



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

Jean M. Lorizio, Esq.
Chairman

**CHUCK'S LIQUOR OF NEW BEDFORD LLC
D/B/A CHUCK'S LIQUORS
60 NAUSET STREET
NEW BEDFORD, MA 02740
LICENSE#: 89709-PK-0778
HEARD: 9/20/2023**

**MEMORANDUM AND ORDER ON THE CITY OF NEW BEDFORD'S
MOTION TO DISMISS THE APPEAL, THE APPELLANT'S OPPOSITION TO THE
MOTION TO DISMISS THE APPEAL, THE APPELLANT'S MOTION FOR
SUMMARY DECISION, AND THE CITY OF NEW BEDFORD LICENSING BOARD'S
OPPOSITION TO THE MOTION FOR SUMMARY DECISION**

The Alcoholic Beverages Control Commission ("Commission" or "ABCC") issues this Memorandum and Order on the City of New Bedford's Motion to Dismiss the Appeal of Chuck's Liquors of New Bedford LLC, d/b/a Chuck's Liquors (the "Licensee" or "Chuck's") and the Appellant's Opposition, and the Appellant's Motion for Summary Decision and the City of New Bedford Licensing Board's Opposition. Chuck's is appealing the City of New Bedford Licensing Board's adoption of a regulation which mandates "the sale of alcoholic beverages by a retail establishment in containers less than or equal to 100 milliliters, whether individually or packaged with other like-size containers, is prohibited within the City of New Bedford." For the following reasons, the Commission **ALLOWS** the City of New Bedford's Motion to Dismiss.

FACTUAL & PROCEDURAL BACKGROUND

On July 10 and 17, 2023, the City of New Bedford Licensing Board ("Local Board" or "Local Licensing Authority") published notices of "a public hearing regarding adding a new regulation to the New Bedford Licensing Board Rules & Regulations for Those Licensed to Sell Alcoholic Beverages Both On and Off Premises" scheduled for July 24, 2023. (Exhibit B to the Motion)

On July 24, 2023, the Local Board conducted a public hearing where it took testimony in favor or against the proposed regulation. The Local Board voted to adopt the regulation and issued written notice, dated July 26, 2023, to all off-premises liquor license holders in the City of New Bedford that regulation No. 48 had been adopted by the Board and would become effective November 1, 2023. (Exhibit A to Licensee's Appeal)

The Licensee filed its appeal on August 4, 2023.

On September 6, 2023, the City of New Bedford Licensing Board filed its Motion to Dismiss. Also on September 6, 2023, Chuck's Liquors filed its Motion for Summary Decision.¹

On September 18, 2023, the City of New Bedford Licensing Board filed its Opposition to Appellant's Motion for Summary Decision. On the same date, the Appellant filed its Opposition to the City of New Bedford Licensing Board's Motion to Dismiss.

The Commission held a remote hearing via Microsoft Teams on the above Motions on Wednesday, September 20, 2023.

DISCUSSION

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). Pursuant to M.G.L. c. 138, § 24, the Commission shall make regulations for "clarifying, carrying out, enforcing and preventing violation of" statutory provisions for the "method of carrying on the business of any licensee," and "for the proper and orderly conduct of the licensed business." M.G.L. c. 138, § 24. Local licensing authorities may make "reasonable requirements" with respect to "the conduct of business by any licensee." M. G. L. c. 138, § 23, Connolly at n. 1; Boston Licensing Board v. Alcoholic Beverages Control Commission, 367 Mass. 788 (1975).

The Commission does not have authority to hear an appeal centered on seeking invalidation of a requirement imposed by a local licensing authority pursuant to its statutory authority under § 23. The Commission can only hear the appeal of "any person who is aggrieved by the action of [local] authorities in modifying, suspending, cancelling, revoking or declaring forfeited the same" M.G.L. c. 138, § 67.

The regulation adopted by the Local Board is not a modification of Chuck's' § 15 license. Modification of a license is a sanction imposed against a specific licensee after a licensing board's finding that the licensee violated the law. RK&E Corp. v. Alcoholic Beverages Control Comm'n, 19-P-240 (slip op. April 21, 2020) (modification of a license is an appropriate sanction for violation of the law), J.C. Fenwick's Pub, Inc. (ABCC Decision Aug. 13, 2014) ("Licenses may be modified for failure to comply with G.L. c. 138"), citing Colonial Tavern, Inc. v. Boston Licensing Bd., 384 Mass. 372 (1981); Leroy's, Inc. (ABCC Decision Nov. 20, 2012) (Commission "modified" a license by imposing a condition on the license to not possess automatic amusement devices). Indeed, the Supreme Judicial Court has upheld this power, holding that "[l]ocal licensing boards have power to make regulations governing the conduct of the licensed business, and to modify, suspend, revoke, or cancel licenses in order to enforce their regulations." City of Revere v. Aucella, 369 Mass. 138, 145 (1975); accord Boston Licensing Bd. at 790; Christopher Columbus Italian Mutual Aid and Benevolent Society v. Alcoholic Beverages Control Comm'n, 2000 WL 1509978 at *3 (Mass. Superior Ct. Sept. 28, 2000).

¹ A Petition to Intervene and Participate was filed on September 6, 2023. Given the Commission's finding in this Memorandum and Order, said Petition is moot.

Again, Chuck's license was not "modified."² Instead, the local licensing authority, pursuant to its authority to promulgate "reasonable requirements" for *all* licensees, adopted a regulation which banned the sale of 100 ml or smaller containers of alcohol, not as a sanction for violating a law, but for multiple reasons, including, but not limited to, "...litter; a lack of disposal alternatives; concerns about underage and public intoxication; concerns about drunk driving and the concealable nature of nips; and contemplation that the ability to purchase alcoholic beverages in other, less concealable sizes would not diminish an individual's ability to purchase alcohol." (Motion to Dismiss)

While the local licensing authority has the statutory authority to pass reasonable requirements regarding the conduct of a licensed business, even if the Commission believed a local licensing authority's requirement to be *unreasonable* on a statutorily appropriate appeal (for example, a violation appeal or a denial of a license appeal), it only has the power to not enforce the requirement on any appeal before it. See, e.g., O'Toole's Pub, Inc. (ABCC Decision Dec. 17, 2015) (where the Commission found a rule regarding "improper management," insufficient to give adequate notice as to what the violation was, the Commission did "not make any findings" regarding those charges and found the licensee "did not commit these violations"); see also, e.g., Karen McGovern, Inc. d/b/a Puffins Restaurant (ABCC Decision November 13, 2014) (Commission disapproved conditions for hours of operation imposed by Local Board because conditions violated the statute and were "illegal per se"); Abracadabra Flower & Gift Service, Inc. (ABCC Decision December 4, 2012) (Commission disapproved Local Board's denial of a §15 retail package store license as being contrary to law and public policy, because the applicant would not accept the condition of non-transferability of the license); Donohue Holdings, Inc. d/b/a Donohue's (ABCC Decision May 25, 2012) (Commission disapproved Local Board decision imposing conditions restricting the months/hours of alcoholic beverage sales in its outdoor seating section, as contrary to those expressly authorized by statute).

The Commission is not the appropriate forum for this challenge.³ Rather, the appropriate forum for the licensee to challenge the local licensing authority's adoption of the regulation is the Superior Court.

² The licensees do not argue their licenses were suspended, canceled, revoked, or declared forfeited.

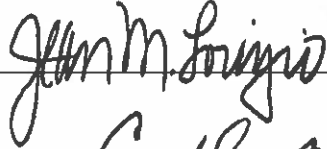
³ In light of the Commission's ruling, it makes no findings on the remaining issues raised in the appellants' appeal.

CONCLUSION

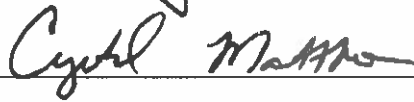
The Alcoholic Beverages Control Commission **ALLOWS** the City of New Bedford's Motion to Dismiss the Appeal.⁴

ALCOHOLIC BEVERAGES CONTROL COMMISSION

Jean Lorizio, Esq. Chairman



Crystal Matthews, Esq., Commissioner



Deborah A. Baglio, Esq., Commissioner



Dated: April 25, 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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2023-000225-ad-enf

cc: Armand Fernandes, Jr., Esq.
Ryan A. Pavao, Esq.
Local Licensing Board
Frederick G. Mahony, Chief Investigator
Administration, File

⁴ Given the Commission's ruling on the Motion to Dismiss, it need not rule on the Motion for Summary Decision.