



*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**

**JAY & RICKY, INC. DBA RICKY'S LIQUOR**  
**212 MAIN ST**  
**READING, MA 01867**  
**LICENSE#: 101600017**  
**HEARD: 10/08/2014**

This is an appeal from the action of the Town of Reading Board of Selectmen (the "Local Board" or "Reading") in suspending for ninety (90) days the M.G.L. c. 138 §15 all alcohol package store license of Jay & Ricky, Inc. dba Ricky's Liquor (the "Licensee" or "Ricky's") located at 212 Main Street, Reading, MA. The applicant timely appealed the Local Board's decision to the Alcoholic Beverages Control Commission (the "Commission") and a hearing was held on Wednesday, October 8, 2014.

The following documents are in evidence:

1. TIPS Certification dated 7/28/2014;
2. Copy of Licensee's All-Alcohol Package Store License;
3. Reading Police Department Investigative Report # D092597 dated 7/08/2014;
4. Letter dated 7/09/2014 from Reading Police Department Deputy Police Chief Segalla;
5. Local Board's Notice of Hearing dated 7/15/2014;
6. Minutes of Local Board's Meeting 7/29/2014;
7. Local Board's Decision dated 8/05/2014;
8. Reading Police Department Officer's Formal Report dated 8/03/2014;
9. Local Board's Notice of Hearing dated 8/07/2014;
10. Minutes of Local Board's Meeting 9/02/2014;
11. Local Board's Decision dated 9/03/2014;
12. Email dated 6/27/2014 from Sergeant David Clark; and
13. Local Board's Liquor License Rules, Regulations, and Procedures.

A. Reading Daily Times Newspaper dated 8/19/2014 Article on Compliance Checks in Reading.

There is one (1) audio recording of this hearing, and one (1) witness testified.

**FACTS**

1. Jay and Ricky, Inc. d/b/a Ricky's Liquors, is the holder of an all alcoholic beverages retail package store off premises liquor license under M.G.L. c. 138, §15, exercised at 212 Main Street, Reading, MA. (Commission Records)

2. Kalpesh Patel is the owner of the Licensee which was granted in June, 2013. (Commission Records, Testimony)
3. Bruce Armstrong was an employee of the Licensee in July and August, 2014. (Testimony)
4. On July 29, 2014, the Local Board, based upon the testimony submitted by the Reading Police Department and after the statements of the licensee's attorney, voted to find sufficient proof that Licensee, Jay and Ricky, Inc. violated M.G.L. c. 138, §34, Sale or delivery of an alcoholic beverage to a person under twenty-one (21) years of age, and voted to suspend its §15 license for four (4) days, to be served on September 15-18, 2014, inclusive. The Board's vote was five (5) in favor, zero (0) opposed. (Exhibits 5, 6, 7)
5. The Licensee did not appeal the July 29, 2014, decision of the Local Board<sup>1</sup>. (Testimony)
6. On August 3, 2014, Reading Police Officer Laura Bullis observed a man of youthful appearance exit Ricky's Liquors with an unbagged bottle of Jägermeister digestif liqueur in plain view. The man entered a motor vehicle containing three others of youthful appearance. Officer Bullis determined upon inquiry that all occupants were 17 or 18 years old. They stated that they had purchased liquor at Ricky's Liquors on multiple occasions. (Exhibit 8)
7. The police found the 375ml Jägermeister bottle in the front seat of the vehicle and the following in the trunk: 1-375ml bottle of Ciroc (peach) vodka; 1-16 pack of Budweiser beer; 1-26 pack of Bud Light beer; 2-8 packs of Bud Light beer; and 1-18 pack of Bud Light beer. (Exhibit 8)
8. The purchaser stated that the alcohol had been purchased in two trips and he was not asked for his driver's license or proof of age at either time. The purchaser of the alcohol identified the store clerk, Bruce Armstrong, as the clerk who had sold him the alcohol. (Exhibit 8)
9. The officers then asked the store clerk, Bruce Armstrong, how he confirmed that the purchasers were at least 21 years of age. He stated that he looked at their drivers' licenses. When questioned about whether the video surveillance would confirm his statement, Mr. Armstrong admitted that he in fact did not ask for identification. (Exhibit 8, Testimony)
10. Mr. Kalpesh Patel then arrived on scene. Mr. Patel is the owner of the licensee. Mr. Patel was very cooperative, and played the video surveillance footage for police at the scene. The footage showed that the young purchasers had made two purchases and were not asked for identification at either time. (Exhibit 8, Testimony)
11. Mr. Patel fired Mr. Armstrong. (Exhibit 8, Testimony)
12. The Local Board held a public hearing on September 2, 2014, and based upon the testimony by Reading Police officers and after the statements of Mr. Patel and his attorney, voted to find sufficient proof that Licensee Jay and Ricky, Inc. sold or delivered alcoholic beverages to persons under 21 years of age, in violation of M.G.L. c. 138, §34. (Exhibit 10)
13. The Local Board voted unanimously that there was substantial evidence of sales or delivery of alcoholic beverages to minors as being a regular business practice of the Licensee. The Local Board voted to suspend the Licensee's §15 license for ninety (90) days effective September 3, 2014, with the previously imposed suspension to be served at the end of that sentence. (Exhibit 10)

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<sup>1</sup> The Licensee received a four (4) day suspension for this violation, which is to be served after the suspension which is the subject matter of this appeal.

14. At the hearing before the Commission, the licensee was serving the suspension which is the subject matter of this appeal.<sup>2</sup> (Testimony)
15. In August of 2014, the licensee passed (did not sell alcohol to a minor) a compliance check/sting procedure performed by the Reading Police Department Detective Unit involving underage operatives. (Exhibit A)
16. The Rules and Regulations of the Local Board of Reading state in Section 3.2.7 the Enforcement Section: "Licensees violating applicable laws of the Commonwealth of Massachusetts, rules or regulations of the Alcoholic Beverage Control Commission, and/or the Town of Reading Liquor Policies shall be subject to the following range of penalties:
  - o 1<sup>st</sup> Offense: Warning to three day suspension;
  - o 2<sup>nd</sup> Offense: Three days to six days suspension;
  - o 3<sup>rd</sup> Offense: Six days to 12 days suspension;
  - o 4<sup>th</sup> Offense: Show cause hearing for license revocation.

The term "Offense" is defined as one violation of Massachusetts General Laws, Chapter 138 and/or one violation of the Massachusetts Alcoholic Beverage Control Commission Rule and Regulations 204CMR, and/or Town of Reading local licensing regulations and any other law or regulation of the Town of Reading. Examples of criteria to invoke penalties are based on the following: severity and type of offense; Number of prior offenses.

The penalties are only a guide. The licensing Authority may use its discretion in determining whether the facts surrounding a violation warrant a penalty which is more lenient or severe than the suggested guidelines. The penalties shall not be construed as to limit the Licensing Authority's ability to consider alternative dispositions or further conditions on a license, or even alternative penalties (e.g. rolling back of the licensee's operating hours, suspension of the licensee's Common Victualers license, and/or suspending the licensee's entertainment license." (Exhibit 13, Section 3.2.7.1)

17. The Licensee does not dispute that the violations occurred. The Licensee argued for a mitigation of the length of time for the penalty of a ninety (90) day suspension. The Licensee argued that a closure for ninety (90) days was too harsh, was a severe financial hardship, and was effectively a revocation of its license. The licensee requested that the Commission reduce the length of the time of the actual suspension to be served/closed, and issue a period of time to be held in abeyance for a period of two (2) years. (Testimony, Joint Pre-Hearing Memorandum)
18. The Local Board's argued that the severity of the penalty was a result of the three (3) violations for serving minors, all non-compliance checks. These violations occurred extremely close in time, selling to minors is a normal practice for the licensee, and the licensee has only held the license since June, 2013. (Joint Pre-Hearing Memorandum)

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<sup>2</sup> As of the Commission hearing date, the licensee was serving the suspension and had been closed for a period of thirty-six (36) days. The licensee twice sought injunctive relief/a stay from the Superior Court for the imposition of the 90 day suspension/closure, and the Superior Court twice denied the stay of the imposition of the suspension.

## DISCUSSION

Licenses to sell alcoholic beverages are a special privilege subject to public regulation and control for which States have especially wide latitude pursuant to the Twenty-First Amendment to the United States Constitution. Connolly v. Alcoholic Beverages Control Commn., 334 Mass. 613, 619 (1956), Opinion of the Justices, 368 Mass. 857, 861 (1975). M.G.L. chapter 138 gives the local board and commission the authority to grant, revoke and suspend licenses. Chapter 138 was "enacted ..... to serve the public need and... to protect the common good." M.G.L. chapter 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. Board 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., 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 Commission, 11 Mass. App. Ct. 785, 788 (1981).

M.G.L. c. 138, §67, provides that "[a]ny person who is aggrieved by the action of the local licensing authorities in modifying, suspending, cancelling, revoking or declaring forfeited their license, may appeal therefrom to the Commission .... If the Commission approves the action of the local licensing authorities it shall issue notice to them to that effect, but if the Commission disapproves of their action it shall issue a decision in writing advising said local authorities of the reasons why it does not approve (said action) and shall then remand the matter to the said local authorities for further action."

As noted above, the Licensee does not challenge the Local Board's finding that the violations occurred. Therefore, the Commission must review whether the penalty imposed by the Local Board for these violations was reasonable.

The Local Board argues that a ninety (90) day suspension/closure is appropriate based on a second and third violation of sales to a minor, which were non-compliance checks, that occurred within thirty (30) days of the first violation, and the Licensee has only been in business for a little more than one (1) year. Furthermore, this is a normal practice of the Licensee, one of the minors involved was seventeen (17) years old, and no identification was requested by the store employee, nor presented by the minor.

The Licensee admitted to the violations, but argued for a mitigation of the time/suspension to be served/closed, arguing that a ninety (90) day closure was effectively a revocation of its license. The Licensee argued for a 90 day suspension, with 45 days to be served, and 45 days to be held in abeyance for a period of two years. The Licensee argued for a lesser period of time of the actual suspension/closure, and to hold some time in abeyance as probation for the Licensee, and should another violation occur, this suspension held in abeyance would then be imposed.

The Commission finds that the Licensee committed the two (2) violations for serving a minor, and that the Licensee has a prior violation for the same offense, thereby constituting second and third violations/offenses for sale to a minor, all three of which are non-compliance checks. The Commission also finds that the three violations were within a one month period of time. However, the first violation which occurred on July 29, 2014, for which the penalty of a four day suspension was imposed, the Licensee did not appeal, and is not the subject matter of this appeal other than its consideration as a first offense for the violation of a sale of alcoholic beverages to a minor. The second and third violations for the violation of sales to a minor, non-compliance checks, involved the same minor, making two purchases on the same day. This is the penalty for which the Licensee is appealing. The Licensee has admitted to the two violations and stipulates to these violations being second and third offenses.

In reviewing the Local Board rules, the Commission is guided by a discussion of progressive sanctions which is developed and found in two cases: Applebee's Northeast, Inc. dba Applebee's Neighborhood

Bar & Grill ("Applebee's"), Suffolk Superior Court C.A. No. 03-610-A (Sikora, J.); and Alcoholic Beverage Control Commission vs. the Licensing Board of the Town of Weymouth. 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 Local Board of Reading, the rules state the penalties for liquor violations: the penalty for the 1<sup>st</sup> offense is a warning to a three day suspension; 2<sup>nd</sup> offense is three day to six days suspension; and a 3<sup>rd</sup> offense is six days to 12 days suspension. The Local Board rules also state that these penalties are only a guide, and that the Local Board may use its discretion regarding the factors surrounding the violation.

The Commission finds that the sanctions imposed in this matter underwent a detailed analysis and thorough scrutiny by the Local Board. However, the Local Board surpassed its own suggested guidelines in this matter regarding its penalties for second and third offenses. The Commission agrees that the Licensee has not held the license for a lengthy period of time, and that two sales to minors (three within one month) all non-compliance checks, are extremely serious and egregious. However, the Commission finds that a straight suspension/closure for 90 days surpasses the suggested guidelines of the Local Board.

The Commission is persuaded that the sanctions imposed in this matter are somewhat inconsistent with the Rules and Regulations promulgated by the Local Board. As such, the Commission finds that a penalty comprised of a period of suspension/closure, with some period of time held in abeyance, thus, placing the Licensee on probation with a suspension to be imposed *immediately* upon the finding of any future violation, to be a more reasonable and measured penalty for the Licensee's second and third offenses.

### CONCLUSION

Based on the evidence and rulings above, the Alcoholic Beverages Control Commission DISAPPROVES the action of the Local Board in suspending the M.G.L. c. 138 §15 wines & malt beverages license of Jay and Ricky's, Inc. dba Ricky's Liquor for ninety (90) days to be served/closed, and remands the matter to the Local Board with the recommendation that the license be suspended for a period of ninety (90) days, with fifty (50) days to be served/closed, and forty (40) days to be held in abeyance for a period of two (2) years provided no further violations of Chapter 138, Local Board, or Commission Regulations occur.

ALCOHOLIC BEVERAGES CONTROL COMMISSION

Kathleen McNally, Commissioner



Susan Corcoran, Commissioner



Dated: October 17, 2014

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: Neil Mooney, Esq. via facsimile 617-720-7877  
Donna M. Brewer, Esq. via facsimile 617-489-1630  
Frederick G. Mahony, Chief Investigator  
Local Licensing Board  
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