

*Commonwealth of Massachusetts
Department of the State Treasurer
Alcoholic Beverages Control Commission
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Jean M. Lorizio, Esq.
Chairman

**CITY LIMITS INC. D/B/A CITY LIMITS
326 NORTH MAIN ST.
RANDOLPH, MA 02368
LICENSE#: 100800016
HEARD: 04/12/2017**

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

City Limits Inc. d/b/a City Limits (the "Licensee" or "City Limits") holds an all alcoholic beverages license issued pursuant to M.G.L. c. 138, § 12 located at 326 North Main Street, Randolph, MA 02368.

On October 27, 2016, the Town of Randolph Board of Selectmen (the "Local Board" or "Randolph") held a hearing and voted unanimously to revoke City Limits' license. The Licensee was hand-served notice of this decision on November 1, 2016.

The Licensee timely appealed the Local Board's decision to the Alcoholic Beverages Control Commission (the "Commission"), and a hearing was scheduled on the appeal for April 12, 2017. While the hearing was pending, the Licensee failed to file a renewal application for its license for calendar year 2016. Accordingly, the Licensee's 2016 license expired on December 31, 2016.

On March 15, 2017, the Local Board filed a Motion to Dismiss the Licensee's Appeal based on the Licensee's failure to renew its license. The Commission scheduled a hearing on the Local Board's Motion for Wednesday, April 12, 2017. The Commission sent notice of the hearing to the Local Board's counsel as well as to the Licensee by mail to its premises. The Commission heard the Local Board's motion to dismiss on April 12, 2017, while the Licensee did not appear for the hearing.

The following documents are in evidence:

1. ABCC Notice of Appeal Hearing dated March 21, 2017.

There is one (1) audio recording of this hearing.

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: “[l]icenses 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 § 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.

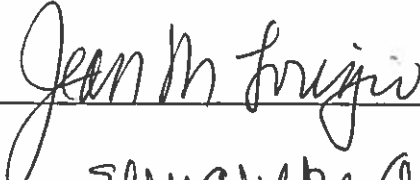
If the Licensee’s application for renewal had been filed in November 2016, the Licensee would have been in a position to call for determination by the Commission of the substantive issue regarding the revocation. See id. But the Licensee *never* filed a renewal application for the license for calendar year 2017. The 2016 license expired with the close of 2016. 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 Randolph’s motion to dismiss the appeal.

CONCLUSION

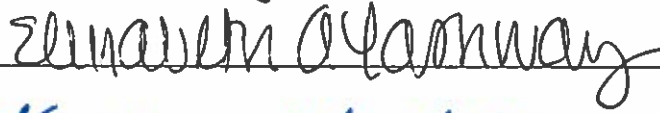
The Alcoholic Beverages Control Commission **ALLOWS** the Town of Randolph’s Motion to Dismiss the Appeal of City Limits Inc. d/b/a City Limits.

ALCOHOLIC BEVERAGES CONTROL COMMISSION

Jean M. Lorizio, Chairman



Elizabeth Lashway, Commissioner



Kathleen McNally, Commissioner



Dated: May 4, 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: Hussain Moheiddin
Robert D. Hillman, Esq. via facsimile 617-951-2323
Frederick G. Mahony, Chief Investigator
Local Licensing Board
Administration, File