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**NORWELL MOBIL MART INC.
89 WASHINGTON STREET
NORWELL, MA 02061
LICENSE#: 0912-00034
HEARD: 03/01/2018**

**MEMORANDUM AND ORDER
ON THE TOWN OF RANDOLPH'S MOTION TO DISMISS**

Norwell Mobil Mart Inc. (the "Licensee" or "Mobil Mart") holds an all alcoholic beverages license issued pursuant to M.G.L. c. 138, § 15 located at 89 Washington Street, Norwell, MA 02061. Mobil Mart obtained its license in the fall of 2016, and it renewed its license for calendar year 2017.¹ (Commission File; Exhibit 2)

On October 4, 2017, the Town of Norwell Board of Selectmen (the "Local Board" or "Norwell") held a hearing and voted to revoke Mobil Mart's license. The Local Board notified Licensee of its decision to revoke the license by way of letter dated October 5, 2017. (Commission File)

The Licensee's attorney timely appealed the Local Board's decision to the Alcoholic Beverages Control Commission (the "Commission"), and a hearing was scheduled on the appeal for March 1, 2018.² (Commission File) While the hearing was pending, the Licensee failed to timely file a renewal application for its license for calendar year 2018. (Testimony; Commission File) Accordingly, the Licensee's 2017 license expired on December 31, 2017. The Licensee then filed a late renewal application, which was postmarked January 5, 2018 and which the Local Board received on January 8, 2018. (Exhibit 1)

On January 19, 2018, the Local Board filed a Motion to Dismiss the Licensee's Appeal based on the Licensee's failure to renew its license. (Commission File) The Commission scheduled a hearing on the Local Board's Motion for March 1, 2018 and sent notice of the hearing to the

¹ The Alcoholic Beverages Control Commission approved Mobil Mart's application in paper in September 2016 and electronically in October 2016. Note that when added to the Commission's eLicensing system, Mobil Mart had the license no. 8883-PK-0912, but Norwell has 0912-000034 as the license number. (Commission File)

² The Commission originally scheduled the hearing for November 30, 2017, but the parties jointly moved to continue the hearing date, which the Commission allowed. (Commission File)

parties' counsel and to the Licensee by mail to its premises. Id. On February 21, 2018, the Commission received a Notice of Withdrawal from the Licensee's counsel. Id. The Commission heard the Local Board's motion to dismiss on March 1, 2018. The Local Board's counsel and Michael Azmey ("Azmey"), owner and manager of record of the Licensee, appeared at the hearing.

The following documents are in evidence as exhibits:

1. Mobil Mart's Paper Renewal Application with Check Payment received by Town of Norwell, 1/8/2018;
2. Copy of Mobil Mart's 2017 § 15 Wines and Malt Beverages Retail Package Store License.

There is one (1) audio recording of this hearing, and one (1) witness testified. The Commission took administrative notice of the contents of the Licensee's Commission File.

DISCUSSION

All licenses and permits issued under Chapter 138 expire on December thirty-first each year. M.G.L. c. 138, § 23. As a result, all such licensees and permittees are required to renew their licenses at the end of every calendar year. Retail licensees possess the prima facie right to renew the license every November: "Licenses issued under section twelve or fifteen shall be automatically renewed for the next annual license period upon application by the holder thereof during the month of November . . ." M.G.L. c. 138, § 16A.

The implication of § 16A is 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. This reading of § 16A 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 § 15 dependent upon application in November of the current year. M.G.L. c. 138, § 16A. "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."³ Zelman, 335 Mass. at 520.

If the Licensee's application for renewal had been filed in November 2017, 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 filed the renewal application for calendar year

³ Note that M.G.L. c. 138, § 16A provides that, "if the [renewal] application does not meet the conditions hereunder, it shall be treated as an application for a new license and all the procedures set forth under section fifteen A shall be applicable thereto."

2018 in January 2018, after the license had expired.⁴ The 2017 license expired with the close of 2017. See id.

This fact renders the appeal before the Commission moot. Because this matter is moot, the Commission is obligated to allow the Town of Norwell's motion to dismiss the appeal.

CONCLUSION

The Alcoholic Beverages Control Commission **ALLOWS** the Town of Norwell's Motion to Dismiss the Appeal of Norwell Mobil Mart Inc.

ALCOHOLIC BEVERAGES CONTROL COMMISSION

Elizabeth Lashway, Commissioner



Kathleen McNally, Commissioner



Dated: March 20, 2018

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.

⁴ At the Commission hearing on the Motion to Dismiss, Azmey testified that he did not timely file the renewal application because he was in discussions with the Local Board about settling the issue that led to the Local Board's October 2017 decision to revoke the license. (Testimony) Azmey testified that he spoke with a woman from the town in early December and told her that he was waiting for a decision from the town before he would renew the license for 2018 and that she said okay. The Commission finds Azmey's statement about his conversation with the clerk to be uncorroborated, unsupported, and thus, unreliable hearsay. See Sinclair v. Director of the Div. of Employment Sec., 331 Mass. 101, 103 (1954) ("[i]f the pertinent evidence is exclusively hearsay, that does not constitute 'substantial evidence' even before an administrative tribunal."); Gallagher v. Dir. of Div. of Employment & Training, 64 Mass. App. Ct. 1102, *1 (2005) (issued pursuant to Rule 1:28) (the Appeals Court "do[es] not consider unsupported and uncorroborated hearsay to be 'substantial evidence'"). Nonetheless, even if the Commission were to rely upon Azmey's statement about his conversation with the clerk, an assistant to a Local Board cannot waive a licensee's statutory requirement to timely renew its license. Moreover, Azmey testified that the conversation with the clerk occurred in December 2017, a time when the Licensee was already late in filing its renewal application. See M.G.L. c. 138, § 16A (renewal applications must be filed in November for the following year).

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cc: Michael Azmey
Robert Galvin, Esq. via facsimile 781-837-1030
Frederick G. Mahony, Chief Investigator
Local Licensing Board
Administration, File