



*Commonwealth of Massachusetts  
Alcoholic Beverages Control Commission  
95 Fourth Street, Suite 3  
Chelsea, Massachusetts 02150-2358*

**Jean M. Lorizio, Esq.**  
*Chairman*

**DECISION**

**GANDOLFIA ASSOCIATES LLC D/B/A SAGA  
84-90 WORTHINGTON STREET  
SPRINGFIELD, MA 01103  
LICENSE#: 00276-RS-1226  
HEARD: 6/23/2021**

This is an appeal from the action of the City of Springfield Licensing Board (the “Local Board” or “Springfield”) for suspending the § 12 all alcoholic beverages license of Gandolfia Associates LLC d/b/a Saga (“Licensee” or “Saga”) located at 84-90 Worthington Street, Springfield, MA, for five (5) days to be held in abeyance for a period of one (1) year. The Licensee timely appealed the Local Board’s decision to the Alcoholic Beverages Control Commission (the “Commission” or “ABCC”), and a remote hearing via Microsoft Teams was held on Wednesday, June 23, 2021.

At the close of the June 23, 2021, hearing the Commission left the record open for the City of Springfield to submit an additional document by close of business on June 25, 2021. The Local Board submitted its document in a timely manner and the record is now closed.

The following documents are in evidence as agreed-upon exhibits:

1. Police Reports from 2/24/2021;
2. Notice of Hearing of Springfield Board of License Commissioners, 3/11/2021;
3. License Commission Decision – Notice of Violation & Penalty, 4/22/2021;
4. Springfield License Commission’s Rules and Regulations Manual.

There is one audio recording of this hearing.

**FINDINGS OF FACT**

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

1. Gandolfia Associates LLC d/b/a Saga (“Licensee” or “Saga”) holds an all-alcoholic beverages license and operates a business at 90 Worthington Street, Springfield, Massachusetts. (Commission Records)
2. On January 21, 2021, at approximately 9:40 p.m., Springfield Police Officers responded to the area of Saga, as a result of the city’s shot spotter activation. (Exhibit 1)
3. The Licensee was unable to provide video footage as required by its security plan. Id.

4. A pre-hearing conference was held on Wednesday, April 14, 2021, wherein the Licensee stipulated to facts set forth in the Springfield Police Report, dated January 21, 2021. The Local Board accepted the stipulation regarding a violation of “204 CMR 2.05 (2) 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 premises. Licensee shall be responsible therefore whether present or not, violation of security plan – failure to provide video footage.” (Exhibit 3)
5. By decision dated April 22, 2021, the Local Board found the Licensee in violation and voted to suspend its license for a period of five (5) days, to be held in abeyance for a period of 1 year. Id.
6. The Licensee timely appealed the Local Board’s decision to the ABCC. (Commission Records)
7. At the opening of the Commission hearing, counsel for the Licensee and counsel for the Local Board agreed that the only issue on appeal was the appropriateness of the penalty imposed.
8. The City of Springfield License Commission Rules and Regulations Section 2.32 A. states, “[i]n matters of a first offense, the License Commission shall issue a 5-day suspension. The License Commission shall then determine on a case-by-case basis whether said suspension should be held in abeyance or served.” (Exhibit 4)
9. The City of Springfield License Commission Rules and Regulations Section 2.32 G. states, “[t]he License Commission may use its discretion in determining whether the facts surrounding a violation warrant a letter of warning to be added to the licensee’s file, a suspension to serve or suspension to be held in abeyance.” Id.
10. The City of Springfield License Commission Rules and Regulations Section H states, “[t]he License Commission will impose penalties for violations of all applicable regulations and laws as well as the following rules...[v]iolation of licensee’s security plan.” Id.

#### 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)). 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. Bd. 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, as amended through St. 1977, c. 929, §7. “[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 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.” Id. 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 (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).

Here, while the Licensee does not dispute that a violation occurred, it argues the penalty of a 5-day suspension to be held in abeyance for a period of 1-year imposed by the Local Board was too severe and thus an arbitrary and capricious decision. Therefore, the Commission must review whether the sanction was reasonable.

The Local Board argues that it promulgated its own written progressive discipline policy, within its Rules and Regulations, and that the suspension it issued to the Licensee was consistent with that policy.

Section 2.32 of the License Commission’s Rules and Regulations Manual is entitled ‘Offenses’ and in A. states, “In matters of a first offense, the License Commission shall issue a 5-day license suspension. The License Commission shall then determine on a case-by-case basis whether said suspension should be held in abeyance or served.” (Exhibit 4)

In the present case, the Local Board followed its written policy of discipline and determined that although five days was mandated under the policy, it would hold the 5 days in abeyance for 1 year. (Exhibit 3)

Notably, there is no evidence that the Local Board has treated other licensees differently for the same violation.

The Commission finds that the imposed suspension was not arbitrary and capricious but rather was a reasonable exercise of the Local Board’s lawful discretion and supported by the record.

### CONCLUSION

The Alcoholic Beverages Control Commission (“Commission”) **APPROVES** the action of the City of Springfield in suspending the license of Gandolfia Associates LLC d/b/a Saga for 5-days to be held in abeyance for 1-year.

**ALCOHOLIC BEVERAGES CONTROL COMMISSION**

Jean M. Lorizio, Chairman Jean M. Lorizio

Crystal Matthews, Commissioner Crystal Matthews

Deborah Baglio, Commissioner Deborah A Baglio

Dated: January 11, 2023

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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2021-000040-ad-enf

cc: Daniel D. Kelly, Jr., Esq.  
Alesia H. Days, Esq.  
Local Licensing Board  
Frederick G. Mahony, Chief Investigator  
Administration, File