

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

**Jean M. Lorizio, Esq.**  
*Chairman*

**DECISION**

**DIAMOND INN THE ROUGH LLC D/B/A BELFONT HOTEL  
11 SOUTH MAIN STREET  
MILLBURY, MA 01527  
LICENSE#: 05982-RS-0712  
HEARD: 5/01/2023**

This is an appeal of the action of the Town of Millbury Board of Selectmen (the "Local Board" or "Millbury") in revoking the M.G.L. c. 138, § 12 all alcoholic beverages license of Diamond Inn The Rough LLC d/b/a Belfont Hotel ("Licensee" or "Belfont Hotel") located at 11 South Main Street, Millbury, Massachusetts. The Licensee timely appealed the Local Board's decision to the Alcoholic Beverages Control Commission (the "Commission" or "ABCC"), and a remote hearing via Microsoft Teams was held on Monday, May 1, 2023.

The following documents are in evidence as agreed upon exhibits:

- A. Millbury Board of Selectmen Liquor License Regulations;
- B. Notice of License Revocation, March 31, 2023;
- C. Millbury Police Report, January 20, 2023;
- D. Millbury Police Report, May 27, 2021;
- E. Millbury Police Report, November 20, 2021;
- F. Millbury Police Report, March 13, 2022;
- G. Millbury Police Report, May 26, 2022;
- H. Millbury Police Report, December 18, 2022;
- I. Notice of Lease Recorded in Worcester South District Registry of Deeds, June 15, 2021;
- J. ReMax Listing Agreement for the sale of the License and Business Assets, February 27, 2023.

There is one (1) audio recording of this hearing, and five (5) witnesses testified.

**FINDINGS OF FACT**

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

*Telephone: (617) 727-3040 \* Fax: (617) 727-1510 \* [www.mass.gov/abcc](http://www.mass.gov/abcc)*

1. Diamond Inn The Rough LLC d/b/a Belfont Hotel ("Licensee" or "Belfont Hotel") holds an all-alcoholic beverages license approved in April 2021 and exercised at 11 South Main Street, Millbury, Massachusetts. Mark Webber is the sole owner of the Belfont Hotel. (Testimony, Exhibit B)
2. On January 9, 2023, the Millbury Police Department received an email alleging drug activity at the Belfont Hotel. (Testimony, Exhibit C)
3. As a result of the above email, on Friday, January 20 into early Saturday, January 21, 2023, the Millbury Police Department and the Blackstone Valley Drug and Counter Crime Task Force conducted an undercover operation at the Belfont Hotel. Id.
4. At approximately 10 p.m. on Friday January 20, 2023, multiple undercover officers entered the licensed premises while Millbury Police Officers conducted surveillance outside of the premises. Id.
5. There was one employee, a bartender, on duty and approximately 20 patrons on the premises. (Testimony)
6. At approximately 12:10 a.m. Saturday, January 21, 2023, additional Millbury Police Officers entered the Belfont Hotel. (Testimony, Exhibit C)
7. The layout of the Belfont Hotel has two sections: a main bar area where the bartender is located with tables and a lower level with a downwards ramp leading to an area with a pool table and dart board. Around the corner from the bottom of the ramp is a U-shaped table which is referred to as the "VIP" table. (Testimony)
8. The "VIP" table is not visible from the bar in the main bar area. Id.
9. While inside the licensed premises, Officer O'Leary observed a patron in possession of a small black scale. He also observed white residue on the "VIP" table as well as in the female restroom. A patron was arrested at the Belfont Hotel. (Exhibit C)
10. Mr. Webber is at the Belfont Hotel daily and leaves the establishment between 5 and 6 p.m. Bartenders are made aware he is available by telephone 24 hours a day, 7 days a week and will go to the establishment at night if necessary for any incidents or problems that might occur. He is never further than 5 miles from the licensed premises. (Testimony)
11. Mr. Webber instructs bartenders to monitor the premises, including restrooms, for unusual activity. Id.
12. The Local Board held a hearing on March 28, 2023, regarding alleged violations which occurred on the night of January 20 and into the early morning of January 21, 2023. (Exhibit B)
13. The Local Board found the Licensee in violation of 204 CMR 2.05(2), and the Local Board Regulations Sections 1.11(a)(1), 1.11(a)(2), and 1.08(a) and voted to revoke the Licensee's § 12 all alcoholic beverages license. Id.
14. 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. See 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” is “such evidence as a reasonable mind might accept as adequate to support a conclusion.” Embers of Salisbury, Inc. v. Alcoholic Beverages Control Comm’n, 401 Mass. 526, 528 (1988). 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). Disbelief of any particular evidence does not constitute substantial evidence to the contrary. New Boston Garden Corp. v. Bd. of Assessor of Boston, 383 Mass. 456, 472 (1981).

The Local Board in its decision dated March 31, 2023, found the Licensee “...had violated Chapter 138 of the Massachusetts General Laws, the Liquor License Regulations of the Board and the terms of the License as follows:

- a. The Licensee failed to monitor restrooms and other nonpublic areas of the Licensed Premises for signs of drug activity, in violation of Section 1.11(a)(1) of the Liquor License Regulations of the Board.
- b. The Licensee failed to pay attention to activities on the Licensed Premises of known drug users and drug dealers, in violation of Section 1.11(a)(2) of the Liquor License Regulations of the Board.

- c. The Licensee failed to ensure that a high degree of supervision was exercised over the conduct of the Licensed Premises with respect to the Incident, in violation of Section 1.08(a) of the Liquor License Regulations of the Board.
- d. The Licensee permitted illegal activity to take place at the Licensed Premises with respect to the Incident, in violation of 205 [sic] CMR 2.05(2) (promulgated pursuant to M.G.L. c. 138)." (Exhibit B)

To prove a case of permitting an illegality, the Local Board must introduce evidence of activities that, taken together, demonstrate that the licensee actually "permitted a disorder, disturbance or illegality of any kind to take place in or on the licensed premises." 204 CMR 2.05(2); see M.V.U.S. LLC d/b/a Odyssey (ABCC Decision Jan. 17, 2017).

Here, the Local Board did not produce any direct evidence of illegal activity.

Sergeant Sutherland and Officer O'Leary testified before the Commission and were found to be professional and credible. However, neither of them took part in the undercover operation in conjunction with the Blackstone Valley Drug and Counter Crime Task Force but rather entered the licensed premises after said operation. Neither witnessed any illegal activity and had no first-hand knowledge as to what, if anything, occurred inside the licensed premises.

The Local Board offered police reports as evidence of the alleged violations but did not produce any corroborating evidence. Police reports are classic totem pole hearsay and, without more, do not constitute substantial evidence. See Merisme, 27 Mass. App. Ct. at 476; 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 evidence that is supported and corroborated by competent legal evidence may be sustained. See Moran v. School Committee of Littleton, 317 Mass. 591, 596 (1945). The Local Board did not offer any supporting corroborating evidence.

Based on the evidence presented at the hearing, the Commission finds that the Local Board has failed to produce substantial evidence to support a finding that the Licensee permitted an illegality on the licensed premises in violation of 204 CMR 2.05(2) and violated the Local Board's Liquor License Regulations.

### CONCLUSION

The Alcoholic Beverages Control Commission **DISAPPROVES** of the action of the Town of Millbury in finding that Diamond Inn The Rough LLC d/b/a Belfont Hotel committed violations of Chapter 138 of the Massachusetts General Laws, the Liquor License Regulations of the Board and the terms of the License as follows:

- a. The Licensee failed to monitor restrooms and other nonpublic areas of the Licensed Premises for signs of drug activity, in violation of Section 1.11(a)(1) of the Liquor License Regulations of the Board.
- b. The Licensee failed to pay attention to activities on the Licensed Premises of known drug users and drug dealers, in violation of Section 1.11(a)(2) of the Liquor License Regulations of the Board.

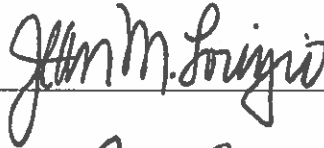
- c. The Licensee failed to ensure that a high degree of supervision was exercised over the conduct of the Licensed Premises with respect to the Incident, in violation of Section 1.08(a) of the Liquor License Regulations of the Board.
- d. The Licensee permitted illegal activity to take place at the Licensed Premises with respect to the Incident, in violation of 205 [sic] CMR 2.05(2) (promulgated pursuant to M.G.L. c. 138)."

Therefore, the Commission **DISAPPROVES** the action of the Town of Millbury Licensing Board in revoking the Licensee's M.G.L. c. 138, § 12 license.

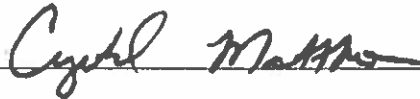
The Commission remands the matter to the Local Board with the recommendation that no further action be taken against the Licensee, as any penalty would be discrepant with this decision.

#### ALCOHOLIC BEVERAGES CONTROL COMMISSION


Jean M. Lorizio, Chairman



Crystal Matthews, Commissioner



Deborah Baglio, Commissioner



Dated: November 21, 2024

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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