

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

Deborah B. Goldberg
Treasurer and Receiver General

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Chairman

PATRICKS RESTAURANT LLC D/B/A PATRICKS HARBORVIEW RESTAURANT
95 CENTRAL STREET
MARSHFIELD, MA 02050
LICENSE#: 066400084
HEARD: 01/19/2016

MEMORANDUM AND ORDER
ON MARSHFIELD'S MOTION TO DISMISS

This case arises under M.G.L. c. 138, § 67. Patrick's Restaurant LLC d/b/a Patrick's Harborview Restaurant (the "Licensee" or "Patrick's") held an all alcoholic beverages license issued pursuant to M.G.L. c. 138, § 12 located at 95 Central Street, Marshfield, MA 02050.

On September 14, 2015, the Town of Marshfield Board of Selectmen (the "Local Board" or "Marshfield") held a hearing and voted unanimously to revoke Patrick's License. The Local Board issued its written decision September 16, 2015 indicating that the following factors were considered by the Local Board: the status of occupancy of the premises, notice by the Marshfield Board of Health that the Licensee violated the State Sanitary Code by failing to have an appropriately certified person and by making a false statement/altering a certification belonging to someone else and passing it off as one's own, failing to pick up the amended license following a prior hearing and to respond to questions from the Selectmen's office, and failing to appear at the September 14, 2015 hearing.

The Licensee timely appealed the Local Board's decision to the Alcoholic Beverages Control Commission (the "Commission"), and a hearing was scheduled on the appeal for January 19, 2016. The Commission sent notices of the appeal hearing to both parties. While the hearing was pending, the Licensee failed to file a renewal application for its license for calendar year 2016. The Licensee's 2015 license expired on December 31, 2015 because it was not renewed.

On January 13, 2016, the Local Board filed a Motion to Dismiss the Licensee's Appeal based on the Licensee's failure to renew its license. The Commission scheduled a hearing on the Local Board's Motion for Tuesday, January 19, 2016, and the appeal hearing was to be rescheduled. The Commission sent notice of the motion hearing to the Local Board's counsel as well as to the Licensee by way of email to the Licensee corporate owner, mail to the Licensee's premises, and mail to the Licensee corporate owner's address. The Commission heard the Local Board's motion to dismiss on January 19, 2016, but the Licensee did not appear for the hearing.

DISCUSSION

General Laws c. 138, § 23, provides that “[e]very license and permit granted under the provisions of this chapter, unless otherwise provided in such provisions, shall expire on December thirty-first of the year of issue, subject, however, to revocation or cancellation within its term.” General Laws c. 138, § 16A, confers upon § 12 licensees, the prima facie right to renew the license every November, subject to certain conditions. “The holder of an annual license under section twelve or fifteen who applies during the month of November in any licensing period for a license of the same class for the next succeeding licensing period . . . shall be prima facie entitled thereto Any such application may, however, be rejected for cause, subject to appeal under section sixty-seven. A person whose application has so been rejected by the local licensing authorities shall for the purposes of section seventeen be deemed to have been granted such a license until the period for such an appeal has expired or until his appeal has been dismissed.” M.G.L. c. 138, § 16A.

The implication from § 16A that the continuing right to exercise the privileges of the license in the succeeding year are predicated on renewing the license for the succeeding year is substantiated by M.G.L. c. 30A, the state’s Administrative Procedure Act. Chapter 30A prohibits the Commission from revoking or refusing to renew a license “unless it has first afforded the licensee an opportunity for [an adjudicatory hearing]. If a licensee has, in accordance with any law and with agency regulations, made timely and sufficient application for a renewal, his license shall not expire until his application has been finally determined by the agency.” M.G.L. c. 30A, § 13. Indeed, the Supreme Judicial Court has already squarely determined that a Licensee’s appeal becomes moot when the Licensee fails to renew its license. Zelman v. Alcoholic Beverages Control Comm’n, 335 Mass. 515 (1957).

Section 16A therefore makes the prima facie right of renewal for a succeeding year of a license under § 12 dependent upon application in November of the current year. “Except for an application in November the current license terminates at the year end and the licensee . . . stands the same as do applicants who are applying for the first time.” Id. at 520.

If Patrick’s application for renewal had been filed in November 2015, the Licensee would have been in a position to call for determination by the Commission of the substantive issue regarding the revocation. See id. But the Licensee never filed a renewal application for the license for calendar year 2016. The 2015 license expired with the close of that year. See id. This fact renders the appeal before the Commission as moot, and the Commission is relieved of determining whether the revocation was an appropriate sanction.

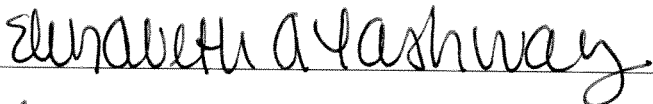
Even if the Commission were now to find (or had at any time after November, 2015 found) in Licensee’s favor on the appeal, such a finding would not make the corporation a licensee for 2016 or put it in a position where it could by its act acquire prima facie rights for 2016. Id.; Ward v. Selectmen of Scituate, 334 Mass. 1, 2 (1956). Compare Piona v. Alcoholic Beverages Control Comm’n, 332 Mass. 53, 57 (1954) (where the petitioner was seeking restoration of a license improperly cancelled.)

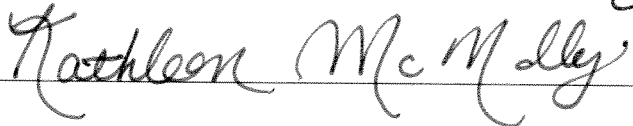
CONCLUSION

The Alcoholic Beverages Control Commission **ALLOWS** the Town of Marshfield's Motion to Dismiss the Appeal of Patrick's Restaurant LLC d/b/a Patrick's Harborview Restaurant.

Based on the above order, the Commission will take no further action on the earlier appeal request of the license revocation. The Commission appeal hearing that was to be rescheduled IS DISMISSED WITHOUT PREJUDICE FOR FAILURE OF THE APPELLANT TO RENEW ITS LICENSE.

ALCOHOLIC BEVERAGES CONTROL COMMISSION

Elizabeth Lashway, Commissioner 

Kathleen McNally, Commissioner 

Dated: January 20, 2016

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: Patrick J. Flaherty, Jr.
Robert W. Galvin, Esq. via facsimile 781-837-1030
Frederick G. Mahony, Chief Investigator
Local Licensing Board
Administration
File