



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

Jean M. Lorizio, Esq.
Chairman

DECISION

PEABODY MARKET & LIQUORS INC
117 NEWBURY STREET
PEABODY, MA 01960
LICENSE#: 00130-PK-0956
HEARD: 02/07/2024

This is an appeal of the action of the City of Peabody Licensing Board ("Local Board" or "Peabody") in its decision to cancel the M.G.L. c. 138, § 15 Wine and Malt Beverages Retail Package Store license of Peabody Market & Liquors Inc. ("Licensee" or "Peabody Market") located at 117 Newbury Street, Peabody, Massachusetts for non-use. The Licensee timely appealed the Local Board's decision to the Alcoholic Beverages Control Commission ("Commission" or "ABCC"), and a remote hearing via Microsoft Teams was held on Wednesday, February 07, 2024.

The following documents are in evidence:

1. 10/12/2022 Copy of Mail returned to Local Board as Undeliverable with 2023 Application Renewal;
2. 2023 License Renewal Form for Peabody Market Signed by Sajad Sofi;
3. 1/26/23 Letter to Peabody Market from Local Board Scheduling Public Hearing, Notice of Public Hearing, Return Receipt Slips;
4. 2/13/2023 Peabody Licensing Board Meeting Minutes;
5. 6/12/2023 Peabody Licensing Board Meeting Minutes;
6. 6/14/2023 Letter to Peabody Market from Local Board Scheduling Public Hearing, Return Receipt Slips;
7. 6/26/2023 Peabody Licensing Board Meeting Minutes;
8. 8/14/2023 Peabody Licensing Local Board Meeting Minutes;
9. 8/28/2023 Peabody Licensing Local Board Meeting Minutes;
10. 9/18/2023 Peabody Licensing Local Board Meeting Minutes;
11. 11/14/2023 Email from S. Sofi to D. McCarthy Related to Termination of Potential Deal to Transfer License;
12. 2024 License Renewal Form for Peabody Market Signed by S. Sofi, Check for 2024 Renewal Fee;
13. 11/8/2023 Notice of Public Hearing Addressed to Sajad Sofi, Copy of Mail Returned to Local Board as Undeliverable;
14. 12/11/2023 Meeting Notice and Agenda, Pg 1 of Application for Transfer and Change of Location of License;
15. 12/11/2023 Peabody Licensing Board Meeting Minutes;

16. 12/15/2023 Local Board Decision regarding cancellation of PML's License.

- A. Email from Sajad Sofi to P. Hathaway, 2/21/2023, with Attachments: 2024 Renewal and Envelope, Check to City of Peabody, Decision of Local Board, 12/15/2023;
- B. Email to Sajad Sofi with Purchase and Sale Agreement Attached.

There is one (1) audio recording of the hearing, and two (2) witnesses testified.

FINDINGS OF FACT

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

1. The Local Board scheduled a public hearing for Monday, February 13, 2023, re: Peabody Market's alleged non-use of its license. (Testimony, Exhibit 3)
2. The Licensee appeared with counsel at the hearing on February 13, 2023. The Local Board was informed Peabody Market had been closed for a couple of months and was seeking to sell the liquor license. Peabody Market had retained the services of a broker to assist in the sale. Peabody Market requested "6 – 12 months" to transfer the license, "or at least 6 months and provide status updates". (Exhibit 4)
3. The Local Board voted to allow 90 days within which an application for transfer of the license must be submitted and/or a written status update provided. (Testimony, Exhibit 4)
4. Peabody Market was on the "Old Business" agenda for the Local Board's June 12, 2023, meeting. As of June 12, 2023, the Licensee had not provided a status update to the Board. The Board voted to require the appearance of the Licensee at its next meeting to provide a status update regarding his license. (Exhibits 5, 6)
5. A status hearing was scheduled for June 26, 2023, and the notice to Peabody Market, dated June 14, 2023, stated "The Licensing Board will not allow a License Holder to indefinitely hold onto a liquor license which is not being used. M.G.L. c. 138, § 77 permits the Licensing Board to cancel licenses for non-use. When you are not currently using the license, the Board will require that you advise whether you intend to: (1) surrender the license to the Licensing Board; (2) apply to transfer the license; (3) apply to change the location of the license; or (4) immediately resume regular operations at the premises." The letter concluded, "[p]lease consider this notification that the Board has the right to exercise all its powers under the laws of the Commonwealth of Massachusetts." (Testimony, Exhibit 6)
6. At the hearing on June 26, 2023, the Licensee appeared along with the attorney for a potential buyer and reported the parties had executed a purchase and sale agreement dated March 10, 2023 but were waiting on a Certificate of Good Standing from the Department of Revenue ("DOR") and a Certificate of Compliance from the Department of Unemployment Assistance ("DUA") in order to file a transfer application. The Local Board voted that it "expects an application for transfer of the license to be submitted to the Licensing Board within 30 days; otherwise, the Licensing Board will proceed with revocation of the license." (Testimony, Exhibits 7, B)

7. Peabody Market was on the “Old Business” agenda for the Local Board’s August 14, 2023, meeting. The Licensee had not provided any written status update following the June 26, 2023, hearing. The Board voted to require the appearance of the Licensee at the Board’s next meeting on August 28, 2023, to provide a status update regarding his license. (Exhibit 5)
8. The Licensee appeared at the Board’s public hearing on August 28, 2023, and reported he was still awaiting the Certificates from the DOR and DUA. The Local Board voted to allow Peabody Market two weeks within which to obtain both certificates. (Testimony, Exhibit 9)
9. Peabody Market was on the “Old Business” agenda for the Local Board’s September 18, 2023, meeting. Counsel for the potential buyer referenced at the June 26, 2023, hearing, advised the Local Board that the buyer had a special permit hearing before the City Council on October 12, 2023, and that he would submit the transfer application to the Local Board after approval of the special permit. (Testimony, Exhibit 10)
10. The Local Board voted to remove Peabody Market from “old business and await submission of an application for transfer.” (Exhibit 10)
11. Peabody Market filed its renewal application and fee for 2024, dated November 1, 2023. (Exhibits 12, A)
12. On November 8, 2023, the Local Board sent Peabody Market a Notice of Public Hearing scheduled for December 11, 2023, “on the cancellation/revocation” of the license for non-use. (Testimony, Exhibit 13)
13. On or about November 14, 2023, the purchase and sale agreement between Peabody Market and the reported buyer was terminated. (Testimony, Exhibit 11)
14. At the December 11, 2023, public hearing, Peabody Market addressed the Local Board regarding the steps taken to effectuate a transfer of the license. The Local Board was informed that a transfer of license had been submitted by a new buyer for Peabody Market’s license.¹ (Testimony, Exhibit 15)
15. At the conclusion of the December 11, 2023, public hearing, the Local Board voted to cancel Peabody Market’s license for non-use. Id.
16. On December 15, 2023, the Local Board issued its written decision canceling Peabody Market’s license for non-use pursuant to M.G.L. c. 138, § 77. (Testimony, Exhibit 16)

¹ On November 30, 2023, the clerk of the Local Board received an application for a transfer of Peabody Market’s license to Devsatya One Inc. d/b/a Dev Convenience was placed on the “New Business/Receipt of Correspondence” Agenda for the Local Board’s December 11, 2023, meeting. (Exhibit 14) The Board Minutes of December 11, 2023, state “[t]he Licensing Board did not receive the Application for Transfer of License submitted by Dev Convenience Store. (Exhibit 15) The record is unclear as to the Local Board’s actions concerning the application filed by Devsatya One Inc. The Local Board is reminded of the statutory requirements of G.L. c. 138, §§ 15A and 16B.

17. The Licensee filed a timely appeal of the Local Board's decision. (Exhibit A)

18. The Licensee did not renew its license for 2025. (Commission Records)

DISCUSSION

"The licensing authorities may, after hearing or reasonable opportunity therefore, cancel any license issued under [Ch. 138] if the licensee ceases to conduct the licensed business." M.G.L. c. 138, § 77. When a local licensing authority cancels such a "pocket license" for non-use, "the licensee may appeal to the [ABCC] as if such authorities had refused to grant the license upon an original application thereof. . . ." *Id.* Accordingly, § 77 "explicitly gives the [ABCC] the authority to review license cancellations by local boards." Bd. of Selectmen of Saugus v. ABCC, 32 Mass. App. Ct. 914, 916 (1992). The decision of the Commission "shall be final." M.G.L. c. 138, § 77.

Because the Commission reviews the cancellation as if the Board had denied the original application, M.G.L. c. 138, § 77, it gives "reasonable deference to the discretion of the local authorities" and determines whether "the reasons given by the local authorities are based on an error of law or are reflective of arbitrary or capricious action." Great Atlantic & Pacific Tea Co., Inc. v. Bd. of License Commissioners of Springfield, 387 Mass. 833, 837, 838 (1983); accord Ballarin, Inc. v. Licensing Bd. of Boston, 49 Mass. App. Ct. 506, 512 (2000) (when reviewing the local board's authority, court does not assess the evidence but rather "examine[s] the record for errors of law or abuse of discretion that add up to arbitrary and capricious decision-making").

"Once a local board has determined that a license holder risks cancellation of its license under M.G.L. c. 138, § 77 as a result of non-use of the license, this Commission evaluates the amount of time the board has given the licensee to cure the non-use to ensure its reasonableness." In Re: Turnpike @ Winona, LLC (ABCC Decision May 14, 2010). It is this Commission's practice to allow a licensee at least six months from the date of the notice of the risk of cancellation to cure the non-use by either operating its premises or filing the appropriate application to transfer the license. See Bd. of Selectmen of Saugus, 32 Mass. App. Ct. at 915-917; Slesar Bros. Brewing Company, Inc. (ABCC Decision February 7, 2019); EKB Corp., Ind. d/b/a Sully C's Bar and Grill (ABCC Decision August 16, 2018); 45 Province Restaurant, LLC (ABCC Decision February 22, 2012); Turnpike @ Winona, LLC (ABCC Decision May 14, 2010); Empresas Guanacas, Inc. d/b/a Mango Grill Fine Latin Cuisine (ABCC Decision March 13, 2009). The Commission's sense of fairness is forward looking, and the time within which the licensee must act does not begin until the licensee is first put on notice that there is a potential enforcement of Chapter 138, § 77. Slesar Bros. Brewing Company, Inc. (ABCC Decision February 7, 2019); Empresas Guanacas, Inc. d/b/a Mango Grill Fine Latin Cuisine (ABCC Decision March 13, 2009).

At the Local Board hearing on February 13, 2023, it was confirmed Peabody Market was not operating. (Exhibit 4) Peabody scheduled a status hearing and issued notice, dated June 14, 2023, wherein the Licensee was notified of its options and the potential cancellation of its license. (Exhibit 6) Subsequently, the Local Board held a cancellation hearing on December 11, 2023, at which time it voted to cancel Peabody Market's License. (Exhibit 15)

Here, the Local Board did not afford Peabody Market at least six months from its notice of potential cancellation.

The Commission finds that the Local Board's decision to cancel Peabody Market's license for non-use was not reasonable and therefore is disapproved by the Commission.

The Commission was prepared to remand this matter and recommend the Local Board provide Peabody Market a reasonable time within which to transfer or utilize its license. However, the Commission is without authority to do so as Peabody Market no longer holds a license.

M.G.L. c. 138, § 23 states "[e]very license and permit granted under the provisions of this chapter, unless otherwise provided in such provisions, shall expire on December thirty-first of the year of issue, subject, however, to revocation or cancellation within its term." Because Peabody Market failed to renew its license for 2025, its license expired by operation of law.

CONCLUSION

Based on the evidence, the Alcoholic Beverages Control Commission **DISAPPROVES** the action of the City of Peabody Licensing Board in cancelling the license of Peabody Market & Liquors Inc. for non-use. The decision of the Commission regarding the cancellation of this license is final and cannot be appealed. M.G.L. c. 138, § 77.

ALCOHOLIC BEVERAGES CONTROL COMMISSION

Deborah Baglio, Commissioner Deborah A. Baglio

Crystal Matthews, Commissioner Crystal Matthews

I, the undersigned, hereby certify that I have reviewed the hearing record.

Jean M. Lorizio, Chairman Jean M. Lorizio

Dated: August 22, 2025

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cc: Sajad Sofi
Elizabeth Lashway, Esq.
Local Licensing Local Board
Frederick G. Mahony, Chief Investigator
Administration, File