



Commonwealth of Massachusetts
Alcoholic Beverages Control Commission
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Jean M. Lorizio, Esq.
Chairman

DECISION

FALI, INC. D/B/A SICHUAN TASTE RESTAURANT
290 MAIN STREET
MALDEN, MA 02148
LICENSE#: 0646-00130
HEARD: 3/15/2018

This is an appeal of the action of the City of Malden License Board (the “Local Board” or “Malden”) for revoking the M.G.L. c. 138 § 12 all – alcohol license of Fali, Inc. d/b/a Sichuan Taste Restaurant (the “Licensee” or “Sichuan Taste”) located at 290 Main Street, Malden, MA. The Licensee timely appealed the Local Board’s decisions to the Alcoholic Beverages Control Commission (the “Commission” or “ABCC”), and a hearing was held on Thursday, March 15, 2018.

The following documents are in evidence as exhibits:

- A. Licensee’s Application for New Director and Change of Manager approved by Local Board on 9/27/16 and cover letter, dated 9/28/2016, submitted with application to ABCC;
- B. Local Board Meeting Minutes, 9/27/2016;
- C. Malden Advocate Article re: Jade Palace, 8/25/2017;
- D. New Hampshire Union Leader Article re: Jade Palace, 8/22/2017;
- E. Local Board’s Notice of Hearing, 9/20/2017;
- F. Local Board’s Meeting Agenda for 9/20/2017;
- G. Investigative Notes of Malden Police Captain Gatcomb;
- H. Email of 10/18/17 from Local Board with Decision and Statement of Reasons;
- I. Local Board Meeting Minutes, 10/10/2017;
- J. Petition on Appeal, 10/18/17;
- K. Notice of Appeal Hearing for 1/11/18;
- L. State of New Hampshire Liquor Commission Records for Jade Palace;
- M. Local Board’s Regulations, Policies, and Procedures;
- N. Local Board’s Administrative Record for the Licensee;
- O. Transcript of Local Board Meeting re: Sichuan Taste on 9/27/16;

1. Certificate of Resignation of Director, Alan Tianci Yang.

The Commission left the record open until March 22, 2018 to allow submission of additional material. The record is now closed. There is one (1) audio recording of this hearing and five (5) witnesses testified.

The Commission took Administrative Notice of the Licensee's Commission records.

FINDINGS OF FACT

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

1. Fali, Inc. d/b/a Sichuan Taste Restaurant is the holder of a M.G.L. c. 138, § 12 all alcoholic beverages license located at 290 Main Street, Malden, MA. Sichuan Taste has held the license since July 22, 2015. The original corporate officers were: Jian Wu Chen, President; Xin Chen, Treasurer; Li Ru Shi, Secretary; and Liang Gao, Director. Liang Gao was also the license manager of record. (Commission Records, Testimony)
2. Sichuan Taste filed an application with the Local Board to change the manager, appoint new officer/director, add new stockholder and transfer of stock to add Alan Tianci Yang as a director of the corporation and license manager of record. Mr. Yang was to replace Mr. Gao as director and license manager. After a hearing, on September 27, 2016 the Local Board approved the application and submitted it to the ABCC. The ABCC approved the application on 10/28/2016. (Commission Records, Testimony)
3. In the application Mr. Yang identified only one other existing interest in an alcohol license, New Shanghai Restaurant at 21 Hudson Street, Boston, Massachusetts. He failed to disclose that he was the owner and license manager of Jade Palace at 28 Portsmouth Avenue, Stratham, New Hampshire. (Exhibit A)
4. Mr. Yang signed the Manager Application swearing under the pains and penalties of perjury that the information provided in the application was true and accurate. On said Manager Application when listing his employment for the last 10 years Mr. Yang listed the following:

August 2012 – Present – has been employed by the Jade Palace at 29 Portsmouth Ave., Stratham, NH, as bartender. (Exhibit A)
5. As part of the filings with the Local Board, the "Applicant's Statement" was signed by Mr. Jian Wu Chen certifying under the pains and penalties of perjury that he had "personal knowledge of the information submitted in the Application, and as such affirm that all statements and representations therein are true to the best of..." his knowledge and belief. By signing the Applicant's Statement, he further acknowledged that he understood that "any false statement or misrepresentation will constitute cause for disapproval of the application or sanctions including revocation of any license for which this application is submitted." (Exhibit A)
6. Mr. Chen knew that Mr. Yang was the owner and license manager of Jade Palace in New Hampshire. (Testimony)

7. At the Local Board's hearing on September 27, 2016, Mr. Yang testified under oath that he was the bartender at Jade Palace in Stratham, New Hampshire. Mr. Yang failed to disclose that he was also the owner and license manager of Jade Palace. Mr. Yang failed to disclose violations at Jade Palace. (Exhibit O)
8. In August 2017, Mr. Yang was indicted by a grand jury in New Hampshire for overserving three patrons, one of whom was under 21 years old, at Jade Palace on February 29, 2016. The three patrons died as a result of a motor vehicle accident after leaving Jade Palace. (Exhibits C & G, Testimony)
9. Malden Police Captain Gatcomb became aware of the indictment of Mr. Yang and began an investigation into the matter of Mr. Yang's interest in Jade Palace and the alleged perjury on the licensee's application for a change of manager, new officer/director, new stockholder and transfer of stock. (Exhibit G, Testimony)
10. Captain Gatcomb's investigation revealed a prior violation at Jade Palace. Mr. Yang acknowledged that violation. (Exhibit I)
11. The Local Board held a hearing October 10, 2017. (Exhibit I)
12. By decision dated October 11, 2017, the Local Board found Sichuan Taste violated 204 CMR 2.01 (8): "All applications shall be made under the pains and penalties of perjury and any false statement contained in any application shall be a cause or grounds for refusing to grant you the license or for suspending, canceling or revoking a license already granted" and therefore, revoked the license of Sichuan Taste. (Exhibit H)
13. The Certificate of Resignation of Director or Officer signed by Mr. Yang bears no indication that it has been filed with the Massachusetts Secretary of State. (Exhibit I)
14. As of the date of the Commission hearing, the licensee had not filed an application with the Local Board to remove Mr. Yang as officer/director, shareholder and manager. (Testimony)

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). 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)." Dolphino, 29 Mass. App. Ct. at 955.

The Commission's decision must be based on substantial evidence. See Embers of Salisbury, Inc. v. Alcoholic Beverages Control Comm'n, 401 Mass. 526, 528 (1988). "Substantial evidence" is "such evidence as a reasonable mind might accept as adequate to support a conclusion." Id. Evidence from which a rational mind might draw the desired inference is not enough. See Blue Cross and Blue Shield of Mass. Inc. v. Comm'r of Ins., 420 Mass 707, 710 (1995). "The Local

Board has the burden of producing satisfactory proof to the Commission that the licensee committed the alleged violations.” Jaman Corp., d/b/a Crossroads (ABCC Decision Nov. 4, 2010). Adjudicatory findings must be “adequate to enable [a court] to determine (a) whether the order and conclusions were warranted by appropriate subsidiary findings, and (b) whether such subsidiary findings were supported by substantial evidence.” Charlesbank Rest. Inc. v. Alcoholic Beverages Control Comm’n, 12 Mass. App. Ct. 879 (1981) (quoting Town of Westborough v. Dep’t of Pub. Util., 358 Mass. 716, 717-718 (1971)).

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). Both the Local Board and the Commission have the authority to grant, revoke, and suspend licenses. “The Commission has comprehensive powers of supervision over licensees,” Boston Licensing Bd. v. Alcoholic Beverages Control Comm’n, 367 Mass. 788, 795 (1975), 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).

The Appeals Court has discussed the statutory standard to grant a license and the factors that a licensing authority may properly consider in its decision whether to grant or deny a license application. In Ballarin Inc., v. Licensing Board of Boston, 49 Mass. App. Ct. 506 (2000), the Appeals Court held that:

The statute authorizing the issuance of liquor licenses speaks in terms of serving “the public need and in such a manner as to protect the common good and, to that end, to provide, in the opinion of the licensing authorities, an adequate number of places at which the public may obtain, in the manner and for the kind of use indicated, the different sorts of beverages for the sale of which provision is made.” G.L. c. 138, § 23, as amended by St. 1965, c. 399.

In making its discretionary determination, a licensing authority may take into account a wide range of factors -- such as traffic, noise, size, the sort of operation that carries the license, and *the reputation of the applicant*. [Emphasis added]. See Connolly v. Alcoholic Bevs. Control Comm’n, 334 Mass. at 617-618; Great Atlantic & Pac. Tea Co. v. Board of License Commrs. of Springfield, 387 Mass. 833, 837 (1983); Beacon Hill Civic Assn. v. Ristorante Toscano, Inc., 422 Mass. at 322 n. 4; Hub Nautical Supply Co. v. Alcoholic Bevs. Control Comm’n, 11 Mass. App. Ct. 770, 772-774 (1981). Ballarin Inc., v. Licensing Board of Boston, 49 Mass. App. Ct. 506, 510-512 (2000).

Here the Local Board was unable to consider the reputation of the applicant as the applicant failed to truthfully answer questions on the application.¹ Mr. Yang also willfully neglected to disclose pertinent information at the local board hearing. Despite direct questions regarding his experience and his knowledge as to the duties of a license manager, Mr. Yang failed to disclose that he was,

¹ It is Mr. Yang’s contention that his former attorney instructed him that he was not required to disclose any interest in alcohol licenses located outside of Massachusetts. The Commission does not find this argument persuasive.

in fact, the owner and license manager of Jade Palace. Mr. Yang did not disclose the violation history at Jade Palace.

The Commission has previously addressed the issue of false statements in an application in the decision of Re: Nantucket Adventures, Inc. In that matter the Commission disapproved an application for a Section 13 license after learning the applicant answered “none” in response to a question regarding an arrest record when in truth a review of the applicant’s Criminal Offender Record Information revealed several arrests. The applicant appealed, and the Commission upheld the denial of the application based on the fact that the applicant lied on the application. (Nantucket Adventures, Inc., ABCC decision 8/29/97)

In Number Three Lounge v. Alcoholic Beverages Control Commission, the Massachusetts Appeals Court upheld the Commission’s revocation of a license because the applicant/licensee made false statements in its license application based “on the findings of deliberate deception on the part of the plaintiff (licensee) and the conclusion that the deception struck at the root of the obligations imposed on the board and the commission to regulate the ownership of licenses.” Number Three Lounge v. Alcoholic Beverages Control Comm’n., 7 Mass App. Ct. 301, 312-313 (1979).

The Appeals Court held that “businesses selling intoxicating liquors are heavily regulated.” Number Three Lounge v. Alcoholic Beverages Control Comm’n., 7 Mass. App. Ct. 301, 312 (1979) citing Ziffrin, Inc. v. Reeves, 308 U.S. 132, 138 (1939). Connolly v. Alcoholic Beverages Control Comm’n., 334 Mass. 613, 619 (1956). Arno v. Alcoholic Beverages Control Comm’n., 377 Mass. 83, 85-86 (1979). The Court found “because of this the licensing authorities have the legitimate right to expect full disclosure of holdings in the nature of substantial indirect as well as direct beneficial interests in an entity which seeks to own a license, particularly where specific inquiry is made on the issue, so that the agencies will be able properly to discharge their obligations of ensuring that the applicant meets the requirements imposed upon a prospective licensee.” Number Three Lounge v. Alcoholic Beverages Control Comm’n., 7 Mass. App. Ct. 301, 312 (1979).

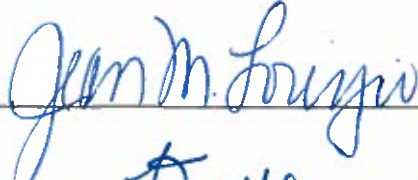
The Commission finds that Mr. Yang misrepresented substantial facts both in the application and at the hearing before the Local Board. The Commission finds that Mr. Yang purposefully did not disclose his ownership interest in Jade Garden, his position as license manager at Jade Garden and the violation history at Jade Garden.

CONCLUSION


Based on the evidence, the Alcoholic Beverages Control Commission **APPROVES** the action of the City of Malden License Board in finding Fali, Inc. d/b/a Sichuan Taste Restaurant violated 204 CMR 2.01 (8): “All applications shall be made under the pains and penalties of perjury and any false statement contained in any application shall be a cause or ground for refusing to grant you the license or for suspending, canceling or revoking a license already granted,” and as a result revoking the license.

ALCOHOLIC BEVERAGES CONTROL COMMISSION

Jean Lorizio, Chairman



Kathleen McNally, Commissioner



Dated: September 17, 2018

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: Peter Rossetti, Esq. via facsimile 781-231-4222
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Local Licensing Board
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