

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

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Treasurer and Receiver General

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RAMALLAH, INC. D/B/A YAZ'S PLACE
132 EAST HOWARD STREET
QUINCY, MA 02169
LICENSE#: 100600213
HEARD: 1/5/2016

MEMORANDUM AND ORDER
ON QUINCY'S MOTION TO DISMISS

This case arises under M.G.L. c. 138, § 67. Ramallah Inc. d/b/a Yaz's Place (the "Licensee" or "Yaz's") held an all alcoholic beverages license issued pursuant to M.G.L. c. 138, § 12 located at 132 East Howard Street, Quincy, MA. On July 28, 2015, the City of Quincy Licensing Authority (the "Local Board" or "Quincy") held a hearing regarding an incident that was alleged to have occurred on July 24, 2015, at the licensed premises. The Local Board found that a violation of M.G.L. c. 138 had occurred and voted to revoke Yaz's License by its decision dated July 29, 2015.

The Licensee timely appealed the Local Board's decision to the Alcoholic Beverages Control Commission (the "Commission") and a hearing was scheduled for the appeal on January 5, 2016. While the hearing was pending, the Licensee failed to file a renewal application for its license for calendar year 2016. The Licensee's 2015 license expired on December 31, 2015 because it was not renewed.

On December 31, 2015, the Local Board filed a Motion to Dismiss the Licensee's Appeal based on the Licensee's failure to renew its license. On January 4, 2016, the Licensee filed an Opposition to the Motion to Dismiss the Appeal. The Commission held a hearing on the Local Board's Motion on Tuesday, January 5, 2016, and rescheduled the appeal hearing for January 21, 2016. During the hearing, the Licensee agreed that it did not file an application to renew its license for calendar year 2016.

DISCUSSION

General Laws c. 138, § 23, provides that “[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.” General Laws c. 138, § 16A, confers upon § 12 licensees, the prima facie right to renew the license every November, subject to certain conditions. “The holder of an annual license under section twelve or fifteen who applies during the month of November in any licensing period for a license of the same class for the next succeeding licensing period . . . shall be prima facie entitled thereto Any such application may, however, be rejected for cause, subject to appeal under section sixty-seven. A person whose application has so been rejected by the local licensing authorities shall for the purposes of section seventeen be deemed to have been granted such a license until the period for such an appeal has expired or until his appeal has been dismissed.” M.G.L. c. 138, § 16A.

The implication from § 16A 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 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 § 12 dependent upon application in November of the current year. “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.” *Id.* at 520.

If Yaz’s application for renewal had been filed in November 2015, the Licensee would have been in a position to call for determination by the Commission of the substantive issue regarding the revocation.¹ Zelman, *supra*. But the Licensee admits that it never filed a renewal application for the license for calendar year 2016. The 2015 license expired with the close of that year. *See Zelman*, *supra*. This fact renders the appeal before the Commission as moot, and the Commission is relieved of determining whether the revocation was an appropriate sanction.

The case before the Commission is moot. Even if the Commission were now to find (or had at any time after November, 2015 found) in Licensee’s favor on the appeal, such a finding would not make the corporation a licensee for 2016 or put it in a position where it could by its act acquire prima facie rights for 2016. *Id.*; Ward v. Selectmen of Scituate, 334 Mass. 1, 2 (1956). Compare Piona v. Alcoholic Beverages Control Comm’n, 332 Mass. 53, 57 (1954) (where the petitioner was seeking restoration of a license improperly cancelled.)

¹ Because the Licensee never filed a renewal application, the Commission need not address other issues raised at the hearing regarding the licensed premises.

CONCLUSION

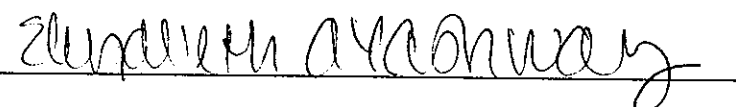
The Alcoholic Beverages Control Commission **ALLOWS** the City of Quincy's Motion to Dismiss the Appeal of Ramallah Inc. d/b/a Yaz's Place. Based on the above order, the Commission will take no further action on the earlier appeal requests (appealing a 5 day suspension and the license revocation). The Commission hearing currently scheduled for January 26, 2016 is **DISMISSED WITHOUT PREJUDICE FOR FAILURE OF THE APPELLANT TO RENEW ITS LICENSE.**

ALCOHOLIC BEVERAGES CONTROL COMMISSION

Kim S. Gainsboro, Chairman



Elizabeth Lashway, Commissioner



Dated: January 13, 2016

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: Rudolph F. Miller, Esq. via facsimile 617-507-6331
James Timmons, Esq. via facsimile 617-376-1519
Frederick G. Mahony, Chief Investigator
Local Licensing Board
Administration
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