

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

Steven Grossman
Treasurer and Receiver General

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Chairman

VASTA, INC. D/B/A KWIK STOP LIQUORS
18-20 RAILROAD ST.
WINCHENDON, MA 01475
LICENSE#: 148400024
HEARD: 04/16/2014

This is an appeal of the action of the Town of Winchendon Board of Selectmen (the "Local Board" or "Winchendon") for revoking the M.G.L. c. 138 §15 license of Vasta, Inc. d/b/a Kwik Stop Liquors (the "Licensee" or "Vasta" or "Kwik Stop") located at 18-20 Railroad Street, Winchendon, MA. The Licensee timely appealed the Local Board's decision to the Alcoholic Beverages Control Commission (the "Commission") and a hearing was held on Wednesday, April 16, 2014.

The Local Board held a hearing on January 27, 2014, after which it voted unanimously to revoke Vasta Inc.'s §15 all alcohol package store license.

The following documents are in evidence as exhibits:

1. Vasta Common Stock, 1,000 shares, in the name Vasilios Halkiadakis and A. Halkiadakis;
 2. Vasta Common Stock, 1,000 shares, in the name Anastasia Halkiadakis;
 3. Licensee's Articles of Organization;
 4. Licensee's Filings with the Secretary of State, Corporations Division;
 5. Licensee's Application to the Town of Winchendon; and
 6. Licensee's Addendum to Article V in Articles of Organization.
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- A. Local Board's Notice of Hearing dated 1/16/2014;
 - B. Local Board's Approved Minutes of Meeting held 1/27/2014;
 - C. Winchendon Police Department Summons Report dated 3/25/2014;
 - D. Local Board's Decision dated 1/28/2014;
 - E. Local Board's Amended Decision dated 3/24/2014;
 - F. Local Board's Liquor License Penalty Guidelines;
 - G. Winchendon Police Department Arrest Report dated 1/23/2014 for Vasilios Halkiadakis.

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

The Commission took Administrative Notice of the Licensee's Commission Records.

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

FACTS

1. Vasta, Inc. d/b/a Kwik Stop Liquors is the holder of an all alcoholic beverages off premises package store license issued pursuant to M.G.L. c. 138, §15. Vasta, Inc. is a Massachusetts corporation which was formed on January 1, 2003 and is located at 18-20 Railroad Street, Winchendon, Massachusetts. (Testimony, Commission Records)
2. Vasilios Halkiadakis, is the President, member of the Board of Directors, and fifty percent (50%) shareholder of Vasta. Mrs. Anastasia Halkiadakis, who is married to Vasilios Halkiadakis, is the Treasurer, Clerk, member of the Board of Directors, and fifty (50%) shareholder of Vasta. Mrs. Halkiadakis is also the license manager of Vasta. (Testimony, Commission Records)
3. Detective Wolski of the Winchendon Police Department, testified before the Commission that he began receiving information that Vasilios Halkiadakis was selling illegally obtained prescription medication (pills believed to be oxycodone) from Kwik Stop. (Testimony)
4. Beginning on December 13, 2014, and utilizing the services of a confidential informant, Detective Wolski conducted three (3) controlled buys at the Kwik Stop package store, the target of which was Vasilios Halkiadakis. (Testimony)
5. On each of the three occasions, the confidential informant went into the store with marked bills of U. S. currency, and returned with pills, providing them to the Winchendon Police. (Testimony)
6. While Detective Wolski was involved with the surveillance of each of the controlled buys, he testified that he was not in a position to directly observe/witness on any of the three occasions the transaction between the confidential informant and Mr. Halkiadakis. (Testimony)
7. During the Commission hearing, Detective Wolski declined to provide the dates of the controlled buys or the quantities involved due to a pending criminal case, and the need to protect the identity of the confidential informant. (Testimony)
8. On each of the three occasions, Detective Wolski testified that he identified the pills by their appearance as containing Oxycodone, a class B narcotic/controlled substance, commonly referred to as Percocet. (Testimony)
9. Detective Wolski had retained the pills and as of the Commission hearing date, he did not have a certificate of chemical analysis proving that the pills recovered were each a narcotic or a controlled class B substance. (Testimony)
10. On the basis of these controlled buys, Detective Wolski obtained a search warrant from the Winchendon District Court which was executed on January 14, 2014. (Testimony)
11. On Tuesday January 14, 2014, Detective Wolski along with other detectives of the North Worcester County Drug Task Force ("NWCDTF") executed a search warrant for drugs at the licensed premises of Kwik Stop Liquors. (Exhibit C, Testimony)
12. During the course of the execution of the search warrant at the licensed premise, among the items recovered were the marked bills of U. S. currency used to purchase pills during the controlled buys. (Testimony, Exhibit G)
13. On January 14, 2014, the Winchendon Police arrested Vasilios Halkiadakis at the licensed

premises. At the time of the arrest, police took possession of certain items, including money in the sum of \$12,193.00. (Testimony, Exhibit G)

14. Upon searching Vasilios's pockets, Detective Wolski found a glassine sandwich containing 40 and one-half round blue pills of 30 milligrams (mg.) each. (Testimony, Exhibit G)
15. Detective Wolski testified that he visually identified the pills as Oxycodone, a class B drug. (Exhibit C, Testimony)
16. Vasilios Halkiadakis denied that he was selling the pills, and stated that they were for his personal use. (Testimony)
17. Detectives found additional drugs related to a prescription for five milligram (5 mg.) Oxycodone pills in a locked store safe. (Testimony, Exhibit C)
18. No prescription bottle was ever found for the 30 milligram round blue pills recovered from the pocket of Mr. Halkiadakis. (Testimony, Exhibit C)
19. While conducting their search, detectives entered a storage room of the building where they observed items wrapped in Christmas paper. The objects included a 47-inch Vizio television; a camcorder; a GPS device; a laptop computer; a compound hunting bow; a Bluetooth portable speaker, and a Troy Built generator. (Exhibit C, Testimony)
20. Vasilios Halkiadakis told Winchendon Police that on several occasions, different people had brought these items for him to purchase; however, Vasilios did not identify the persons from whom he purchased the items. Vasilios stated that he did not know if the items were stolen. (Exhibit C, Testimony)
21. Detective Wolski testified that he determined from his investigation, and after speaking to a Walmart employee, that the items recovered from the package store originally came from Walmart stores in the area. Detective Wolski testified that the Walmart employee told him that although these items should have been sold at the stores, the stores have no record that these items were ever actually sold or purchased in the stores. (Testimony)
22. No witnesses from Walmart or elsewhere testified as to the ownership of the 47-inch Vizio television; a camcorder; a GPS device; a laptop computer; a compound hunting bow; a Bluetooth portable speaker, and a Troy Built generator which were seized. (Testimony, Commission hearing)
23. Detectives placed Vasilios Halkiadakis under arrest and charged him with possession of a Class B substance, and for possession with intent to distribute a Class B substance, and for receiving stolen property under \$250.00, and for receiving stolen property over \$250.00. (Exhibit C, Testimony)
24. Detective Wolski testified that the chemical analysis of the pills was not yet completed by the drug lab, and therefore there were no certificates of drug analysis presented in this matter, nor admitted in evidence. (Testimony)
25. There was no evidence before the Commission that any type of field tests were conducted on the pills to determine the identity or chemical composition of the pills seized. (Testimony, Commission Hearing)

26. Detective Wolski was not qualified during the Commission hearing as an expert in narcotics. (Testimony)
27. Anastasia Halkiadakis testified at the Commission hearing that after the arrest of Mr. Vasilios Halkiadakis, she took immediate steps to remove him from the license and the corporation in general. (Testimony, Exhibit 1-4)
28. On January 14, 2014, Mr. Halkiadakis signed over his shares to Anastasia Halkiadakis, and resigned as President and member of the Board of Directors. He was fired from Vasta, Inc., removed from the payroll, and then removed from the family home. (Testimony, Exhibit 1-4)
29. Mrs. Halkiadakis is attempting to enact a transfer of the corporate stock, as well as changes in the officers of the corporation by taking on the role as President, and the sole member of the Board of Directors. (Testimony)
30. Although Mrs. Halkiadakis is listed as the License Manager, Anastasia Halkiadakis testified that Mr. Halkiadakis "typically ran that store" and that he was "solely there as an owner/operator." (Testimony)
31. Mrs. Halkiadakis indicated that she did the ordering of alcoholic beverages and things which did not need to be done physically in the store, and that she was there only four days during October of 2013. (Testimony)
32. Mrs. Halkiadakis indicated that she did not spend any time at the liquor store during November and December of 2013, because she was busy running another section 15 retail package store which they own in Lunenburg, Massachusetts. (Testimony)
33. Mrs. Halkiadakis testified that she spent 5% of her time in the Winchendon store, and 95% of her time in the Lunenburg store. (Testimony)
34. Mrs. Halkiadakis testified that she had no idea that Mr. Halkiadakis was selling narcotics and that she had never seen these (television, GPS, laptop) items while she was in the store. (Testimony)
35. Mrs. Halkiadakis replied that she had no idea that anything was taking place, and that although she was the license manager, she spent most of her time at their Lunenburg store. (Testimony)
36. Since this incident has occurred, Anastasia Halkiadakis has been at the Winchendon store almost every day and will continue to do so. Mrs. Halkiadakis stated she had faith in her significant other and had absolutely no idea what was occurring at the Winchendon location. (Testimony)
37. Vasta, Inc. d/b/a Kwik Stop Liquors has no history of previous violations. (Commission Records)
38. The Local Board found that Vasta violated the Board of Selectmen's Policies and Procedures, no. 400-32-02: Liquor License Violation Penalty Guidelines, specifically narcotics transactions on licensed premises, commission of a crime involving moral turpitude, receiving stolen Property either by licensee on premises or by an employee on premises. (Exhibit E)
39. The "Liquor License Violation Penalty Guidelines" of Winchendon provide a progressive penalty structure for the Local Board to consider when imposing sanctions against licensees. (Exhibit F)
40. The "Liquor License Violation Penalty Guidelines" provide that for a first violation within 5 Years, the sanction generally runs from a warning letter to a five (5) day suspension, regardless of the amount of penalty suspended, if any. (Exhibit F)

41. For a second violation within five years, the "Liquor License Violation Penalty Guidelines" provide that a penalty should generally run from a three to fourteen (3-14) day suspension, regardless of amount of penalty suspended, if any. (Exhibit F)
42. For a third violation with five years, the "Liquor License Violation Penalty Guidelines" generally provide that a penalty should run from a seven (7) day suspension up to revocation of license. (Exhibit F)
43. The "Liquor License Violation Penalty Guidelines" of Winchendon also provide that: [t]he Board, after a hearing with the licensee, and in accordance with mitigating and aggravating factors presented, retains the authority to deviate from these penalty guidelines where the circumstances are appropriate." (Exhibit F)
44. Moreover, the "Liquor License Violation Penalty Guidelines" also provide that "[w]hile the Board will endeavor to impose penalties upon licensees in a manner consistent with these regulations, where exigent or special circumstances warrant, such as a violation of the regulations resulting in serious personal injury or death, the Board retains the authority in such circumstances to immediately order a full hearing, provide a licensee an opportunity to present evidence, and to revoke a license where the evidence so warrants a revocation." (Exhibit F)
45. On March 24, 2014, the Local Board issued an amended Notice of Action which contained amended language specifically outlining the offenses which the Local Board found Vasta had violated, as well as outlining that the Local Board had made factual findings to support the same. (Exhibits D & E)
46. The Local Board found that Vasta was responsible for violating 204 CMR 2.05 (2) and that the licensee also violated the Board of Selectmen's Policies and Procedures, no. 400-32-02: Liquor License Violation Penalty Guidelines, specifically, narcotics transactions on licensed premises, a Commission of a Crime Involving Moral Turpitude, and Receiving Stolen Property either by licensee on premises or by an employee on premises. (Testimony, Exhibits C, D, E)
47. On January 28, 2014, the Local Board revoked the license of Vasta, Inc. d/b/a Kwik Stop Liquors after finding violations for the aforementioned incidents. (Testimony, Exhibits C, D, E)

DISCUSSION

The Local Board has the burden of producing satisfactory proof that the licensee violated 204 CMR 2.05(2) permitting disorder, disturbance, or illegality on the licensed premises, M.G.L. c. 138, §64, and that the penalty imposed by the local board was a reasonable exercise of its lawful discretion.

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. United Food Corp v. Alcoholic Beverages Control Commission, 375 Mass. 240 (1978). 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. See, e.g. Devine v. Zoning Bd. of Appeals of Lynn, 332 Mass. 319, 321 (1955); Josephs v. Board of Appeals of Brookline, 362 Mass. 290, 295 (1972); Dolphino Corp. v. Alcoholic Beverages Control Comm'n, 29 Mass.App.Ct. 954, 955 (1990) (rescript)." The Local Board has the burden of producing satisfactory proof to the Commission that the licensee committed the alleged violations and that the penalty imposed by the Local Board was a reasonable exercise of its lawful discretion. 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, 710 (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).

In the context of an ongoing drug dealing operation operating out of a licensee's store front, the Commission is not required to make a finding that the licensee *actually knew* that drug dealing was going on in their licensed premises. As the Appeals Court held in New Palm Gardens Inc. v. Alcoholic Beverages Control Commission, 11 Mass. App. Ct. 785, 798 (1981), "[i]t is ... quite possible for a licensee to offend the regulatory scheme without scienter." The obligation of a licensee under the law is clear. A vendor who sells alcohol is "bound at his own peril to keep within the condition of his license." Commonwealth v. Gould, 158 Mass. 499, 507 (1893), Burlington Package Liquors, Inc. v. Alcoholic Beverages Control Commn., 7 Mass. App. Ct. 186, 190 (1979).

Moreover, the Code of Massachusetts Regulations clearly and directly requires a licensee to exercise and maintain control over a licensed premises. 204 CMR 2.05(2). Said code provision provides:

"[n]o 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. *The licensee shall be responsible therefor, whether present or not.*" (Emphasis supplied).

Attribution of responsibility for employee behavior to alcoholic beverages licensees has been consistently upheld. C.F., Rum Runners v. ABCC, 43 Mass. App. Ct. 248 (1997), Rico of the Berkshires v. Alcoholic Beverages Control Commission, 19 Mass. App. Ct. 1026 (1985). Where there is evidence of a drug trade taking place on a licensed premises and where a licensee later disavows knowledge thereof, it is clear that the Commission can infer that "a manager who wanted to see would have seen." Rico of the Berkshires v. Alcoholic Beverages Control Commission, 19 Mass. App. Ct. 1026, 1027 (1985).

The task before the Commission is to weigh the evidence and make a determination as to whether or not the Local Board has met its burden to establish violations by satisfactory proof, and whether or not the penalty imposed by the local board was a reasonable exercise of its lawful discretion.

The clear weight of the testimony is that Mr. Halkiadakis was the principal member of the corporation operating the establishment known as Kwik Stop Liquors. The evidence is clear that he was the person most regularly involved with the day to day operation of the business, and that Mrs. Anastasia Halkiadakis, as license manager under c. 138, §26, trusted him to be the person present operating the licensed premises. That Mr. Vasilios Halkiadakis was an owner and officer of Vasta Inc. is undisputed, and that he was arrested on January 14, 2014, and charged with a number of serious criminal offenses is also undisputed.

After the arrest of Mr. Vasilios Halkiadakis on January 14, 2014, both Vasilios and Anastasia took immediate and deliberate actions to extricate Vasilios Halkiadakis from the ownership and control structure of Vasta, Inc. They immediately removed him as a Member of the Board of Directors, Vasilios immediately transferred his shares to Anastasia, and he immediately resigned as President of the corporation. Moreover, Mr. Vasilios Halkiadakis was then removed from the company payroll.

In the instant case, the Commission must examine alleged illegalities in the absence of a criminal conviction. It is well established that the question of whether a criminal statute has been violated is within the proper authority of the Local Board and the Commission, even in the absence of a criminal conviction. New Palm Gardens v. ABCC, 11 Mass. App. Ct. 785 (1981). The statutory scheme provided by Chapter 138 gives the Commission the authority to grant, revoke and suspend licenses, and was "enacted . . . 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. Board of Registration in Medicine, 383 Mass. 299 , 317 (1981).

As the Appeals Court provided in New Palm Gardens, “both the Supreme Judicial Court and this court have upheld suspensions or revocations of licenses on findings by licensing authorities of violations of criminal statutes.” New Palm Gardens v. ABCC, 11 Mass. App. Ct. 785, 789-790 (1981), citing Olde Towne Liquor Store, Inc. v. Alcoholic Beverages Control Commn., 372 Mass. 152 , 153 (1977), Aristocratic Restaurant of Mass., Inc. v. Alcoholic Beverages Control Commn. (No. 2), 374 Mass. 564 , 565, appeal dismissed, 439 U.S. 803 (1978). United Food Corp. v. Alcoholic Beverages Control Commn., 375 Mass. 238, 240 (1978). Boylston-Washington, Inc. v. Alcoholic Beverages Control Commn., 8 Mass. App. Ct. 396 (1979), see Saxon Coffee Shop, Inc. v. Boston Licensing Bd., 380 Mass. at 928 (1980).

Moreover, the standard of review for finding violations of criminal statutes by the Commission is also well settled. M.G.L. c. 138, §64 specifically authorizes discipline upon “satisfactory proof” of a violation. Accordingly, the statutorily provided standard of review of agency action is whether the agency action is supported by “substantial evidence.” M.G.L. c. 30A, §14(7)(e), see also New Palm Gardens Inc. v. Alcoholic Beverages Control Commission, 11 Mass. App. Ct. 785, 798 (1981). This standard has been consistently applied in cases where revocation or suspension of a license has been grounded on the violation of a statute or regulation. Id., at 790.

The Local Board has found the Licensee responsible for a violation of 204 CMR 2.05(2) which provides:

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. The licensee shall be responsible therefor, whether present or not.

To prove a case of permitting an illegality under the facts of this case, the Local Board must *only* introduce evidence of activities that, taken together, demonstrate that the licensee actually “permitted a disorder, disturbance or illegality of any kind to take place in or on the licensed premises.” In the instant case, the Local Board contends that the licensee violated 204 CMR 2.05(2) by possessing a Class B drug (Percocet containing oxycodone) on the licensed premises without a prescription, and/or by possessing same with the intent to distribute. They also contend that the licensee violated 204 CMR 2.05(2) by receiving stolen property.

At the hearing, the Commission heard testimony from Detective Wolski of the Winchendon Police Department regarding the drug dealing allegations leading up to the arrest of Vasilios Halkiadakis on January 14, 2014. The evidence admitted before the Commission demonstrates that Detective Wolski received information alleging that Mr. Halkiadakis was dealing drugs out of the licensed premises.

The evidence also demonstrates that Detective Wolski worked with a confidential informant on three different occasions to conduct controlled buys of pills from Mr. Halkiadakis at the licensed premises. The Commission heard testimony that on each occasion, a confidential informant went into the licensed premises to purchase pills from Vasilios Halkiadakis, and that on each occasion, the confidential informant returned with the pills as requested. Detective Wolski testified that he did not actually witness any of these three transactions.

Detective Wolski testified that on the basis of these controlled buys, he obtained a search warrant for the licensed premises. In the course of the execution of this search warrant, Detective Wolski recovered prescription drugs from Vasilios Halkiadakis. Specifically, Winchendon Police and Detective Wolski recovered pills for which Mr. Halkiadakis had a prescription identifying them as Percocets. Also in Vasilios’ possession, the police recovered 40 and ½ round blue pills for which no prescription was found.

The Local Board must demonstrate that the pills recovered actually contain oxycodone in this matter before the Commission, and the charge must be proven by satisfactory proof pursuant to M.G.L. c. 138, §64. Additionally, the statutorily provided standard of review of agency action is whether the agency action is supported by "substantial evidence." M.G.L. c. 30A, §14(7)(e), see also New Palm Gardens Inc. v. Alcoholic Beverages Control Commission, 11 Mass. App. Ct. 785, 798 (1981).

In the instant case, there is circumstantial evidence which includes Detective Wolski's visual identification of the pills seized which he based on his training and experience, three controlled buys, and the presence of marked bills found at the premises. However, Detective Wolski testified that he did not actually witness any of the transactions between the confidential informant and the licensee. Furthermore, Detective Wolski was not qualified as an expert witness in these proceedings before the Commission.¹

The criminal proceedings in this matter were pending at the time of the Commission hearing. The Commission heard testimony that some of the pills recovered were sent to the drug lab for chemical analysis. However, there were not any certificates of analysis submitted by the Local Board, nor were any drug analysis certificates admitted in evidence during the Commission proceeding. There was also no evidence before the Commission of any field tests being conducted on the pills recovered as proof of their chemical composition, and that these pills were in fact oxycodone or a class B controlled substance. Although the Commission was presented with circumstantial evidence regarding proof of identification of the substance seized, there was no certificate of analysis presented to prove that the pills were in fact oxycodone, a Class B controlled substance. This, the Commission cannot ignore.

To prove a criminal case for possession of an illegal drug for instance, "the Commonwealth must prove beyond a reasonable doubt that the substance distributed was, in fact," a drug (in this case containing oxycodone). Commonwealth v. King, 461 Mass. 354 (2012), Commonwealth v. Vasquez, 456 Mass. 350, 361, 923 N.E.2d 524 (2010). Accordingly, this would suggest that in the instant case, the Local Board would have to apply the same logic only to meet the lesser satisfactory proof by substantial evidence test. The Supreme Judicial Court of Massachusetts has held "We suspect it would be a rare case in which a witness's statement that a particular substance looked like a controlled substance would alone be sufficient to support a conviction." Commonwealth v. Dawson, 399 Mass. 465, 467 (1987).

On the basis of the totality of the evidence presented to the Commission, the Commission is left with the question of whether or not the Local Board has met its burden of proof that Mr. Halkiadakis was unlawfully in possession of a Class B controlled substance, while in operation of the licensed premises as an owner/operator, and as a corporate officer of Vasta, Inc.

The Commission finds that the Local Board has not met its burden of satisfactory proof by substantial evidence that the pills were in fact oxycodone, a class B substance. Therefore, the Commission finds that satisfactory proof has not been demonstrated to support a finding that Mr. Halkiadakis was in fact in possession of a Class B drug/controlled substance with the intent to distribute.

The Town of Winchendon found the Licensee in violation of Winchendon Board of Selectmen's Policies and Procedures No. 400-32-02, for Receiving Stolen Property. The offense of receiving stolen property is committed when a person has bought, received, or aided in the concealment of property which has been stolen or embezzled, knowing that the property was stolen or embezzled. M.G.L. c. 266, §60², see

¹ This is not normal practice during Commission proceedings; however, since the statements of the Detective are the only evidence identifying the substance of the pills recovered, the Commission must consider this factor.

² Chapter 266 Section 60 provides: Whoever buys, receives or aids in the concealment of stolen or embezzled property, knowing it to have been stolen or embezzled, or whoever with intent to defraud buys, receives or aids in the concealment of property, knowing it to have been obtained from a person by a false pretense of carrying on business and dealing in the ordinary course of trade, shall, if the value of such property does not exceed two hundred and fifty dollars, be punished for a first offense by

generally Commonwealth v. Donahue, 369 Mass. 943, 949, (1976) (stating the elements of the offense). The person must have intended to deprive the owner of the property of his rightful use of it, but that intent may be inferred from all of the facts. Id.

The evidence before the Commission clearly provides that a wide variety of items were recovered in the execution of the search warrant, that one would not normally expect to find in a package store. Included among these items were a 47" Vizio high definition television, a camcorder, a GPS device, a laptop computer, and a printer. Some of the items were wrapped in Christmas paper, yet were found on January 14, approximately two weeks after Christmas.

This leaves the Commission to examine the question of whether Mr. Halkiadakis intended to deprive the rightful owner of the property of his rightful use of it. Generally "[A] defendant may be convicted of receiving stolen property 'if he either knew or believed [the] property was stolen property at the time it came into his possession, or at any time while it was in his possession he ascertained that it was stolen property and he undertook to deprive the owner of his rightful use of it,' " Commonwealth v. Kirkpatrick, 26 Mass. App. Ct. 595, 599, 530 N.E.2d 362 (1988): quoting from Commonwealth v. Kronick, 196 Mass. 286, 288, 82 N.E. 39 (1907).

No specific evidence was offered as to any particular item connecting Mr. Halkiadakis to actual knowledge that an item was stolen. That is, the Commission heard no evidence which directly indicated that Vasilios Halkiadakis had personal knowledge about a particular item's origin as stolen property.

The evidence does overwhelmingly demonstrate that Mr. Halkiadakis knowingly possessed these items, and that these items were unusual for a package store. Nonetheless, the Commission finds that insufficient evidence was presented to convince the Commission that Mr. Halkiadakis had personal knowledge that any of the particular items were stolen. Furthermore, there was no direct evidence as to the proof of ownership of these items. Although Detective Wolski testified that he later determined that some these items were from local stores, there was no direct evidence presented to the Commission regarding the ownership of these seized items or that they were stolen. Consequently, on the basis of reviewing and considering the totality of the evidence presented, the Commission finds that insufficient evidence was presented to find that the Licensee violated Winchendon Board of Selectmen's Policies and Procedures No. 400-32-02, "Receiving Stolen Property."

The Local Board revoked the chapter 138, §15 license of Vasta. The Commission finds that the Local Board has not met its burden of satisfactory proof that the pills recovered from Vasilios Halkiadakis were a class B controlled substance, and has not met its burden of satisfactory proof that Vasilios Halkiadakis knowingly received stolen property of a greater value than \$250.00, and of a lesser value than \$250.00.

The Local Board found four separate violations arising out of this incident. The Local Board found the Licensee responsible for the following offenses:

1. a violation of 204 CMR 2.05(2);
2. Narcotics Transactions on the Premises;
3. A Commission of a Crime Involving Moral Turpitude; and
4. Receiving Stolen Property.

imprisonment in jail or house of correction for not more than two and one half years, or by a fine of not more than two hundred and fifty dollars; or, if for a second or subsequent offense, or if the value of such property exceeds two hundred and fifty dollars, be punished by imprisonment in the state prison for not more than five years, or by imprisonment in a jail or house of correction for not more than two and one half years or by a fine of not more than five hundred dollars.

Due to the lack of any proof of the chemical analysis for the pills, and the lack of substantial evidence that the pills recovered at the package store were in fact a class B controlled substance, considered in conjunction with the lack of substantial evidence that the items recovered at the premises were in fact stolen, the Commission disagrees with the findings of the Local Board involving these four violations on the grounds of insufficient evidence.

Based on the Commission's finding that these violations were not proven, the Commission does not approve of the Local Board's action of revocation. Moreover, as a result of the Commission's findings that the Local Board did not meet its burden of proof, the Commission need not determine the reasonableness and appropriateness of the Local Board's sanctions of the licensee based on its policy of progressive discipline.

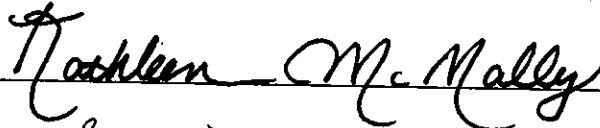
CONCLUSION

Based on the evidence, the Alcoholic Beverages Control Commission **DISAPPROVES** the action of the Town of Winchendon Board of Selectmen in revoking the M.G.L. c. 138 §15 license of Vasta, Inc. d/b/a Kwik Stop Liquors.

However, the Commission supports the action taken by Mrs. Halkiadakis to become the sole officer, director, and manager of the licensee, Vasta, Inc.

ALCOHOLIC BEVERAGES CONTROL COMMISSION

Kathleen McNally, Commissioner



Susan Corcoran, Commissioner



Dated: October 3, 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: Steven W. Panagiotis, Esq. via facsimile 978-342-3444
Brian W. Riley, Esq. via facsimile 617-654-1735
Frederick G. Mahony, Chief Investigator
Local Licensing Board
Administration
File