25-P-304 Appeals Court

MONSIEUR TOUTON SELECTION OF MASSACHUSETTS, LTD. vs. ALCOHOLIC BEVERAGES CONTROL COMMISSION.

No. 25-P-304.

Suffolk. January 12, 2026. - September 10, 2026.

Present: Walsh, Toone, & Tan, JJ.

Alcoholic Liquors, Alcoholic Beverages Control Commission, Certificate of compliance, License, Revocation of license, Supplier, Wholesaler. Statute, Construction. Administrative Law, Agency's interpretation of statute. Practice, Civil, Judgment on the pleadings. Words, "Shall be cause for."

Civil action commenced in the Superior Court Department on May 19, 2023.

The case was heard by Rosemary Connolly, J., on motions for judgment on the pleadings.

Joshua M.D. Segal for the plaintiff.
David R. Marks, Assistant Attorney General, for the defendant.

TOONE, J. This case addresses whether, upon finding a violation of G. L. c. 138, § 18B, the Alcoholic Beverages Control Commission (commission) has discretion to impose a sanction other than "the revocation of all certificates and licenses held by the certificate holder and his immediate family," G. L. c. 138, § 18B, third par. Since 1999, the plaintiff, Monsieur Touton Selection of Massachusetts, Ltd. (MTMA), has been licensed as a Massachusetts wholesaler of alcoholic beverages pursuant to G. L. c. 138, § 18. MTMA is wholly owned by Touton Holdings, Ltd. (Touton Holdings). Touton Holdings also owns a New York corporation, Monsieur Touton Selection, Ltd. (MTNY), which in 2018 was granted a certificate of compliance as an out-of-State supplier of alcoholic beverages into Massachusetts pursuant to G. L. c. 138, § 18B, first par. Following an investigation, during which MTNY surrendered its certificate, the commission found that the common ownership of MTMA and MTNY violated the second paragraph of G. L. c. 138, § 18B, which provides that "[n]o person who holds a certificate under this section shall hold or be granted a license" under § 18. The commission then determined that, under the third paragraph of § 18B, it was "without discretion in this matter" and required to revoke MTMA's wholesaler license. In an action for judicial review pursuant to G. L. c. 30A, § 14, a judge of the Superior Court upheld the commission's decision. Exercising de novo review, we conclude that the statute grants the commission authority to revoke certificates and licenses, but does not mandate revocation in every instance. Accordingly, we vacate the judgment entered in favor of the commission and remand for further proceedings consistent with this opinion.

Background. 1. Statutory framework. Following the end of Prohibition, the Legislature enacted the Liquor Control Act (act), G. L. c. 138, as appearing in St. 1933, c. 376, § 2, and established the commission. G. L. (Ter. Ed.) c. 6, § 43, inserted by St. 1933, c. 120, § 2. See Craft Beer Guild, LLC v. Alcoholic Beverages Control Comm'n, 481 Mass. 506, 513-514 (2019). The purpose of the act was to "generally govern[] the distribution and sale of alcoholic beverages in the Commonwealth," and it charged the commission with the "general supervision of the conduct of the business of manufacturing, importing, exporting, storing, transporting and selling alcoholic beverages." Id. at 514, quoting G. L. c. 10, § 71. By segregating licensees into three tiers -- manufacturers/suppliers, wholesalers, and retailers -- and giving the commission strict regulatory oversight, "the Legislature sought to encourage temperance and combat the risk that the multiple branches of liquor traffic would become muddled due to collusion and corruption." Craft Beer Guild, LLC, supra at 515. Under this three-tiered system, alcohol products are initially sold by manufacturers or suppliers to wholesalers, who then sell to retailers, who in turn sell to consumers. Heublein, Inc. v. Capital Distrib. Co., 434 Mass. 698, 699 (2001), citing G. L. c. 138, §§ 12, 15, 18, 18B, 19.

In 1943, the Legislature recognized that "persons shipping alcoholic beverages into [Massachusetts were] in no way subject to State regulating authorities," House Report No. 1461, at 13 (1943), and enacted G. L. c. 138, § 18B, to bring out-of-State suppliers into the three-tiered licensing scheme. See St. 1943, c. 542, § 9; S&H Indep. Premium Brands E., LLC v. Alcoholic Beverages Control Comm'n, 494 Mass. 464, 469 (2024).[1] It did so by assigning the commission "the authority to regulate the Massachusetts activity of out-of-State manufacturers and suppliers by issuance of an annual 'certificate of compliance' and by requirement of a certificate holder's regular submission of 'information concerning all shipments or sales of alcoholic beverages' made by it to licensed wholesalers in the Commonwealth." Anheuser-Busch, Inc. v. Alcoholic Beverages Control Comm'n, 75 Mass. App. Ct. 203, 205-206 (2009), quoting G. L. c. 138, § 18B, first par., inserted by St. 1943, c. 542, § 9. The Legislature required certificate holders to comply with all pertinent provisions of G. L. c. 138 and "any rules or

[1] The enactment of G. L. c. 138, § 18B, was among a host of changes to the administration of the act proposed by a legislative commission. See St. 1943, c. 542; 1943 House Report No. 1461.

regulations made under authority contained therein which pertain to a licensee of the same class, type or character, doing business in this commonwealth under a license issued by the commission," and authorized the commission to "suspend, cancel or revoke any certificate issued hereunder for a violation of the terms or conditions thereof." G. L. c. 138, § 18B, first par., inserted by St. 1943, c. 542, § 9. See Anheuser-Busch, Inc., supra at 206 n.5.

In 1971, the Legislature amended § 18B to advance the policy of prohibiting "vertical integration of the manufacture and distribution of alcoholic beverages in the Commonwealth." Anheuser-Busch, Inc., 75 Mass. App. Ct. at 206, 208, discussing St. 1971, c. 1022, § 1. As amended, the second paragraph of the statute now provides that "[n]o person who holds a certificate under this section shall hold or be granted a [wholesaler's] license under section eighteen." G. L. c. 138, § 18B, second par.[2] The amendment prohibited not only vertical integration through the dual licensing of a single person, but also its achievement through family members by providing that "a person" includes any member of the certificate holder's "immediate

[2] General Laws c. 138, § 18, authorizes the commission to "license wholesalers to purchase beverages from in-State or out-of-State manufacturers or suppliers for resale to other wholesalers and to retailers." Anheuser-Busch, Inc., 75 Mass. App. Ct. at 206.

family" who "holds [a § 18B] certificate and [wholesaler] license." G. L. c. 138, § 18B, second par. See Opinion of the Justices to the House of Representatives, 368 Mass. 857, 859, 864-865 (1975) (analyzing related proposed legislation to amend § 18). Because "§ 18B certificate holders are treated like manufacturers or suppliers in the three-tiered scheme," the statute ensures that the same certificate holder or affiliated licensee cannot control multiple tiers of alcohol distribution as both (i) a manufacturer or supplier, and (ii) a wholesaler. S&H Indep. Premium Brands E., LLC, 494 Mass. at 469. The 1971 amendment also added a third paragraph to § 18B, which provides that "[v]iolation of the provisions of this section shall be cause for the revocation of all certificates and licenses held by the certificate holder and his immediate family." St. 1971, c. 1022, § 1, codified as G. L. c. 138, § 18B, third par.[3]

2. Procedural history. Alleging that the joint ownership of MTMA and MTNY by Touton Holdings violated G. L. c. 138, § 18B, the commission commenced its investigation in 2020. Soon

[3] "Immediate family" is defined as a spouse, parent, child, brother, or sister. G. L. c. 138, § 18B, second par., inserted by St. 1971, c. 1022, § 1. The fourth paragraph of § 18B, also added by St. 1971, c. 1022, § 1, provides that, in the case of a corporate certificate holder or licensee, "any person or his immediate family who owns more than ten per cent of the stock of such corporation shall be deemed to be the certificate holder or licensee under this section." G. L. c. 138, § 18B, fourth par. See Anheuser-Busch, Inc., 75 Mass. App. Ct. at 206 & n.8.

after receiving notice of the investigation, MTNY surrendered its § 18B certificate of compliance. MTMA then stipulated that MTMA and MTNY were wholly owned by Touton Holdings in 2018 and 2019, during which time MTNY held a § 18B certificate and MTMA held a § 18 wholesaler's license. After a hearing, the commission issued a decision finding that MTMA had violated § 18B and revoking its § 18 wholesaler license. Citing our decision in Griffin's Brant Rock Package Store, Inc. v. Alcoholic Beverages Control Comm'n, 12 Mass. App. Ct. 768, 774 (1981) (Griffin's Brant Rock), the commission stated that, under G. L. c. 138, § 18B, it was "without discretion in this matter and must revoke [MTMA's] § 18 wholesaler license."

MTMA filed a complaint for judicial review pursuant to G. L. c. 30A, § 14. It did not dispute that a violation of § 18B had occurred, but rather argued that the statute did not mandate the revocation of its wholesaler's license as a consequence. Both MTMA and the commission moved for judgment on the pleadings. In a thoughtful decision, the judge denied MTMA's motion and allowed the commission's. According to the judge, the commission was "on solid legal ground" in interpreting the third paragraph of § 18B as not granting the commission "discretion as to the sanctions it must impose for a violation." The judge concluded that the commission's interpretation was reasonable and consistent with the "intent of the statute" to "'counteract the tendency toward' the evil of 'tied houses,' . . . that is, the 'reciprocal relationship[s] between saloon owners and manufacturers of alcoholic beverages that existed before Prohibition,'" quoting Craft Beer Guild, LLC, 481 Mass. at 514. The judge further stated that, "[e]ven if [MTMA's] interpretation as to the relevant language is reasonable, so too is the [commission's] interpretation, and as such, the [commission's] interpretation, because it is reasonable and consistent with the law, is entitled to deference." MTMA appealed from the judgment. A second judge stayed the revocation of MTMA's license pending resolution of this appeal.

Discussion. 1. Standard of review. "We review the allowance of a motion for judgment on the pleadings de novo." Boston v. Conservation Comm'n of Quincy, 490 Mass. 342, 345 (2022), quoting Kraft Power Corp. v. Merrill, 464 Mass. 145, 147 (2013). We review the underlying agency decision "in accordance with the standards set forth in G. L. c. 30A, § 14 (7)." Commercial Wharf E. Condominium Ass'n v. Department of Envtl. Protection, 99 Mass. App. Ct. 834, 840 (2021).

General Laws c. 30A, § 14 (7), sets forth the standards of review for adjudicatory decisions by Massachusetts agencies.[4] By

[4] In both its substantive requirements and level of detail, this statute differs from the judicial review provision of the

its terms, the statute mandates a deferential standard of judicial review for certain kinds of challenges to agency action.[5] Other challenges, however, present questions of law that are subject to de novo review. Robinhood Fin. LLC v. Secretary of the Commonwealth, 492 Mass. 696, 707 (2023), citing Fournier v. Secretary of the Exec. Office of Health & Human Servs., 488 Mass. 43, 50 (2021). Where an agency's decision turns on the interpretation of a statute, it presents a question of law that a court reviews de novo. See Arrowood Indem. Co. v.

Federal Administrative Procedure Act, 5 U.S.C. § 706, which the United States Supreme Court reinterpreted in Loper Bright Enters. v. Raimondo, 603 U.S. 369, 372, 411-413 (2024), overruling Chevron, U.S.A., Inc. v. National Resources Defense Council, Inc., 467 U.S. 837, 844 (1984). See M. E. Randazzo & J. R. Hitt, Massachusetts Administrative Law and Practice § 4.04[6] (2025).

[5] Under subsection (g), for example, courts apply the arbitrary or capricious test in reviewing an agency's discretionary decisions -- those committed to the agency's judgment. G. L. c. 30A, § 14 (7) (g). See G. L. c. 30A, § 14 ("court shall give due weight . . . to the discretionary authority conferred upon" agency); Sierra Club v. Commissioner of the Dep't of Envtl. Mgt., 439 Mass. 738, 748-749 (2003). That is a deferential standard that "requires only that there be a rational basis for the decision" (citation omitted). Adams v. Superintendent, Dep't of State Police, 105 Mass. App. Ct. 611, 614 (2025). Under G. L. c. 30A, § 14 (7) (e), if a party challenges the factual basis for an agency's decision, the decision will be sustained if it is supported by substantial evidence, an inquiry that is limited to determining whether "there is such evidence as a reasonable mind might accept as adequate to support the agency's conclusion." Seagram Distillers Co. v. Alcoholic Beverages Control Comm'n, 401 Mass. 713, 721 (1988). See G. L. c. 30A, § 1 (6).

Workers' Compensation Trust Fund, 496 Mass. 222, 229 (2025). Where the interpretation of the statute is erroneous, the decision is "[b]ased upon an error of law" and may be set aside or modified. G. L. c. 30A, § 14 (7) (c).

In determining whether there was error, G. L. c. 30A, § 14, requires that courts "give due weight to the experience, technical competence, and specialized knowledge of the agency." Thus, even though "[t]he duty of statutory interpretation rests ultimately with the courts" (citation omitted), Souza v. Registrar of Motor Vehicles, 462 Mass. 227, 230 (2012), we give deference to an agency's interpretation of a statute that is "based in some way on [its] expertise or specialized knowledge," DeCosmo v. Blue Tarp Redev., LLC, 487 Mass. 690, 702 (2021). See, e.g., NextEra Energy Resources, LLC v. Department of Pub. Utils., 485 Mass. 595, 605 (2020); Springfield v. Department of Telecomm. & Cable, 457 Mass. 562, 568 (2010). That is particularly true "when the statute in question explicitly grants broad rule-making authority to the agency, contains an ambiguity or gap, or broadly sets out a legislative policy that must be interpreted by the agency" (citations omitted). Souza, supra at 229. See Middleborough v. Housing Appeals Comm., 449 Mass. 514, 523 (2007), citing Zoning Bd. of Appeals of Wellesley v. Housing Appeals Comm., 385 Mass. 651, 654 (1982).

This case, however, concerns the meaning of a discrete statutory term: whether the phrase "shall be cause for" in G. L. c. 138, § 18B, third par., mandates, upon the finding of a violation of that section, the revocation of all certificates and licenses for all out-of-State certificate holders, affiliated companies, and immediate family members or, instead, authorizes the commission to exercise discretion in what sanction it imposes. The phrase "shall be cause for" is used in a variety of legal contexts,[6] and it has no special meaning or role to play in the three-tiered licensing scheme for alcoholic beverages. Determining its meaning in § 18B does not require the sort of technical competence or specialized knowledge held by the commission. Nor does it involve the interpretation of a legislative policy that is "only broadly set out in the

[6] See, e.g., G. L. c. 21B, § 6, third par. (attempt to extend mining operations beyond boundaries in application "shall be cause for revocation of the coal mining license"); G. L. c. 140, § 122D (d) (failure to report change of address "shall be cause for revocation or suspension" of self-defense spray permit); G. L. c. 140, § 129B (e) (same for firearm identification card); G. L. c. 140, § 177A (8) (violation of section or G. L. c. 136 by person managing premises "shall be cause for the revocation of all licenses for automatic amusement devices kept or offered for operation on such premises"); G. L. c. 147, § 28, second par. (false statement by private detective regarding person in employ "shall be cause for revocation of his license"); G. L. c. 159B, § 10B (motor carrier's or interstate licensee's failure to keep full records of distinguishing plates "shall be cause for" revocation of such plates for temporarily leased motor vehicles).

governing statute" (citation omitted). Massachusetts Org. of State Eng'rs & Scientists v. Labor Relations Comm'n, 389 Mass. 920, 924 (1983). Accordingly, we give only limited weight to the commission's experience, technical competence, and specialized knowledge in determining whether its decision was based on an error of law. See Arrowood Indem. Co., 496 Mass. at 229-230; Van Munching Co. v. Alcoholic Beverages Control Comm'n, 41 Mass. App. Ct. 308, 310 (1996), citing G. L. c. 30A, § 14 (7).

2. Statutory interpretation. We interpret a statute

> "according to the intent of the Legislature ascertained from all its words construed by the ordinary and approved usage of the language, considered in connection with the cause of its enactment, the mischief or imperfection to be remedied and the main object to be accomplished, to the end that the purpose of its framers may be effectuated."

Arrowood Indem. Co., 496 Mass. at 230, quoting Vita v. New England Baptist Hosp., 494 Mass. 824, 834 (2024). While we begin with the statute's plain language, we do not read it in isolation. S&H Indep. Premium Brands E., LLC, 494 Mass. at 467. Rather, we focus on the "statutory scheme as a whole . . . so as to produce an internal consistency within the statute." Arrowood Indem. Co., supra, quoting Matter of the Estate of Mason, 493 Mass. 148, 152 (2023).

Since the enactment of G. L. c. 138, the statutory scheme has generally authorized, but not mandated, license revocation for violations. The act initially described licenses as "revocable at pleasure and without any assignment of reasons therefor by the licensor." St. 1933, c. 376, § 2. The Legislature soon imposed due process constraints, providing that, after "hearing or opportunity therefor," the commission "may . . . modify, suspend, revoke or cancel [the licensee's] license . . . [w]henever, in the opinion of the commission, [the licensee] fails to maintain compliance with the requirements of this chapter, or any other reasonable requirements which it may from time to time make" (emphasis added). St. 1934, c. 385, § 16. Since then, the commission has exercised "comprehensive powers of supervision over licensees, including the power to revoke, modify, or suspend licenses." Howard Johnson Co. v. Alcoholic Beverages Control Comm'n, 24 Mass. App. Ct. 487, 491 (1987), citing G. L. c. 138, § 23. See G. L. c. 138, § 64; RK&E Corp. v. Alcoholic Beverages Control Comm'n, 97 Mass. App. Ct. 337, 341-342 (2020) (discussing broad authority of commission to revoke, suspend, and attach conditions to licenses following suspension).

The Supreme Judicial Court's decision in Cleary v. Cardullo's, Inc., 347 Mass. 337, 350 & n.13 (1964), leads us to construe G. L. c. 138, § 18B, third par., as authorizing, but not mandating, the revocation of all implicated certificates and licenses in the event of a violation. The commission argues that the explicitly discretionary language used in G. L. c. 138, § 23, fifth par., and other provisions show that the Legislature "uses different words to grant . . . discretionary authority," whereas the plain meaning of "shall be cause for" in § 18B precludes the exercise of discretion because it is "an 'axiomatic' rule of statutory construction that the use of the word 'shall' in a statute imposes a mandatory obligation." See Perez v. Department of State Police, 491 Mass. 474, 486 (2023), quoting School Comm. of Greenfield v. Greenfield Educ. Ass'n, 385 Mass. 70, 81 (1982). In Cleary, however, the court ruled that the phrase "shall be cause for" means that the particular sanctions that follow are only authorized, not mandated. Cleary, supra at 350. That case involved a section of G. L. c. 138 (since superseded) that required a party seeking to transfer a license to disclose "all persons who have a direct or indirect beneficial interest in said license," and stated that "[f]ailure to comply with . . . this paragraph shall be cause for the suspension or revocation of such [a] license." Cleary, supra at 350 n.13, quoting G. L. c. 138, § 23, as amended through St. 1955, c. 652. The court determined that an inaccurate disclosure did not preclude the grant of the transfer because the provision "does not compel revocation or suspension of such a license for noncompliance" but "merely authorizes such action." Cleary, supra at 350.

We are not persuaded by the commission's argument that Cleary involved "a procedural requirement, not a direct affront to the regulatory scheme for alcohol as is the case here." "[T]he language of the statute . . . is 'the principal source of insight' into the intent of the Legislature" (citation omitted), Commonwealth v. Rossetti, 489 Mass. 589, 593 (2022), and the language of § 18B gives no hint that every violation must result in the revocation of all certificates and licenses. To be sure, § 18B serves an important role in preventing vertical integration of the manufacture and distribution of alcoholic beverages in Massachusetts, Anheuser-Busch, Inc., 75 Mass. App. Ct. at 208, and some violations of it may well be more of an affront to the statutory scheme than the one at issue in Cleary. But the commission cites nothing to show that the Legislature intended that revocation must follow every violation -- particularly where the statutory scheme does not mandate revocation of licenses for other violations that implicate the three-tiered system. See, e.g., G. L. c. 138, §§ 12, 15, 18, 19, 23.

In its decision, the commission relied on Griffin's Brant Rock, 12 Mass. App. Ct. at 774, in concluding that § 18B deprived it of discretionary authority and mandated revocation of MTMA's wholesale license. That case, however, involved a specific statutory directive. Seeking to revoke a party's license for the violation of receiving credit from another licensee, in violation of G. L. c. 138, § 25, first par, in that case the commission argued that its authority under G. L. c. 138, § 64, allowed it to revoke a license for "a violation of any condition thereof." Griffin's Brant Rock, supra, quoting G. L. c. 138, § 64, as appearing in St. 1934, c. 385, § 20. We rejected that argument because the required sanctions for credit violations are delineated in § 25 itself, which provides that, if a licensee has violated or participated in a violation of that section, "the commission shall suspend the license of the licensee until full discharge of the indebtedness" and also impose a fine. Griffin's Brant Rock, supra, quoting G. L. c. 138, § 25, fifth par., as appearing in St. 1968, c. 574, § 1. We concluded that "[t]he specific provisions of § 25 supersede the general provisions which appear in § 64." Griffin's Brant Rock, supra, citing Pereira v. New England LNG Co., 364 Mass. 109, 118 (1973).

No specific enforcement action is directed under G. L. c. 138, § 18B. Rather, both its language and legislative history reflect a decision by the Legislature in 1971 to expand the commission's enforcement authority while preserving its long-standing discretion. See Vita, 494 Mass. at 834. The original bill stated that "the holding of any licenses in violation of this provision shall act as a revocation of all certificates and/or licenses held under [G. L. c. 138]" (emphasis added). House Bill No. 745 (Jan. 1971). By replacing "shall act as a revocation" with "shall be cause for the revocation," the Legislature separated the determination of a violation from the imposition of a sanction, leaving the choice of sanctions to the commission's discretion. House Bill No. 5793 (June 14, 1971).

The same amendment substantially enlarged the commission's enforcement authority. Although the commission previously had authority under § 18B to "suspend, cancel or revoke any certificate issued hereunder for a violation of the terms or conditions thereof," G. L. c. 138, § 18B, first par., as amended through St. 1970, c. 893, the new third paragraph expanded that authority in three respects. First, it authorized revocation of certificates and licenses as a sanction for any "[v]iolation," including the prohibition on vertical integration in the second paragraph (also added in 1971). G. L. c. 138, § 18B, third par., as amended by St. 1971, c. 1022, § 1. Second, it allowed the commission to revoke "all certificates and licenses" held by a certificate holder, including wholesaler's licenses under § 18. Id. Third, it allowed the commission to revoke certificates and licenses held by the certificate holder's "immediate family." Id.

Viewed in their totality, these changes enable the commission not only to revoke all certificates and licenses for those affiliated with a violation of § 18B, but also to order a less severe sanction commensurate with the nature and scope of the violation. For example, although many violations of § 18B may be knowing, it is not implausible that a wholesaler licensed under § 18 might be unaware that an affiliate or family member is a § 18B certificate holder. In such circumstances, the commission might determine that a suspension to allow for divestiture, rather than revocation, is adequate to cure the violation. Recognizing the commission's discretion to tailor sanctions to violations reflects the understanding that license revocation is a tool to advance the goals of industry regulation and public safety, not punishment. See Luk v. Commonwealth, 421 Mass. 415, 427 (1995). We offer no opinion on how the commission should exercise its discretion in this case on remand.

Conclusion. For the foregoing reasons, the judgment is vacated, and the matter is remanded to the Superior Court for entry of a new judgment remanding the matter to the commission for further proceedings consistent with this opinion.

So ordered.