



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

Deborah B. Goldberg
Treasurer and Receiver General

Kim J. Gainsboro, Esq.
Chairman

DECISION

CITY LIMITS, INC. DBA CITY LIMITS
326 NORTH MAIN ST.
RANDOLPH, MA 02368
LICENSE#: 100800016
HEARD: 05/27/2015

This is an appeal of the action of the Town of Randolph Town Council (the "Local Board" or "Randolph") for revoking the M.G.L. c. 138, §12, all alcoholic beverages license of City Limits, Inc. dba City Limits ("Licensee" or "City Limits") located at 326 North Main Street, Randolph, Massachusetts. The Licensee timely appealed the Local Board's decision to the Alcoholic Beverages Control Commission (the "Commission") and a hearing was held on Wednesday, May 27, 2015.¹

Prior to the commencement of the hearing, the Licensee stipulated to the following violations:

- a) 204 CMR 2.05 (2), to wit: M.G.L. c. 138, §16, Tampering, refilling bottles, and/or tampering with alcoholic beverages that you serve;
- b) 204 CMR 2.05 (2), to wit: M.G.L. c. 138, §23, Sale of alcoholic beverages other than those purchased from a Licensee under §§18 or 19 or from a holder of a special permit under §22A.

The Licensee also stipulated to the facts of the following charge, but argued that the facts do not rise to the level of a violation:

- c) 204 CMR 2.05 (2), to wit: M.G.L. c. 138, §63A, Hindering or Delaying an Investigation.

The Licensee also stipulated to the facts of the following charge, but argued that the charge is duplicative of charge "a," 204 CMR 2.05 (2), to wit: M.G.L. c. 138, §16, Tampering, refilling bottles, and/or tampering with alcoholic beverages that you serve and that the Commission has no jurisdiction to hear such matters because it is a federal crime:

¹ In addition to the following charges, the Licensee was charged with violating 204 CMR 2.05 (2), Permitting an illegality on the Licensed Premises, to wit: M.G.L. c. 138, §12 Sale or delivery of an alcoholic beverage after the established legal closing hour. The Local Board found the Licensee in violation of this regulation and gave the Licensee a letter of reprimand for this violation. As a result, this violation was not appealed.

3366 8094

1

- d) 204 CMR 2.05 (2), to wit: 26 U.S.C. §5301(c) Refilling of liquor bottles – placing in any liquor bottle any distilled spirits whatsoever other than those contained in such bottle at the time of tax determination.

The Licensee also argued that the penalty is arbitrary and capricious.

The following documents are in evidence:

1. Local Board's Notice of Hearing dated 11/25/2014;
2. Local Board's Decision dated 12/16/2014;
3. Randolph Police Department Formal Report dated 10/19/2014;
4. Randolph Police Department Officer Boudreau's Narrative dated 10/19/2014;
5. Town of Randolph's Liquor Policy;
6. Local Board's Notice of Violation (violation date 10/19/2014) dated 11/02/2014;
7. Quality Beverage Invoice No. 393528 dated 5/22/2014;
8. M.S. Walker Invoices No. 463323 dated 5/20/2014; and Invoice No. 46579522 dated 10/18/2014;
9. Local Board's Notice of Violation (violation date 10/23/2014) dated 11/2/2014;
10. BJ's Wholesale Club Purchase History Report;
11. Copies of 20 Photos of Alcoholic Beverages on the Licensed Premises on 10/23/2014;
12. Randolph Police Department Lieutenant Hamelburg's Formal Report dated 10/23/2014;
13. Local Board's Municipal Annual Reports to ABCC for 2010 thru 2014; and
14. Compact Disc of Local Board's Meeting dated 12/08/2014.

There is one (1) audio recording of this hearing, and five (5) witnesses testified. The Commission took Administrative Notice of the Licensee's Commission File.

FACTS

1. City Limits, Inc. d/b/a City Limits is a Massachusetts corporation with a principal place of business at 326 North Main Street, Randolph, Massachusetts. Hussain Moheiddin, Gerald Thomas, and George Khajadourian each own one third of the company. (Commission files)
2. City Limits holds an all-alcoholic beverages license issued by the Local Board and approved by the Commission on July 12, 2013. Mr. Moheiddin is the approved license manager. (Commission Files)
3. City Limits is situated in the basement of the building in which it is located. (Testimony)
4. On October 23, 2014, Randolph Police Lieutenant John Hamelburg called Mr. Moheiddin and informed him that Lt. Hamelburg and Commission Investigators were coming to inspect the premises. There had been incidents that occurred outside of the licensed premises and Lt. Hamelburg wanted to conduct an investigation of the business operations. (Testimony, Exhibit 12)
5. At approximately 3:40 p.m., Lieutenant Hamelburg, along with ABCC Investigators Jack Carey and Michael Teehan, went to City Limits. (Testimony, Exhibit 12)

6. Lieutenant Hamelburg has been to the establishment many times in the past and is familiar with the layout. The premises has had an alcoholic beverages license for approximately 20-30 years, under differing ownership. (Testimony, Exhibit 12)
7. Upon arrival, Investigators were met outside the front entrance by Mr. Moheiddin and Mr. Khajadourian. (Testimony)
8. Lt. Hamelburg and Investigator Carey entered the establishment together. When Investigators asked to see the bar area, Mr. Moheiddin hesitated and then gestured by hand in the direction of the bar area; however he failed to turn on the lights until asked to do so. (Testimony, Exhibit 12)
9. Investigator Carey observed that the bar area was in disarray. As he walked through the premises he noted that the alcoholic beverages on display for sale had no corresponding bigger bottles in the back room, and that the labels on the bottles were worn. (Testimony)
10. Investigator Teehan entered the premises approximately five minutes after Investigator Carey and Lt. Hamelburg. Investigator Teehan observed a lot of bottles with worn out labels, and bottles from "package stores". He also noticed that the bottles were filled to the top, which is a clear indication that the bottles were being refilled. (Testimony)
11. Investigator Carey asked Mr. Moheiddin where the alcoholic beverages were stored. In response Mr. Moheiddin pointed to the bar area and stated that they were on the shelves and underneath the bar. (Testimony)
12. Investigator Carey also asked Mr. Moheiddin questions regarding which wholesalers he purchases alcoholic beverages from, including the identity of the liquor salesperson(s), and the date of his or her last visit date to the premises. Initially, Mr. Moheiddin failed to answer Investigator Carey's questions. Mr. Moheiddin tried to change the subject. (Testimony, Exhibit 12)
13. Mr. Moheiddin provided Investigators with a Quality Beverage receipt dated 5/22/2014 for six cases of Budweiser Light beer and six cases of Budweiser beer. He had no documentation for any properly purchased or delivered beer after this date in May. (Testimony, Exhibit 12)
14. Mr. Moheiddin also provided Investigators with two invoices from M.S. Walker distributors, one invoice dated 05/20/2014 and one dated 10/18/2014. There was no documentation for any properly purchased or delivered alcoholic beverages between these two dates.
15. Approximately 15-20 minutes after the Investigators entered the premises and began questioning Mr. Moheiddin about the location of the alcoholic beverages and his alcoholic beverages purchases, Mr. Moheiddin became very emotional and admitted that he had purchased alcoholic beverages from BJ's Wholesale Club.
16. Mr. Moheiddin admitted that he bought the larger sized bottles of alcoholic beverages at a better price, and transferred the liquor into the smaller bottles on the bar. (Testimony)

17. Mr. Moheiddin took the Investigators to a liquor closet in his office which contained alcoholic beverages and a funnel. (Testimony, Exhibit 12)
18. Further inspection revealed bottles of Evan Williams Kentucky Bourbon whiskey. Investigators discovered various other bottles and products such as vodkas, tequilas, and rums where a cheaper product was disguised in a higher quality, premium liquor bottle. For example, Investigators found Grey Goose vodka, Bacardi rum, and Patron tequila. (Exhibit 12)
19. Based on their training and experience, Investigators formed the opinion that Hussein was substituting the cheaper brands of liquor for the premium brands, such as Jack Daniels.
20. The entire beer and wine inventory in the bar located at the front door was confiscated. Mr. Moheiddin admitted that he had purchased the beer and wine at BJ's Wholesale Club in Avon. A number of liquor bottles were confiscated when Mr. Moheiddin admitted that they were purchased at BJ's or refilled by him.
21. The Licensee does not have any prior violations. (Testimony, Commission Files)
22. The Local Board has adopted the following guidelines, if a licensed establishment is found violating the General Laws of the Commonwealth, or a rule or regulation of the Local Board:
 - First Offense: Written reprimand;
 - Second Offense: Three to five (3-5) consecutive days suspension;
 - Third Offense: Seven to ten (7-10) consecutive days suspension;
 - Fourth Offense: Thirty (30) consecutive days suspension; and
 - Fifth Offense: Show cause hearing to revoke.
23. However, the Local Board reserves the right to increase the penalty if the offense is of an extremely grievous nature and reserves the right to reduce the penalty where mitigating circumstances are present.

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." United Food Corp. v. Alcoholic Beverages Control Comm'n, 375 Mass. 238, 240 (1978). 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. See, e.g. Devine v. Zoning Bd. of Appeal of Lynn, 332 Mass. 319, 321 (1955); Josephs v. Bd. of Appeals of Brookline, 362 Mass. 290, 295 (1972); Dolphino Corp. v. Alcoholic Beverages Control Comm'n, 29 Mass. App. Ct. 954, 955 (1990). 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. “[T]he purpose of discipline is not retribution but the protection of the public.” New Palm Gardens, Inc. v. Alcoholic Beverages Control Comm’n, 11 Mass. App. Ct. 785, 788 (1981); quoting 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.” M.G.L. c. 30A, §1(6). 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, 710 (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). The Local Board has the burden of producing satisfactory proof to the Commission that the licensee committed the alleged violations.

In this matter, the contested issues are whether 204 CMR 2.05 (2) to wit: 26 U.S.C. §5301(c) refilling of liquor bottles – placing in any liquor bottle any distilled spirits whatsoever other than those contained in such bottle at the time of tax determination is duplicative of 204 CMR 2.05 (2), to wit: M.G.L. c. 138, §16, Tampering, refilling bottles, and/or tampering with alcoholic beverages and whether City Limits hindered or delayed an investigation by the Town of Randolph Police Department.

204 CMR 2.05 (2), to wit: 26 U.S.C. §5301(c) Refilling of liquor bottles – placing in any liquor bottle any distilled spirits whatsoever other than those contained in such bottle at the time of tax determination.

The Commission finds that both charges were based on the same set of facts and circumstances and the elements of both offenses are the same. The only difference between the two charges is that one is a state crime and the other a federal one. The Licensee has stipulated to the state crime. Although the Commission has jurisdiction over both crimes as charged, we find in this matter, the federal crime is duplicative. As such, the Commission finds no violation of 204 CMR 2.05 (2), to wit: 26 U.S.C. §5301(c), as it is duplicative of 204 CMR 2.05 (2), to wit: M.G.L. c. 138, §16.

204 CMR 2.05 (2), to wit: Hindering or Delaying Investigator, Inspector or Agent Pursuant to M.G.L. c. 138, §63A.

The Licensee was charged with hindering or delaying any investigator, inspector or any other authorized agent of the local licensing authorities in the performance of his duties. M.G.L. c. 138, §63A. M.G.L. c. 138, §63A is violated when a person "hinders or delays any authorized investigator . . . in the performance of his duties . . . or . . . refuses to give to such investigator . . . such information as may be required for the proper enforcement of this chapter." Lion Distributors, Inc. v. Alcoholic Beverages Control Comm'n, 15 Mass. App. Ct. 988 (1983).

The Commission cannot and does not condone hindering in violation of this statute, nor does it condone a lack of cooperation by the Licensee with the Investigators while in the performance of their duties. In this case, Mr. Moheiddin initially did not fully cooperate with the investigators. Although he was respectful and not argumentative, he was not honest. At the time, he was also very upset and nervous.

After approximately 15 minutes, Mr. Moheiddin admitted to purchasing alcoholic beverages from an unlicensed entity and refilling bottles. He also produced receipts evidencing the purchase from the unlicensed source. Most of the cases for hindering involve individuals that steadfastly refuse to produce documents when given a demand notice, refuse to allow investigators access to areas of the premises, or attempt to conceal evidence while the investigators are on the licensed premises. See, e.g., In Re: J.F.D. Enterprises, Inc. dba Century Liquor Mart, West Springfield, MA (ABCC Decision December 28, 1992) (violation found where principal and key employee of licensee denied unlawful sales and were warned by Commission investigators that withholding information could result in a §63A violation, and a subsequent investigation revealed that the key employee had personally authorized and participated in many of the transactions.); In Re: Bowser's, Inc. dba Bowser's Seafood, Abington, MA (ABCC Decision May 23, 2001) (violation found where licensee owner refused to permit investigators entrance to his office, investigators repeated they had evidence of illegal gambling and wanted to see where the envelopes were that had been described to them, and the owner continued to refuse to open the door despite investigators advising him of c. 138, §§63 and 63A); In Re: Market Liquors, Inc., Boston, MA (ABCC Decision August 27, 1990) (violation found where a licensee was questioned about delivery of rum, licensee provided investigators with false information, and licensee did not report to the ABCC office for further questioning, as requested by investigators); In Re: Shree Mahavir Corp. dba Sweeney's Package Store, Lawrence, MA (ABCC Decision October 23, 2013) (violation found where investigators identified themselves to the owner and advised him about a complaint they had received, observed during their investigation of the premises that the owner was no longer with them, and found the owner in the bathroom, hiding a 28-pack case of Sam Adams beer and trying to hide an empty 28-pack case of Sam Adams beer); In Re: Gerald Ely II, dba The Menu, Pittsfield, MA (ABCC Decision September 17, 1997) (violation found where licensee consistently refused to cooperate with investigators. Commission investigators made several attempts to interview the licensee through attorneys and other means, requests were made for licensee records, and licensee was uncooperative); In Re: North End Boat Club, Newburyport, MA (ABCC Decision February 14, 2013) (violation found where investigators served the license manager in hand with the demand for information on January 2, 2013 with a due date of January 14, 2013, and as of the date of the Commission hearing on January 29, 2013, the manager had not produced all of the

requested documents, and he refused to answer questions pertaining to the business operation of the licensee.)

In this matter, although reluctant at first to admit everything to the Investigators, within 15 – 20 minutes, the owner of the License responded appropriately to questions asked and did produce evidence of the alleged violations. Mr. Moheiddin's recalcitrance did not take place over several days or even several hours, but for several minutes. As such, we cannot say these actions rose to the level of hindering an investigation. Given this analysis, the Licensee has not violated the provisions of M.G.L. c. 138, §63A.

CONCLUSION

The Commission **DISAPPROVES** the action of the Local Board in finding violations of 204 CMR 2.05 (2), to wit: Hindering or Delaying Investigator, Inspector or Agent Pursuant to M.G.L. c. 138, §63A; and 204 CMR 2.05 (2), to wit: 26 U.S.C. §5301(c) Refilling of liquor bottles – placing in any liquor bottle any distilled spirits whatsoever other than those contained in such bottle at the time of tax determination based on the aforesaid.

The Commission also **DISAPPROVES** the action of the Local Board in revoking the license for said violations that were disapproved. The Commission remands the matter to the Local Board with the recommendation that the Local Board return the License to City Limits and impose a penalty consistent with its published guidelines.

ALCOHOLIC BEVERAGES CONTROL COMMISSION

Kim S. Gainsboro, Chairman

Elizabeth A. Lashway, Commissioner

Dated: June 30, 2015

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.

cc: Louis Cassis, Esq. via facsimile 617-472-9028
Christine M. Griffin, Esq. via facsimile 781-961-0905
Frederick G. Mahony, Chief Investigator
Local Licensing Board
Administration
File