



*The Commonwealth of Massachusetts*  
*Department of the State Treasurer*  
*Alcoholic Beverages Control Commission*  
*Boston, Massachusetts 02114*

*Deborah B. Goldberg*  
*Treasurer and Receiver General*

*Kim L. Gainsboro, Esq.*  
*Chairman*

**DECISION**

**BAILLE LIAM CORP. D/B/A CLASH OF THE ASH**  
**1464 HANCOCK STREET**  
**QUINCY, MA 02169**  
**LICENSE#: 100600030**  
**HEARD: 11/16/2016**

This is an appeal of the action of the City of Quincy Board of License Commissioners (the "Local Board" or "Quincy") for revoking the M.G.L. c. 138 § 12 license of Baille Liam Corp. d/b/a Clash of the Ash (the "Licensee" or "Clash of the Ash") located at 1462 Hancock Street, Quincy, MA. The Licensee timely appealed the Local Board's decision to the Alcoholic Beverages Control Commission (the "Commission" or "ABCC") and a hearing was held on Wednesday, November 16, 2016.

The following documents are in evidence as exhibits:

1. Letter from Local Board Chairman Joseph Shea to Licensee, 3/23/16;
2. Email from C. Manning to Attorney Cassis, 4/8/16;
3. Local Board's Decision, 4/13/16;
4. Rules and Regulations of Local Board;
5. Police Report from Quincy Police Lt. Turowski, 3/21/16;
6. Letter from Chairman Joseph Shea to Licensee, 1/12/12;
7. Compilation of Local Board's license violations for 2011 through 2015.

Per Commission Request during the hearing, the Local Board submitted M.G.L. c. 138 §12 records for:

- a. Giang's Family, Inc. d/b/a Quincy Jade Restaurant, 18 – 22 Cottage Street, Quincy, MA 02169
- b. Ramallah, Inc. d/b/a Yaz's Place, 132 East Howard Street, Quincy, MA 02169

There is one (1) audio recording of this hearing, and three (3) witnesses testified.

The Commission took Administrative Notice of the Licensee's records.

## FINDINGS OF FACT

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

1. Baille Liam Corp. d/b/a Clash of the Ash is the holder of a M.G.L. c. 138 §12 all alcoholic beverages license, located at 1464 Hancock Street, Quincy, Massachusetts. Mr. Bernard Connaughton is the owner of the Licensee and license manager since its transfer in June of 2008. (Commission records)
2. On March 17, 2016. Quincy Police Lieutenant Peter Turowski ("Lt. Turowski") entered the premises through the rear door located in the alley. (Testimony, Exhibit 5)
3. Lt. Turowski entered the bar area through the kitchen and observed a young male drinking an alcoholic beverage from a plastic cup. (Testimony, Exhibit 5)
4. Lt. Turowski requested an identification from the minor. The minor presented an expired Florida driver's license with a photo which did not look like the minor. (Testimony, Exhibit 5)
5. The minor then presented his Massachusetts driver's license with a date of birth of 8/29/1995, indicating that he was 20 years of age. The minor admitted to Lt. Turowski that he had entered the premises through the rear door in the alley, and he had already consumed several beers. (Testimony, Exhibit 5)
6. The Local Board held a hearing on April 12, 2016. (Testimony, Exhibit 1)
7. The Local Board found the Licensee in violation of sale to a minor, M.G.L. c. 138, § 34, and revoked<sup>1</sup> the license of Baille Liam Corp. d/b/a Clash of the Ash. (Testimony, Exhibit 3)
8. The written Rules and Regulations of Board of License Commissioners of Quincy do not address progressive discipline, nor sanctions imposed by the Alcoholic Beverages Control Commission in regards to progressive discipline. (Exhibit 4)
9. The Local Board has an informal unwritten policy about progressive discipline: (Testimony, Exhibit 2)
  - First Offense: Verbal Warning;
  - Second Offense: Written Warning;
  - Third Offense: Suspension.
10. The Licensee's history of prior violations before the Local Board is: (Testimony, Exhibits 3, 5, 6, 7)
  - First Violation: In July 2010 the Licensee received a warning for violation of M.G.L. c. 138, §69 - sale of alcoholic beverages to an intoxicated person
  - Second Violation: On March 12, 2012, the Licensee was found in violation of

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<sup>1</sup> The Local Board granted the Licensee a stay of revocation pending this appeal.

disturbances on the premises from a December 26, 2011, incident. The Licensee's hours were rolled back to 11:00 p.m. for three (3) months, and the Local Board issued a five (5) day suspension.<sup>2</sup>

11. The Licensee has one prior violation before the Alcoholic Beverages Control Commission. On May 20, 2014, the ABCC found that the Licensee had violated M.G.L. c. 138, § 34C violation (5 counts of minors in possession of alcohol). The ABCC imposed an eighteen (18) day suspension, of which eight (8) days were served and ten (10) days were held in abeyance for a period of two years. (Commission records)
12. The Local Board imposed sanctions for other licensees in the same time period: (Exhibit 7)
  - In 2011 the Local Board imposed sanctions against six (6) licensees for first offenses. The licensees received written warnings placed in their files;
  - In 2011 Tedeschis,<sup>3</sup> 751 East Squantum Street, Quincy, MA 02171, was found in violation for a third 3<sup>rd</sup> offense of M.G.L. c. 138, § 34, sale to a minor, and the Local Board imposed a Six (6) Day suspension;
  - In 2012 Tedeschis, 751 East Squantum Street, Quincy, MA 02171, had a subsequent violation hearing for a violation of M.G.L. c. 138, § 34, sale to a minor, with no disposition stated;
  - In 2012, 2013, 2014, and 2015 the Local Board imposed violations against various Licensees for various violations, however the Local Board records do not indicate for which number of offense, Licensee's first, second, third offense, etc.
13. The Local Board has revoked two other licensees in the City of Quincy. (Exhibit 7, Local Board records)
  - a. Giang's Family Inc. d/b/a Quincy Jade Restaurant was revoked in June 2014;
  - b. Ramallah, Inc. d/b/a Yaz's Place was revoked in July 2015.
14. Giang's Family, Inc. d/b/a Quincy Jade Restaurant, 18 – 22 Cottage Street, Quincy, MA 02169, has the following history before the Local Board: (Exhibit 7, Local Board records)
  - First Offense, 2010: Written Warning for a compliance check violation;
  - Second Offense, 2012: One (1) Day Suspension for violation of sale to minor on May 24, 2012;
  - Third Offense, 2013: Five (5) Day Suspension for violations of M.G.L. 138, §§34,

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<sup>2</sup> Commission review of Local Board records indicate other Warnings given to the Licensee: On September 13, 2011, and December 13, 2011 the Local Board issued Warnings to the Licensee for permitting illegalities on the premises. However, without more details in the records, the Commission is unable to determine the specific violations and whether the Local Board held a hearing which the Licensee attended. (Testimony, Exhibits 3, 5, 6, 7)

<sup>3</sup> There is another Tedeschis at 495 Washington Street, Quincy, MA 02169, which had a violation of M.G.L. c. 138, § 34, incident occurred May 26, 2011, hearing held June 21, 2011. Local Board imposed a written warning, placed on file for one year. (Exhibit 7)

34C, and 204 CMR 204 (2) permitting illegalities on the licensed premises;

- Fourth Offense, 2013: Fifteen (15) Day Suspension and roll back of closing hour to 11:00 p.m. permanently, for a violations of M.G.L. 138, §§ 12, 34, 34C and violations of Quincy Rules and Regulations;
- Fifth Offense, 2014: Revocation (5-0 vote) for violations of M.G.L. c.138, §§ 12, 34C, and violations of Local Board Rules and Regulations.

15. Ramallah, Inc. d/b/a Yaz's Place, 132 East Howard Street, Quincy, MA 02169, has the following history before the Local Board: (Local Board records, Exhibit 7)

- First Offense, 2009: Written Warning for a compliance check violation with a sale to a minor, violation of M.G.L. c. 138, § 34;
- Second Offense, 2012: One (1) Day Suspension for a violation of the Rules and Regulations of the Licensing Board, shots (gun) fired in the parking lot of premises;
- Third Offense, 2014: Five (5) Day Suspension for a violation of M.G.L. c 138, § 34, compliance check;
- Fourth Offense, 2015: Revocation (5-0 vote) for violation of M.G.L. c 138, §§ 62 and 63A, Disturbance, stabbing at premises, serious injury to patron, and staff lost control of premises.

### DISCUSSION

Pursuant to 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. 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." Dolphino Corp. v. Alcoholic Beverages Control Comm'n, 29 Mass. App. Ct. 954, 955 (1990) citing United Food Corp v. Alcoholic Beverages Control Comm'n, 375 Mass. 240 (1978). The findings of a local licensing board are "viewed as hearsay evidence, [and] they are second-level, or totem pole hearsay, analogous to the non-eyewitness police reports in Merisme v. Board of Appeals on Motor Vehicle Liab. Policies and Bonds, 27 Mass. App. Ct. 470, 473 – 476 (1989)." Dolphino, 29 Mass. App. Ct. at 955.

Both the Local Board and the Commission have the authority to grant, revoke, and suspend licenses. Their powers were authorized "to serve the public need and . . . to protect the common good." M.G.L. c. 138, § 23, as amended through St. 1977, c. 929, § 7. "[T]he purpose of discipline is not retribution but the protection of the public." Arthurs v. Bd. of Registration in Medicine, 383 Mass. 299, 317 (1981). The Commission is given "comprehensive powers of supervision over licensees," Connolly v. Alcoholic Beverages Control Comm'n, 334 Mass. 613, 617 (1956), as well as broad authority to issue regulations. The Local Board has authority to enforce Commission regulations. New Palm Gardens, Inc. v. Alcoholic Beverages Control Comm'n, 11 Mass. App. Ct. 785, 788 (1981).

These "comprehensive powers" are balanced by the requirement that the Local Board and the Commission provide notice to the licensee of any violations, as well as an opportunity to be heard. M.G.L. c. 138, § 64. In addition, the Local Board has the burden of producing satisfactory proof

that the licensee violated or permitted a violation of any condition thereof, or any law of the Commonwealth. M.G.L. c. 138, §§ 23, 64.

The Commission's decision must be based on substantial evidence. See Embers of Salisbury, Inc. v. Alcoholic Beverages Control Comm'n, 401 Mass. 526, 528 (1988). "Substantial evidence" is "such evidence as a reasonable mind might accept as adequate to support a conclusion." *Id.* Evidence from which a rational mind might draw the desired inference is not enough. See Blue Cross and Blue Shield of Mass. Inc. v. Comm'r of Ins., 420 Mass. 707 (1995). Disbelief of any particular evidence does not constitute substantial evidence to the contrary. New Boston Garden Corp. v. Bd. of Assessor of Boston, 383 Mass. 456, 467 (1981).

In this matter, the Local Board has the burden of producing satisfactory proof that on March 17, 2016 the Licensee violated M.G.L. c. 138 §12, sale to a minor (one count). During the hearing, the Licensee stipulated that the violation occurred. M.G.L. Chapter 138, §34, provides in part, "Whoever makes a sale or delivery of any alcoholic beverage or alcohol to any person under twenty-one (21) years of age ... shall be punished by a fine of not more than two thousand dollars (\$2000) or by imprisonment for not more than one (1) year or both."

While the Licensee does not dispute that the violation occurred, it argues that the penalty of revocation imposed by the Local Board was too severe and thus an arbitrary and capricious decision. The Licensee contends that it was treated differently than other licensees in Quincy as its license was revoked for a third offense, contrary to the Local Board's informal rules of progressive discipline, and inconsistent with the treatment of other licensees in Quincy. The Licensee requests that the Commission disapprove the Local Board action and remand the case with the recommendation that the Local Board follow its own policy on progressive discipline and sanctions. Therefore, the Commission must review whether the sanction imposed by the Local Board for these violations was reasonable.

In reviewing the Local Board Rules, the Commission is guided by a discussion of progressive sanctions which is developed and found in: Applebee's Northeast, Inc. dba Applebee's Neighborhood Bar & Grill v. Massachusetts Alcoholic Beverages Control Commission and The Licensing Board of the Town of Weymouth, Suffolk Superior Court C.A. No. 03-610-A (Sikora, J.); ("Applebee's"). In Applebee's, the Licensee challenged a five (5) day suspension as too severe. The Court laid out the criteria that the Town of Weymouth used for its calibration of penalties:

These included: (i) the number of prior offenses; (ii) the degree of inspection (of customers) exhibited by the licensee; (iii) the severity and type of offense; (iv) the efforts to identify purchasers of alcohol, if any; (v) the appearance of the purchaser receiving the illegal sale; (vi) the quality of evidence of the violation, i.e. clear violation versus questionable one; and (vii) the general reputation of the licensee. *Id.* at 7.

In reviewing the appropriateness of the penalty the Court found, "that for several reasons, the resulting sanction does not fall outside the boundaries of rationality." In reviewing the Town's imposed sanctions the Court found that the Town's well-developed disciplinary system helped to avoid "abrupt or draconian punishment." Instead, the system "implemented graduated penalties and afforded the warnings of graduated penalties to offenders." *Id.* at 6.

Upon Commission review of the Rules and Regulations promulgated by the Board of License Commissioners and its “unwritten informal rules of progressive discipline,”<sup>4</sup> the penalties for liquor violations are as follows: (1) First Offense: Verbal Warning; (2) Second Offense: Written Warning; and (3) Third Offense: Suspension. (Exhibit 2). The Rules give no guidance on revocation, and contain no information regarding progressive discipline and revocation of a license. The Rules contain no guidelines as to the discretion of the Local Board regarding progressive discipline. The Rules also do not indicate how prior ABCC violations and penalties factor into a Local Board’s decisions involving progressive discipline and sanctions. The Local Board argued before the Commission and stated in its decision (Exhibit 3) that it considered the Licensee’s prior ABCC violation in its decision to revoke the license of Clash of the Ash. However, this policy is not in writing, in neither the written rules promulgated by the Local Board, nor in the informal rules of progressive discipline. (Exhibits 2, 4)

The Commission has reviewed the Local Board records of two other licensees in Quincy, whose M.G.L. c. 138 §12 licenses were revoked by the Local Board. The Commission, upon review of the records, finds that the Local Board revoked the License of Giang’s Family Restaurant, d/b/a Crystal Jade after the Licensee’s fifth violation. The Local Board revoked the license of Ramallah, Inc. d/b/a Yaz’s Place after the Licensee’s fourth violation. The Commission finds upon review of the Local Board record of violations and dispositions, that Licensee Tedeschis, received a six (6) day suspension after a finding of a violation for its third offense. (Exhibit 7)

Based on the evidence, the Commission finds that this is the Licensee’s third (3<sup>rd</sup>) violation before the Local Board. The Commission finds that the sanctions imposed in this matter underwent a detailed analysis and thorough scrutiny by the Local Board. However, the Commission finds that the Local Board imposed a penalty inconsistent with its own “informal rules of progressive discipline,” and inconsistent with the progressive discipline imposed on other licensees in the City of Quincy. As such, the Commission disapproves the disposition of the Local Board in revoking the license of Baille Liam Corp. d/b/a Clash of the Ash.

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<sup>4</sup> The Commission finds that the informal unwritten rules of progressive discipline are not actually “rules,” because they are not in writing. The Commission finds that when written formal rules of progressive discipline exist, the Licensee has notice of what constitutes progressive discipline pursuant to the rules and regulations of a Local Board. (Exhibit 2)

## CONCLUSION

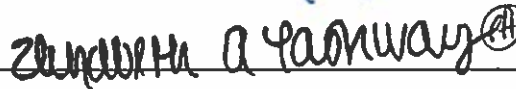
Based on the evidence, the Alcoholic Beverages Control Commission **DISAPPROVES** the action of the Quincy Board of License Commissioners in revoking the M.G.L. c. 138 § 12 license of Baille Liam Corp. d/b/a Clash of the Ash. The Commission remands the matter to the Local Board with the recommendation that a penalty be imposed which is consistent with the Local Board's rules of progressive discipline.

## **ALCOHOLIC BEVERAGES CONTROL COMMISSION**

Kathleen McNally, Commissioner



Elizabeth Lashway, Commissioner



Dated: February 3, 2017

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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cc: Louis A. Cassis, Esq. via facsimile 617-472-9028  
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Administration, File