



*Commonwealth of Massachusetts  
Alcoholic Beverages Control Commission  
95 Fourth Street, Suite 3  
Chelsea, Massachusetts 02150*

**Jean M. Lorizio, Esq.**  
Chair

**DECISION**

**THE TWELVE CRANE STREET CORP. D/B/A DARK HORSE PUB  
12 CRANE STREET  
SOUTHBRIDGE, MA 01550  
LICENSE#: 1218-00055  
HEARD: 7/18/2019**

This is an appeal from the action of the Town of Southbridge Liquor Licensing Board (the "Local Board" or "SLLB") for suspending the § 12 all-alcohol license of The Twelve Crane Street Corp. d/b/a Dark Horse Pub ("Licensee") located at 12 Crane St., Southbridge, MA. The Local Board imposed a suspension of twenty-one (21) days and two 2-day suspensions, to be served concurrently.

The Licensee timely appealed the Local Board's decision to the Alcoholic Beverages Control Commission (the "Commission" or "ABCC"), and a hearing was held on Thursday, July 18, 2019.

The following documents are in evidence as exhibits:

1. Licensee's Articles of Organization;
  2. Licensee's Business Entity Summary from Secretary of the Commonwealth's Corporations Division website;
  3. Licensee's 2018 All Alcoholic Beverages License; and
  4. Local Board's Decision, 3/12/2019.
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- A. Southbridge Police Sergeant Ryan Roettger's Memorandum to the Southbridge Liquor Licensing Board Requesting a Violation Hearing, 1/31/2019;
  - B. Southbridge Police Sergeant John Fahey's Memorandum to Police Chief Shane Woodson, 12/27/2018;
  - C. Southbridge Police Department's Call Log for 12/23/2018;
  - D. Copy of Check #1256 from RMG Restaurant Inc. payable to Southbridge Police Department; and
  - E. Local Board's License Regulations.

There is one audio recording of this hearing and seven (7) witnesses testified.

## FINDINGS OF FACT

The Commission makes the following findings based on the evidence presented at the hearing:

1. The Twelve Crane Street Corp. d/b/a Dark Horse Pub ("Licensee"), holds an all alcoholic beverages license and operates a business at 12 Crane St., Southbridge, MA. John Gabriel McCarthy is President, Treasurer, Secretary, Director and stockholder of the corporation, as well as being the manager of record. The Licensee has held a § 12 all-alcohol license since 2006. (Testimony, Exhibit 2, Commission Records)
2. On Saturday, December 22, 2018, an event was held on the licensed premises which continued into the early morning hours of Sunday, December 23, 2018. (Testimony)
3. At approximately 1:55 a.m. on Sunday, December 23, 2018, Southbridge Police Department dispatched all patrol units to the 12 Crane Street area due to reports of a fight and a large gathering involving 100+ patrons. Southbridge Police requested assistance from surrounding area police departments. (Testimony, Exhibits A, B & C)
4. The decision to dispatch all patrol units and request assistance from area police departments was made given the number of people observed outside the premises. (Testimony)
5. During this incident, the shift supervisor, Sergeant John Fahey, identified Mr. Jesus Suarez as the "establishment manger" citing Mr. Suarez' behavior with security staff and members of the Southbridge Police Department. (Testimony, Exhibits A & B)
6. The security personnel were identifiable as they wore black shirts with writing on them indicating they were part of the security company. (Testimony)
7. Mr. McCarthy is a stockholder and principle of the Licensee corporation and the manager of record. He was not on the premises during the incident on December 23, 2018. (Testimony, Exhibits 1 & A)
8. Sgt. Fahey reported in a memorandum, dated December 27, 2018, to Chief Shane Woodson the events of the early morning hours of December 23, 2018. (Testimony, Exhibit B)
9. Sergeant Ryan Roettger is a Day Shift Supervisor and the designated liquor agent for the Southbridge Police Department, a position he has held for 15 years. (Testimony)
10. Based on Sgt. Fahey's memorandum, Sgt. Roettger submitted a written request, dated 1/31/2019, for a violation hearing before the Southbridge Liquor Licensing Board regarding the events of 12/23/2018 and alleged continuing violations. (Testimony, Exhibit A)
11. In his request for a hearing, Sgt. Roettger cited the following:

204 CMR 2.05(2) Permitting an illegality on the licensed premises, to wit: Violation of SLLB License Regulations, 1.06 Business Arrangements of Licenses, 1.10 Standards of Conduct on the Premises, 1.18 Management & 1.08 Environs of Licensed Premises.

1.06 Business Arrangements of Licenses;

(k) Managers in licensed premises shall not be changed until the SLLP and the Alcoholic Beverages Control Commission have approved such change.

1.10 Standards of Conduct on the Premises;

(d) No manager or employee shall consume any alcoholic beverages while on the licensed premises while on duty or after the official closing hour.

1.18 Management;

(d) The licensee shall not change managers, change corporate officers, sell or transfer corporate stock, pledge corporate stock or liquor license as security, or accept a loan or credit from another licensee, without first obtaining approval of the SLLB. No person may have a direct or indirect beneficial interest in a license without first obtaining the approval of the SLLB.

1.08 Environs of Licensed Premises;

(e) When any noise, disturbance, misconduct, disorder, act or activity occurs in the licensed premises, or in the area in front of or adjacent to the licensed premises, or in any parking lot provided by the licensee for the use of its patrons, which in the judgment of the SLLB adversely affects the health, welfare, safety or repose of the residents of the area in which the licensed premises are located, or results in the licensed premises becoming the focal point for police attention, the licensee shall be held in violation of the license and subject to proceedings for suspension, revocation or modification of the license. (Exhibit A)

12. Sgt. Roettger was not present at the licensed premises during the event on the night of December 22, 2018 and continuing into the early morning of December 23, 2018. (Testimony)
13. A hearing was held before the Local Board on March 11, 2019. (Testimony, Exhibit 4)
14. By decision dated March 12, 2019, the Local Board found the Licensee in violation of 204 CMR 2.05 (2) Permitting an illegality on the licensed premises, to wit: Violation of SLLB Regulations 1.06 Business Arrangements of Licenses; 1.18 Management; and 1.08 Environs of Licensed Premises. (Testimony, Exhibit 4)<sup>1</sup>
15. The Local Board found the Licensee not responsible regarding a violation of 1.10 Standards of Conduct on the Premises. (Exhibit 4)
16. The Local Board imposed a 21-day suspension and two additional 2-day suspensions, all of which were to run concurrently. (Testimony, Exhibit 4)
17. The Licensee timely appealed the Local Board's decision to the ABCC. (Commission Records)

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<sup>1</sup> The Local Board found the Licensee in violation of 204 CMR 2.05(2) and Regulations 1.06, 1.18 and 1.08. The Board in its decision did not cite any particular sections of Regulations 1.06, 1.18 or 1.08. The Commission is reviewing this violation as being found regarding the sections specified in Sgt. Roettger's request for a violation hearing: 1.06(k), 1.18(d) and 1.08(e).

18. Mr. McCarthy had been on the premises on December 22, 2018 but left prior to the start of the night's event. (Testimony)
19. Mr. McCarthy left Maria Lugo to oversee the licensed premise in his absence. Ms. Lugo is a paid employee who works under the direction of Mr. McCarthy. Ms. Lugo met with Mr. McCarthy on December 22, 2018 and communicated his expectations to the staff. Ms. Lugo managed the event from start to finish. (Testimony)
20. Mr. Bentley Rivera and Mr. Jesus Suarez are involved with Renaissance Med Group ("RMG"), an entity which, among other business ventures, operates an adult day center in Southbridge. (Testimony)
21. RMG hired the Licensee to provide food for its clients at its adult day center. The food is prepared at the licensed premises and taken to RMG's adult day center. (Testimony)
22. For the past approximately 2 years, Mr. Suarez and Mr. Rivera have worked together to plan and promote approximately 13 to 16 musical events at the licensed premises. (Testimony)
23. Mr. Rivera hired artists from different countries to perform at the licensed premises. (Testimony)
24. As part of promoting the musical events, Mr. Rivera and Mr. Suarez were responsible for hiring security personnel and requesting detail officers based on the number of patrons expected. (Testimony)
25. Mr. Rivera made payments for police detail officers by delivering checks from RMG to the Southbridge Police Department. (Testimony, Exhibit D)
26. Mr. McCarthy reviewed and approved any security company being utilized to ensure that they were properly licensed. (Testimony)
27. The Licensee did not dispute that RMG paid for security personnel and detail officers on the nights of the musical events they promoted. (Testimony)
28. Detail officers were hired to work at the licensed premises only on nights when musical events were taking place, and not for regular restaurant hours. (Testimony)
29. Neither Mr. Suarez nor Mr. Rivera have any involvement with the sale or service of alcohol at the licensed premises, and neither of them received any of the money derived from the sale or service of alcohol. (Testimony)
30. Mr. Rivera was on premises for the entire event on December 22, 2018 and into the early morning hours of December 23, 2018. (Testimony)
31. Ms. Lugo was inside the premises for the entirety of the event on December 22, 2018 and into December 23, 2018. She did not observe any fights or disturbances inside. She did not go outside until she was leaving which was after all patrons had exited the area. (Testimony)
32. Mr. Suarez arrived at the licensed premises sometime after 11:00 P.M. on December 22, 2018. (Testimony)

33. Mr. Suarez had no hand in managing the licensed premises but was there with friends, as a patron. (Testimony)
34. Sgt. Fahey observed a verbal altercation in the parking lot. (Testimony)
35. Sgt. Torres observed a physical altercation outside the establishment, near the rear entrance. Officers were able to get the situation under control. (Testimony)
36. Neither Chief Woodson nor any of the officers who testified before the Commission were inside the licensed premises on the night of the incident, and none of them have been inside the licensed premises for the approximately 2 years within which RMG has been involved with promoting musical events. (Testimony)
37. Mr. Suarez contacted Chief Woodson the morning following the incident to apologize for his behavior and to discuss arrangements regarding security and detail officers for musical events going forward. (Testimony)
38. No one who was involved in a disturbance and/or altercation on the night of the incident testified before the Commission.

### DISCUSSION

Pursuant to M.G.L. Ch. 138, § 67, “[t]he ABCC is required to offer a de novo hearing, that is to hear evidence and find the facts afresh. 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.” Dolphino Corp. v. Alcoholic Beverages Control Comm’n, 29 Mass. App. Ct. 954, 955 (1990) (citing United Food Corp. V. Alcoholic Beverages Control Comm’n, 375 Mass. 240 (1978); 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)). 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).” Id.

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.” 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 Licensee’s obligation under 204 C.M.R. 2.05(2) to maintain control over the premises and to

comply with Chapter 138 and local regulations is well-settled. The responsibility of the Licensee is to “exercise sufficiently close supervision so that there is compliance with the law on the premises.” Rico’s of the Berkshires, Inc. v. Alcoholic Beverages Control Comm’n, 19 Mass. App. Ct. 1026, 1027 (1985) (table). A licensee who sells alcohol is “bound at his own peril to keep within the condition of his license.” Burlington Package Store, Inc. v. Alcoholic Beverages Control Comm’n, 7 Mass. App. Ct. 186, 190 (179); accord Commonwealth v. Gould, 158 Mass. 499, 507 (1893). “It is, thus, quite possible for a Licensee to offend the regulatory scheme without scienter.” Rico’s of the Berkshires, 19 Mass. App. Ct. at 1027.

In order for the Commission to make a finding, there must be substantial evidence that a violation has occurred. “Substantial evidence of a violation is more than a mere scintilla. It means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.” Consol. Edison Co. of New York v. N.L.R.B., 305 U.S. 197, 229 (1938); accord Charlesbank Rest. Inc. v. Alcoholic Beverages Control Comm’n, 12 Mass. App. Ct. 879 (1981).

The Local Board has the burden of producing satisfactory proof that the Licensee committed the violations that are alleged to have occurred on December 23, 2018.

- I. “Managers in licensed premises shall not be changed until the SLLB and the Alcoholic Beverages Control Commission have approved such a change.” Rule 1.06(k) Southbridge License Regulations. The Local Board’s Rule, as allowed to be promulgated under M.G.L. Ch. 138, s. 23, mirrors the requirements of M.G.L. Ch. 138, s. 26 which states “No corporation, organized under the laws of the commonwealth or of any other state or foreign country, shall be given a license to sell in any manner any alcoholic beverages unless such corporation shall have first appointed, in such a manner as the licensing authorities by regulation prescribe, as manager or other principal representative, a citizen of the United States, and shall have vested in him by properly authorized and executed written delegation as full authority and control of the premises, described in the license of such corporation, and of the conduct of all business therein relative to alcoholic beverages as the licensee itself could in any way and exercise if it were a natural person resident in the commonwealth, nor unless such manager or representative is, with respect to his character, satisfactory to the licensing authorities.” M.G.L. Ch. 138, s. 26.

The Local Board presented evidence through the testimony of Southbridge Police Chief Woodson and Sergeants Roettger, Fahey and Torres as to their belief that Mr. Suarez is the License Manager at the licensed premise. The officers based their belief on Mr. Suarez’s actions wherein he appeared to be supervising the security personnel outside the licensed premise on the date of the incident, and conversations with Mr. Suarez on various other dates with regards to security and police details at events his company, RMG, assisted in promoting at the licensed premise. None of the interactions between Mr. Suarez and members of the Southbridge Police Department took place inside the licensed premise.

While the Commission found the Chief and his officers to be professional and credible, they testified only as to Mr. Suarez’s involvement with the oversight of security and the hiring and paying for police detail officers. Neither Chief Woodson nor his officers have been inside the licensed premise in the last approximately two years. None of them observed Mr. Suarez inside the licensed premise or interacting with Licensee employees.

The Licensee presented testimony from Mr. McCarthy, a principal of the Licensee and the Manager of Record. Mr. McCarthy testified that he is, in fact, the Manager and outlined his daily activities as such. Mr. McCarthy testified as to Mr. Suarez's limited role at the licensed premise wherein he has assisted in promoting several musical events over the last approximately two years. The Commission also heard testimony from Ms. Lugo, an employee of the Licensee, who identified Mr. McCarthy as the Manager under whose direction she works. Ms. Lugo confirmed that she oversees the licensed premise when Mr. McCarthy is not present.

The Licensee does not dispute that RMG promoted musical events at the premise. In his testimony before the Commission, Mr. McCarthy confirmed that as part of said promotion RMG was to hire and oversee security, with the approval of Mr. McCarthy, and to hire police detail officers as needed.

Mr. Rivera appeared at the Commission hearing and testified that he and Mr. Suarez worked together to promote events at the licensed premise and arranged for security which included securing police detail officers and overseeing security personnel. Mr. Rivera, in his direct testimony and consistent with the testimony of both Mr. McCarthy and Ms. Lugo, identified Ms. Lugo as the person in charge of managing the licensed premise during the musical events.

The Commission is not persuaded that Mr. Suarez has replaced Mr. McCarthy as Manager.

- II. "The licensee shall not change managers, change corporate officers, sell or transfer corporate stock, pledge corporate stock or liquor license as security, or accept a loan or credit from another licensee, without first obtaining the approval of the SLLB. No person may have a direct or indirect beneficial interest in the license without first obtaining the approval of the SLLB." Rule 1.18(d) Southbridge License Regulations.

As discussed above, the Commission determined that the Licensee did not change the manager without approval.

There were no allegations before the Commission as to the Licensee changing corporate officers, selling or transferring corporate stock, pledging corporate stock or liquor license as security, accepting a loan or credit from another licensee, without first obtaining the approval of the SLLB, or any person having a direct or indirect interest in the license without first obtaining the approval of the SLLB. As such, the Commission goes no further than to determine that the Licensee did not change the manager.

- III. 3.204 CMR 2.05(2) states, "No licensee for the sale of alcoholic beverages shall permit any disorder, disturbance or illegality of any kind to take place in or on the licensed premise. The Licensee shall be responsible therefor, whether present or not."

The Southbridge Licensing Board found the Licensee permitted a violation of Rule 1.08(e) Southbridge License Regulations which states, "[w]hen any noise, disturbance, misconduct, disorder, act or activity occurs in the licensed premises, or in the area in front of or adjacent to the licensed premises, or in any parking lot provided by the licensee for the use of its patrons, which in the judgment of the SLLB adversely affects the protection, health, welfare, safety or repose of the residents of the area in which the licensed premises are located, or results in the licensed premises becoming the focal point for police attention, the licensee shall be held in violation of

the license and subject to proceedings for suspension, revocation or modification of the license.”  
1.08(e) Southbridge License Regulations.

The licensee has a duty of care to prevent only foreseeable harm to its patrons and others. Westerback v. Harold F. Leclair, Co., 50 Mass. App. Ct. 144, 145 (2000); Carey v. New Yorker or Worcester, Inc., 355 Mass. 450, 451 (1969); Kane v. Fields Corner Grille, Inc., 341 Mass. 640, 641 (1961). The Supreme Judicial Court has held that 204 C.M.R. 2.05(2),

describes a preexisting common law duty which licensees owe to their patrons or guests. A bar owner, for example, has the duty to protect persons on or about the premises from the dangerous propensities of its patrons, served or unserved. When the bar has served a potentially dangerous patron, the duty may extend beyond the premises. When the bar has not served the patron, however, the duty is based merely on a duty to keep the premises safe, and the duty applies on or about the premises. See Gustafson v. Matthews, 109 Ill. App. 3d 884, 65 Ill. Dec. 475, 441 N.E. 2<sup>d</sup> 388 (1982) (bar owner had no duty to prevent intoxicated patron from driving away with his five children in the car); Locklear v. Stinson, 161 Mich. App. 713, 411 N.W. 2d 834 (1987) (bar owner not liable when one patron was killed by another patron off the premises). O’Gorman v. Antonio Rubinaccio & Sons, Inc., 408 Mass. 758, 761 n.2 (1990) (citations omitted).

“The duty to protect patrons ... does not require notice of intoxication but may be triggered when the conduct of another person puts a tavern owner or its employees on notice that harm is imminent.” Christopher v. Father’s Huddle Café, 57 Mass. App. Ct. 217, 222-223 (2003). However, a licensee may discharge its duty to protect patrons by taking steps to prevent the harm – such as denying service to a person who appears intoxicated or who has requested too many drinks, or calling police when a fight occurs or an aggressive patron threatens assault. See, e.g., Greco v. Sumner Tavern, Inc., 333 Mass. 144, 145 (1995); Carey, 355 Mass. at 451.

In order for the Licensee to have permitted an illegality on its premises, the Licensee must have had notice that the harm was imminent, and the Licensee must have been able to foresee the disturbance and prevent it. The record before the Commission is lacking in any evidence that the Licensee should have foreseen an incident occurring. There was no evidence of any disturbance inside the licensed premise. The incidents described by Sergeants Torres and Fahey occurred outside, in view of police officers, and were quickly addressed. As a result, there was nothing presented that would have alerted the Licensee to the possibility of an imminent disturbance. See Kane, 341 Mass. at 641; Carey, 355 Mass. at 451; Greco, 333 Mass. at 145.

The Local Board produced no evidence that prior to the altercation outside the premises, there was an altercation inside, or any conduct inside that would put the Licensee or its employees on notice. There was no evidence presented that those involved in the altercation had been patrons of the Licensee and/or had been inside the licensed premises.

The Commission is not persuaded that the Licensee committed the alleged violation of 204 CMR 2.05(2) and Rule 1.08(e) of the Southbridge License Regulations.



## CONCLUSION

The Alcoholic Beverages Control Commission ("Commission") **DISAPPROVES** the action of the Town of Southbridge Liquor Licensing Board in finding that The Twelve Crane Street Corp. d/b/a Dark Horse Pub committed a violation of 204 CMR 2.05 (2) Permitting an illegality on the licensed premises, to wit: Violation of SLLB Regulations 1.06 Business Arrangements of Licenses; 1.18 Management; and 1.08 Environs of Licensed Premises.

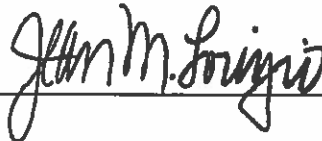
The Commission **DISAPPROVES** the action of the Town of Southbridge in imposing a penalty of a twenty-one (21) day suspension and two 2-day suspensions to be served concurrently.

As such, the Commission remands the matter to the Town of Southbridge with the recommendation that it find no violation and that no further action be taken against the Licensee, as any penalty would be discrepant with this decision.

The Commission cautions the Licensee as to the dangers of allowing a 3rd party to promote events at the Licensed Premises.

## **ALCOHOLIC BEVERAGES CONTROL COMMISSION**

Jean M. Lorizio, Chairman



I, the undersigned, hereby certify that I have reviewed the hearing record and concur with the above decision.

Crystal Matthews, Commissioner



Dated: June 23, 2020

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: Wayne M. LeBlanc, Esq.  
Adam J. Costa, Esq.  
Local Licensing Board  
Frederick G. Mahony, Chief Investigator  
Administration, File