



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

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

**DECISION**

**TRESTLE BRIDGE LLC D/B/A THE THIRSTY TURTLE PUB  
15 CENTRAL STREET  
TEMPLETON, MA 01436  
LICENSE#: 03459-RS-1268  
HEARD: 01/09/2020**

This is an appeal of the action of the Town of Templeton Board of Selectmen (the "Local Board" or "Templeton") for suspending the § 12 all alcoholic beverages license of Trestle Bridge LLC d/b/a The Thirsty Turtle Pub (the "Licensee" or "Thirsty Turtle Pub") located at 15 Central Street, Templeton, MA. The Local Board imposed a suspension of seven (7) days, with said suspension being further extended until the violations are corrected by the Licensee, but not to exceed the December 31, 2019 license expiration. 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, January 9, 2020.

The following documents are in evidence as exhibits:

1. Executed Settlement Agreement between the Licensee Trestle Bridge LLC d/b/a The Thirsty Turtle Pub and the Board of Selectmen for the Town of Templeton, 5/29/2019.
- A. The Board of Selectman for the Town of Templeton letter to Licensee Trestle Bridge LLC d/b/a The Thirsty Turtle Pub, 7/16/2019;
- B. Notice of Show Cause Hearing before the Board of Selectmen, 8/6/2019;
- C. Certified copy of approved meeting minutes of August 4, 2019 Board of Selectmen meeting;
- D. Board of Selectmen's Hearing Decision letter to Licensee Trestle Bridge LLC d/b/a The Thirsty Turtle Pub, 8/15/2019.

There is one (1) audio recording of this hearing, and four (4) witnesses testified.

**FINDINGS OF FACT**

The Commission makes the following findings of fact:

1. Trestle Bridge LLC d/b/a The Thirsty Turtle Pub holds an all alcoholic beverages license and operates a business at 15 Central Street, Templeton, Massachusetts. The Licensee has held a s. 12 all alcohol license since 2017. Jason Arsenault is the owner of the corporation. (Testimony, Exhibit 1, Commission Records)

2. On May 29, 2019, a Settlement Agreement<sup>1</sup> was executed between the Local Board and the Licensee. The Settlement Agreement was signed by Mr. Arsenault, the Licensee, and by four (4) members of the Town of Templeton Board of Selectmen. (Testimony, Exhibit 1)
3. The Licensee was represented by Counsel during settlement negotiations which took place over the course of several weeks. (Testimony)
4. The Settlement Agreement between the parties placed a number of conditions on the Licensee's license. The Agreement specifically states, in relevant part:

Paragraph 3. The Establishment will immediately designate its lower entry door<sup>2</sup> as an emergency exit.

Paragraph 4. Mr. Arsenault will meet and confer with the Fire Chief and the Building Commissioner within 30 days of the execution of this Agreement to determine if the emergency exit can be alarmed such that Establishment staff will be notified upon the opening of the door.

Paragraph 8. The Establishment shall comply with the terms of this Settlement Agreement so long as it holds an all alcohol restaurant license with the Town of Templeton.

Paragraph 11. This Agreement may be amended only in writing, signed by both Parties. (Exhibit 1)

5. Initially, Mr. Arsenault locked the rear door of the premises so that it could not be utilized as an entrance. Thereafter, on July 22, 2019, he determined doing so created an unnecessary public safety risk and unlocked the rear door, allowing it to be used as an entrance. (Testimony)
6. At some point after the execution of the Settlement Agreement, Templeton Police Chief Michael Bennett inspected the rear door of the premises and found it to be unlocked, with patrons and employees allowed to enter and exit at will. (Testimony)
7. By letter dated July 16, 2019, the Town Administrator notified the Licensee that he was in violation of the Settlement Agreement and allowed him until July 31, 2019 to comply with paragraph 4 by holding a joint meeting with the Fire Chief and Building Commissioner. The letter continued that if the Licensee failed to comply, then the Town Administrator would pursue a revocation of the license at the Selectman's upcoming meeting on August 14, 2019. (Exhibit A)

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<sup>1</sup> The underlying matter occurred on the evening of January 6, 2019 into early morning of January 7, 2019, wherein the Licensee is alleged to have sold alcoholic beverages to an intoxicated person in violation of M.G.L. c. 138, § 69. This alleged violation was resolved by way of a Settlement Agreement and therefore, not the subject of the appeal before the Commission.

<sup>2</sup> At the Commission hearing, the door was also described as and referred to as the rear door.

8. On or around August 6, 2019, Mr. Arsenault contacted Fire Chief David Dickie to discuss his safety concerns regarding locking the lower entry door and inquired about whether it was mandatory under the Fire Code to alarm the back door. (Testimony)
9. Mr. Arsenault did not meet with the Town's Building Commissioner as agreed to in the Settlement Agreement. (Testimony)
10. By letter dated August 6, 2019, the Town Administrator informed the Licensee that he had requested a Show Cause hearing before the Board of Selectmen concerning alleged violations of the Settlement Agreement. Specifically, the letter indicated that the Licensee had not "1) Secured the rear door as an emergency exit. It was clearly understood by all that this door was to be secured such that no entry could be made. Inspections made have shown this is not the case; and 2) Conferred with *both* the Fire Chief and Building Commissioner, '... within 30 days of the execution of the Agreement to determine if the emergency exit can be alarmed...'" (Emphasis in original) (Exhibit B)
11. The Licensee was notified of a hearing scheduled for August 14, 2019 to address the alleged violations. (Exhibit B)
12. On August 14, 2019, the Local Board held a public hearing regarding the alleged violations of the conditions. Testimony from Police Chief Michael Bennett and Mr. Arsenault was offered at the hearing. (Exhibit C)
13. Based on the evidence presented at the hearing, the Local Board found the Licensee had violated the conditions of his license, specifically laid out in paragraphs 3 and 4 of the Settlement Agreement, and voted to suspend the license for a period of seven (7) days and further that "[s]aid time period is to be extended until such time as the violations are corrected by the proprietor; any extensions may not exceed the 31 December 2019 license expiration. The purpose of this suspension is to allow time for the proprietor to comply with the 29 May settlement provisions." (Exhibit C)

### DISCUSSION

Pursuant to M.G.L. c. 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). 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)." Dolphino, 29 Mass. App. Ct. at 955.

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, 710 (1995).

M.G.L. chapter 138, § 23 states, in part... "Whenever, in the opinion of the local licensing

authorities, any applicant for a license under section twelve, fourteen, fifteen or thirty A fails to establish to their satisfaction his compliance with the requirements of this chapter, or any other reasonable requirements which they may from time to time make with respect to licenses under said sections, respectively, or to the conduct of business by any licensee thereunder, said authorities may refuse to issue or reissue to such applicant any such license; and whenever in their opinion any holder of such a license fails to maintain compliance with this chapter or it appears that alcoholic beverages are being or have been sold, served or drunk therein in violation of any provision of this chapter, they may, after hearing or opportunity therefor, modify, suspend, revoke or cancel such license, ...." M.G.L. c. 138, § 23.

Here, conditions were placed on the license by virtue of a Settlement Agreement.

"The Local Board has the burden of producing satisfactory proof to the Commission that the licensee committed the alleged violations." Jaman Corp., d/b/a Crossroads (ABCC Decision Nov. 4, 2010). Accordingly, here, the Local Board has the burden of producing satisfactory evidence that the Licensee violated conditions of its license.

Specifically, the Licensee is alleged to have violated two (2) conditions of its license including designating its lower entry door as an emergency exit and also meeting and conferring with the Fire Chief and the Building Commissioner within 30 days of the execution of the Settlement Agreement which took place on May 29, 2019. When the Licensee failed to meet and/or confer with both the Fire Chief and the Building Commissioner within the 30 days, the Local Board informed the Licensee he was being given an extension to July 31, 2019 to do so.

Mr. Arsenault testified that he initially locked the rear door in an effort to comply with the condition but then had concerns regarding the safety of his patrons and employees. He determined that keeping the rear door locked was a safety hazard and thus, kept it unlocked during operating hours. He admitted that the door is currently unlocked and utilized by patrons and employees.

On or around August 6, 2019, more than sixty (60) days after the execution of the Settlement Agreement and after the expiration of the extension, Mr. Arsenault contacted the Fire Chief by telephone to discuss the rear emergency door. Mr. Arsenault admitted that he did not meet with the Building Commissioner.

The Commission finds that the Licensee failed to comply with the conditions of its license.

### CONCLUSION

Based on the findings above, the Alcoholic Beverages Control Commission ("Commission") **APPROVES** the action of the Local Board in finding the Licensee violated the two (2) conditions of the license.

The Commission **APPROVES** the action of the Local Board for imposing a penalty of a 7-day suspension.

**ALCOHOLIC BEVERAGES CONTROL COMMISSION**

Crystal Matthews, Commissioner



Jean M. Lorizio, Chairman



Dated: October 26, 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: Jerold G. Paquette, Esq.  
Alexandra B. Rubin, Esq.  
Local Licensing Board  
Frederick G. Mahony, Chief Investigator  
Administration, File