

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

Steven Grossman
Treasurer and Receiver General

Kim J. Gainsboro, Esq.
Chairman

DECISION

Jo-Kar, Inc.
dba Joe T's Pub and Billiards
75 South Street East
Raynham, MA 02767
License#: 101200023
Heard: February 9, 2011

This was an appeal of from the action of the licensing board of the town of Raynham (the "Local Board" or "Raynham") for revoking the license of Jo-Kar, Inc. dba Joe T's Pub and Billiards ("Jo-Kar, Inc." or the "Licensee") located at 75 South Street East, Raynham, MA. The Licensee timely appealed the Board's decision to the Alcoholic Beverages Control Commission (the "Commission") and a hearing was held on February 9, 2011.

The following exhibits are in evidence:

1. Joint Pre-Hearing Memorandum

- A. Copy of Letter from Louis A. Cassis, Esq. dated June 30, 2008;
- B. Copy of Letter to Karen Thomas dated November 5, 2008;
- C. Minutes from the Town of Raynham Board's meeting of November 18, 2008;
- D. Copy of Letter to Karen Thomas dated November 25, 2008;
- E. Copy of Letter to Karen Thomas dated July 1, 2009;
- F. Minutes from the Town of Raynham Board's meeting of July 28, 2009;
- G. Copy of Letter to Karen Thomas dated October 27, 2009;
- H. Copy of Letter to Karen Thomas dated November 9, 2009;
- I. Minutes from the Town of Raynham Board's meeting of November 10, 2009;
- J. Minutes from the Town of Raynham Board's meeting of November 24, 2009;
- K. Minutes from the Town of Raynham Board's meeting of January 19, 2010;
- L. Copy of the Certificate of Organization Painten Place Generations LLC dated March 20, 2010;
- M. Copy of Vote of Painten Place Generations LLC dated March 20, 2010;
- N. Copy of Certificate of Good Standing from Commonwealth Secretary of State's Office for Painten Place Generations LLC dated March 29, 2010;

- O. Copy of Commission Application for Painten Place Generations LLC dated March 30, 2010;
- P. Copy of Form A dated March 30, 2010;
- Q. Minutes from the Town of Raynham Board's meeting of June 1, 2010;
- R. Copy of Letter to Lawrence Painten dated August 12, 2010;
- S. Copy of Letter to Karen Thomas dated September 9, 2010;
- T. Minutes from the Town of Raynham Board's meeting of September 21, 2010;
- U. Copy of Letter to Karen Thomas dated September 22, 2010;
- V. Minutes from the Town of Raynham Board's meeting of December 21, 2010;
- W. List of Alcoholic Beverages Licenses Renewed for the Year 2011; and
- X. Jo-Kar, Inc.'s Alcoholic Beverage License.

There is one (1) tape of this hearing.

FACTS

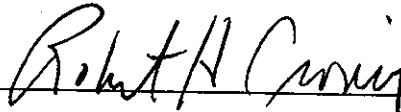
1. The licensee was the holder of a Common Victualer All Alcoholic Beverages Pouring License for the premises at 75 South Street East, Raynham, MA in 2010 prior to the local board's revoking of the license by a written decision dated September 22, 2010 which was sent to the licensee and the Commission.
2. In its written statement of reasons, the local board stated that the license was revoked because the establishment has been closed since May 31, 2008.
3. Also it states that the local board felt after numerous failed attempts by the licensee to find a buyer and numerous extensions of time, the public need would be best served by finding an entity that would put the license to use.
4. The license has not been used by the licensee since its business voluntarily closed on or about May 31, 2008 because the licensee was unable to install a required sprinkler system at the licensed premises.
5. The local board at the request of the licensee renewed the license in 2009 and 2010 because the licensee repeatedly indicated it had potential buyers for the licensed premises. No sale of the licensed premises ever took place.
6. In a letter to the licensee and a potential buyer dated August 12, 2010, the local board stated that if a completed application with financing in place was not submitted by September 7, 2010, a hearing to revoke the license would be held on September 21, 2010. No completed application with financing was submitted by the due date.
7. The licensee received a letter dated September 9, 2010 from the local board informing them that Raynham would hold a public hearing on September 21, 2010 on whether to revoke its license due to the fact that the premises have been closed since May 31, 2008.
8. At the September 21, 2010 public hearing, the manager of Jo-Kar, Inc. was not present. A representative for Jo-Kar, Inc. was present and requested that the local board grant the licensee another extension of time on the determination of the liquor license.
9. The local board declined to grant any further extensions.
10. Raynham voted to revoke Jo-Kar, Inc.'s license.
11. On September 22, 2010, the local board sent written notice of its decision which included a statement of reasons. The letter was sent to Jo-Kar, Inc. and to the Commission.

CONCLUSION

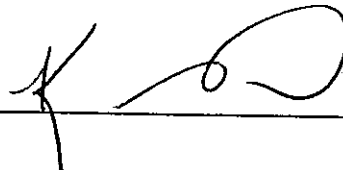
Based on the Joint Pre-Hearing Memorandum (Ex. 1) and the testimony of the representatives of the town of Raynham, the Commission APPROVES the action of the Raynham Local Board in terminating the license for non-use.^{1[1]}

ALCOHOLIC BEVERAGES CONTROL COMMISSION

Robert H. Cronin, Commissioner



Kim S. Gainsboro, Chairman



Dated: March 8, 2011

You have the right to appeal this decision to the Superior Court under the provisions of Chapter 30A of the Massachusetts General Laws within thirty (30) days of receipt of this decision.

cc: Local Licensing Board
Chief Investigator, Frederick Mahony
Louis A. Cassis, Esq. via Facsimile 617-472-9028
Marc E. Antine, Esq. via Facsimile 508-824-6608
File

^{1[1]} If the Commission were to disapprove the action of the Local Board, this case presents an additional issue on the relief available. No evidence was presented of any action taken by the Licensee to renew the license into calendar year 2011. No evidence was presented that showed that the Licensee met the statutory pre-condition to renewal of a license imposed by M.G.L. c. 10, §74.

Without renewal of the license into calendar year 2011, the license expired by operation of law. M.G.L. c. 138, §23, ¶ 11 ("Every 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"). Without an appeal from the Local Board's failure to renew the license into calendar year 2011, the Commission is without authority to re-instate the license after the expiration of the license term. See Board of Selectmen of Sudbury v. Alcoholic Beverages Control Commission, 25 Mass.App.Ct. 470, 519 N.E.2d 1365 (1988). In re: Italian-American Restaurant, Inc. dba Italian American Restaurant, (Boston)(ABCC Decision dated July 2008).