. (Testimony)
6. Provenza hired non-police security personnel for its grand opening event. The additional security personnel were unarmed except for handheld metal detector wands. (Testimony, Exhibit 6)
7. Provenza did not provide the Local Board with written notification that it hired non-police security personnel prior to its grand opening event as required by Local Rules and Regulations. (Testimony)
8. Sometime after it opened for business, the Licensee contacted the Landlord requesting a copy of the signed lease which was needed in order to obtain liquor liability insurance. (Testimony, Exhibit D)
9. On April 22, 2024, Local Board sent the Licensee correspondence outlining allegations that Provenza hired non-police security personnel without notifying the Licensing Commission as required by its regulations, allegations of armed security personnel in violation of its regulations, and allegations made by the landlord in a letter including possible overcrowding, noise violations, public intoxication, public urination and public indecency. (Testimony, Exhibit 8)

10. On April 30, 2024, Lynn ordered the Licensee to appear at a hearing on Tuesday, May 21, 2024, “on question of the following Reports:

- #24-024677 on 4/15 at 9:43 for a Violation occurring 4/14/24
- Letter from Gladstone Bennett and Andrea Gayle-Bennett Landlord of 124 Union Street
- Violation of Local Rules and Regulations
- Lack of Management and Control
- Overcrowding” (Testimony, Exhibit 2)

11. The Local Board held a Public Hearing on May 21, 2024. (Testimony, Exhibit 1)

12. The Local Board issued a written decision on May 28, 2024. Its decision outlined seven (7) findings:

- a. Violation 1: Misrepresentations to the Lynn License Board;
- b. Violation 2: Failure to obtain Approval of Manager;
- c. Violation 3: Failure to have Liquor Liability Insurance in violation of State Law;
- d. Violation 4: Failure to provide notice to License Commission of Engagement of Security Personnel;
- e. Violation 5: Armed Security Personnel;
- f. Violation 6: Prior History;
- g. Possible Further Violations: Excessive Noise, Public Urination, Public Indecency, Overcrowding, Public Intoxication.

Id.

13. The Local Board referenced Local Rules in its findings regarding violations of failure to obtain approval of manager, failure to provide notice to license commission of engagement of security personnel and armed security personnel. No rule, regulation or statute was cited in findings regarding violations of misrepresentations to the local board, failure to have liquor liability insurance, prior history and possible further violations. Id.

14. The Local Board imposed a thirty (30) day suspension of Provenza’s All Alcoholic Beverages License. Id.

15. Provenza timely appealed the decision of the Local Board to the ABCC. (Commission Records)

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).”
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, as amended though 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. 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 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) 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.

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 are alleged to have occurred on April 14, 2024, and thereafter.

Here, the Licensee contends that the Local Board’s April 30th Notice of Hearing failed to provide adequate notice to the Licensee of the charges it was expected to defend against at its May 21st hearing as evidenced by the violations found in the Local Board’s Notice of Decision dated May 28, 2024. The Commission agrees in part.

M.G.L. c. 138, § 64 states, “the licensing authorities after notice to the licensee and reasonable opportunity to be heard, may modify, suspend, revoke or cancel the license upon satisfactory proof that the licensee has violated or permitted a violation of any condition thereof, or any law of the commonwealth.” M.G.L. c. 138, § 64

“One of the prerequisites to the exercise of the statutory power is that notice setting forth the grounds upon which the respondent board intends to proceed must be given to the licensee. While

it is the initial step in the procedural process required by the statute, yet it is not a matter of procedure alone but one of substantial right.” Higgins v. License Commrs. of Quincy, 308 Mass. 142, 145 (1941) citing Stiles v. Municipal Council of Lowell, 233 Mass. 174, McKenna v. White, 287 Mass. 495.

The Local Board cannot base its action on violations for which it has not properly provided notice. “The return as extended shows that license was revoked upon a ground other than that contained in the notice. The decision was based upon matters concerning which the petitioner had never been given an opportunity to answer.” Id. at 148.

“The grounds upon which it is proposed to proceed should be stated with reasonable particularity so that the notice is sufficiently definite fairly to apprise the licensee of the charges which he must be prepared to meet.” Id. at 145-146. “Mere defects in matters of form will not invalidate a notice if enough remains for the person whose rights may be affected reasonably to understand the substance and the nature of the ground upon which he is called upon to answer. Such a notice must comply with the requirements of natural justice and of fair play, and must, in conjunction with the hearing, be sufficient to accomplish substantial justice in accordance with the general aim of similar statutory proceedings.” Id. at 146.

Violation 1: Misrepresentations to the Lynn Licensing Board

The Local Board alleges Provenza misrepresented its business operation both at the Local Board’s original hearing regarding Provenza’s application and at the May 21st violation hearing. (Testimony, Exhibits 1, 2, 3) The Local Board alleges Provenza applied for a restaurant license and represented it would not operate as a club, however the Local Board provided no notice of these allegations prior to the May 21, 2024 hearing (Testimony, Exhibits 2, 3) In fact, consideration of this issue was initiated at the Local Board’s May 21st hearing making it impossible for the Local Board to have adequately provided notice to the Licensee.

Violation 2: Failure to Obtain Approval of Manager

The Local Board alleges Provenza violated Local Rules Section VIII, Paragraph C which states “[a]ll managers in licensed places must not be changed until the board has approved such change.” (Testimony, Exhibits 1, A) The Local Board produced evidence that during the May 21st hearing, a Provenza employee stated he was acting as bar manager at its grand opening. (Testimony) The Local Board presented no other evidence that Orellana-Garcia relinquished her duties and/or the manager of record had changed without Local Board approval. Orellana-Garcia testified that no change of manager occurred, and she was, in fact, manager of record on the night of Provenza’s grand opening. (Id.) Discussion of this alleged violation arose for the first time at the Local Board’s hearing on May 21st making it impossible for the Local Board to have adequately provided notice to the Licensee. Assuming arguendo provided proper notice had been given, the Local Board did not meet its burden of proof to sustain this violation. In fact, direct evidence was presented that the approved manager of record has not changed. The Commission is not persuaded the Licensee violated Local Rule VIII, Paragraph C.

Violation 3: Failure to Obtain Liquor Liability Insurance

The Local Board alleges Provenza operated without liquor liability insurance. (Testimony, Exhibit 1) Applicants for alcoholic beverages licenses issued under M.G.L. c. 138, §12 are required to have a minimum amount of mandatory liquor liability insurance coverage and proof of satisfactory coverage is a condition to receive a license. M.G.L. c. 138, §12 Provenza admits it operated without liquor liability insurance in violation of §12. However, the Local Board initially raised the Licensee's failure to obtain liquor liability insurance at the May 21st hearing. The Local Board provided no notice of allegations related to liquor liability insurance prior to the May 21, 2024, hearing. (Testimony, Exhibits 2, 3)

Violations 4 and 5: Failure to provide notice to License Commission of Engagement of Security Personnel/Armed Security Personnel

The Local Board alleges Provenza hired private non-police security for its grand opening event, failed to provide notice to the Board as required by Local Board Rule XXV(A), and that the non-police security personnel were armed in violation of Local Rule XXV (C)(D). (Testimony, Exhibit 1)

The Local Board provided adequate notice of Violation No. 4 and Violation No. 5 prior to the May 21, 2024, hearing. (Testimony, Exhibits 1, 2, C, D) On April 22, 2024, Assistant City Solicitor sent a letter to Provenza along with a copy of a Lynn Police report dated April 15, 2024. (Exhibit C, D) Both the letter and the police report refer to the presence of security on the night of April 14-15, 2024, the Licensee's obligation to provide advance written notice to the Local Board of the use of non-police security personnel, and observations of armed security personnel. (Id.) Further, the Notice of Hearing specifically refers to the police report which was provided in the City Attorney's letter of April 22, 2024. (Exhibit 2, 3, C, D) Local Board Rule XXV (A) requires that if any licensed establishment employs non-police security personnel, advance written notice must be given to the Lynn Licensing Board and CORI checks completed prior to employment. (Testimony, Exhibit A) The Licensee concedes that she did not notify the Local Board. (Testimony, Exhibits 6, A) The Commission finds the Licensee violated Local Board Rule XXV(A).

As to Violation No. 5, the Local Board offered the Lynn Police report which describes observations related to armed non-police security personnel, however neither the responding nor reporting officers testified before the Commission. (Exhibit C) Police reports are classic totem pole hearsay and, without more, do not constitute substantial evidence. See Merisme v. Board of Appeals on Motor Vehicle Liab. Policies and Bonds, 27 Mass.App.Ct. 470, 476 (1989); accord Flow Lounge Bar & Grill, LLC (ABCC Decision Aug. 3, 2022); Silhouette Lounge, Inc. d/b/a Silhouette Lounge (ABCC Decision Nov. 30, 2004). A finding of a violation that rests entirely on hearsay cannot be sustained; however, a decision based upon hearsay that is supported and corroborated by competent legal evidence may be sustained. See Moran v. School Committee of Littleton, 317 Mass. 591, 596 (1945). Here, the Local Board did not offer any corroborating evidence. For these reasons, the Commission finds the Local Board failed to produce substantial evidence to support a finding that the Licensee violated Local Rule XXV (C)(D).

Violation 6- Prior History

The Local Board did not cite a statute and/or rule or regulation on which it based its finding of "prior history" and therefore the Commission is unable to make a finding.

Possible further violations: excessive noise, public urination, public indecency, overcrowding, public intoxication

Regarding the Local Board's finding that the Licensee violated "possible further violations" "excessive noise", "public urination", "public indecency" and "public intoxication", it points to no particular statute or regulation the Licensee is alleged and/or found to have violated. As such, the Commission is unable to make a finding.

The Local Board also charged the Licensee with a violation of "overcrowding". The Local Board cites no statute or regulation upon which it based its finding of a violation. Presumably the charge relates to 204 CMR 2.05(2) Permitting an illegality on the licensed premises, to wit: 527 CMR 1.05 § 10.4.2.1 Overcrowding or admittance of any person beyond the established posted occupant load shall be prohibited¹. However, the Local Board presented no eyewitnesses or other direct evidence which would support a finding of a violation of 204 CMR 2.05 (2) Permitting an illegality on the licensed premises, to wit: 527 CMR 1.05 § 10.4.2.1 "overcrowding" and for this reason, the Commission finds the Local Board failed to meet its burden.

CONCLUSION

The Alcoholic Beverages Control Commission ("Commission")

DISAPPROVES of the action of the City of Lynn in finding Provenza Restaurant LLC in violation for Misrepresentations to the Lynn Licensing Board and **REMANDS** the matter to the Local Board for proper notice to the Licensee and re-hearing;

DISAPPROVES of the action of the City of Lynn in finding Provenza Restaurant LLC in violation for Failure to Obtain Approval of Manager;

DISAPPROVES of the action of the City of Lynn in finding Provenza Restaurant LLC in violation for Failure to Obtain Liquor Liability Insurance and **REMANDS** the matter to the Local Board for proper notice to the Licensee and re-hearing;

APPROVES of the action of the City of Lynn in finding Provenza Restaurant LLC in violation of Local Board Rule XXV(A) - and **REMANDS** the matter to the Local Board with the recommendation that it impose a reasonable penalty in accordance with its Rules and Regulations;

¹ 10.4.2.1 Overcrowding. Overcrowding or admittance of any person beyond the established posted occupant load shall be prohibited. The AHJ, upon finding overcrowded conditions or obstructions in aisles, passageways or other means of egress, or any condition which constitutes a hazard to life and safety shall cause the performance, presentation, spectacle or entertainment to be stopped until the area posted occupant load is reestablished or the obstruction or hazardous condition is removed.

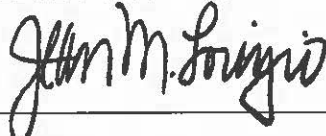
DISAPPROVES the action of the City of Lynn in finding Provenza Restaurant LLC in violation of Local Rule XXV (C)(D);

DISAPPROVES of the action of the City of Lynn in finding Provenza Restaurant LLC in violation for "Prior History";

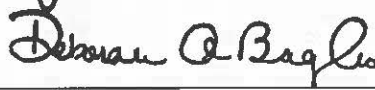
DISAPPROVES of the action of the City of Lynn's findings regarding Provenza Restaurant LLC's "Possible Further Violations".

ALCOHOLIC BEVERAGES CONTROL COMMISSION

Jean M. Lorizio, Chairman



Deborah Baglio, Commissioner



Dated: May 21, 2026

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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यह दस्तावेज़ महत्वपूर्ण है और इसका तुरंत अनुवाद किया जाना चाहिए

Dokiman sa a enpòtan epi li ta dwe tradwi touswit

‘Đây là tài liệu quan trọng và cần được dịch ngay’

ឯកសារនេះសំខាន់ណាស់ ហើយត្រូវបកប្រែជាបន្ទាន់។

2024-000125-ad-enf

cc: Samuel Vitali, Esq.
James Lamana, Esq.
Local Licensing Board
Administration, File