

Re: V.N.H. Ltd
Db a Vanessa Noel Hotel and Vanno Bar Appeal
Premises: 5 Chestnut Street
City/Town: Nantucket, MA 02554
Licensee: AA Hotel
Heard: July 14, 2010

DECISION

This was a hearing before the Alcoholic Beverages Control Commission (“Commission”) on the appeal of the action of the licensing board of the Town of Nantucket (“Local Board”) for revoking the seasonal license of V.N.H. Ltd. dba Vanessa Noel Hotel and Vanno Bar Appeal.

At hearing before the Commission, the Local Board did not appear. The Local Board sent a letter dated July 12, 2010 stating the Local Board “will not make an appearance or file any objection regarding the appeal.”

The Appeals Court has held that

[o]n appeal under 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. *United Food Corp.*, 375 Mass. at 240, 243, 376 N.E.2d 833. 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. See, e.g. *Devine v. Zoning Bd. of Appeals of Lynn*, 332 Mass. 319, 321, 125 N.E.2d 131 (1955); *Josephs v. Board of Appeals of Brookline*, 362 Mass. 290, 295, 285 N.E.2d 436 (1972).’ *Dolphino Corp. v. Alcoholic Beverages Control Com’n*, 29 Mass.App.Ct. 954, 955, 559 N.E.2d 1261, 1263 (1990)(rescript). The findings of a local licensing board are ‘viewed as hearsay evidence, [and] they are second-level, or totem pole hearsay, analogous to the noneyewitness police reports in *Merisme v. Board of Appeals on Motor Vehicle Liab. Policies and Bonds*, 27 Mass.App.Ct. 470, 473-476, 539 N.E.2d 1052 (1989). These were held not to constitute ‘substantial evidence’ within the meaning of the State Administrative Procedure Act. It was error for the [ABCC] to treat the board’s findings as, in his words, ‘the [local board’s] case.’”

Dolphino Corp. v. Alcoholic Beverages Control Com'n, 29 Mass.App.Ct. 954, 955, 559 N.E.2d 1261, 1263 (1990)(rescript).

Based on the hearing before the Commission that the Local Board chose not to attend and presented no evidence to prove the alleged misconduct of the licensee, the Commission disapproves the action of the Local Board in finding a violation. The Commission, therefore, also disapproves the action of the Local Board revoking the seasonal license. The Commission remands the matter back to the Local Board with the recommendation that no penalty be imposed and that the license be issued forthwith upon receipt of this Decision.

ALCOHOLIC BEVERAGES CONTROL COMMISSION

Kim S. Gainsboro, Chairman_____

Susan Corcoran, Commissioner_____

Dated in Boston, Massachusetts this 14th day of July 2010.

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 days of receipt of this decision.

cc: Local Licensing Board
Paul Jenson, Esq.
File