



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

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

**DECISION**

**1 EXCHANGE PLACE, INC.**  
**D/B/A MICHAEL'S CIGAR BAR**  
**1 EXCHANGE PLACE**  
**WORCESTER, MA 01608**  
**LICENSE NO.: 00504-GP-2358**  
**HEARD: 05/03/2023 and 5/24/2023**

This is an appeal of the action of the City of Worcester License Commission (the "Local Board" or "Worcester") in suspending the M.G.L. c. 138, § 12 all alcoholic beverages license of 1 Exchange Place, Inc. d/b/a Michael's Cigar Bar ("Licensee" or "Michael's") located at 1 Exchange Place, Worcester, Massachusetts for ten (10) days, with five (5) days to be served and five (5) days to be held in abeyance for one year. The Licensee timely appealed the Local Board's decision to the Alcoholic Beverages Control Commission (the "Commission" or "ABCC"), and remote hearings were held via Microsoft Teams on Wednesday, May 3, 2023, and Wednesday, May 24, 2023.

The following documents are in evidence as exhibits:

1. Letter from the License Commission, 1/30/23;
2. Notice of Decision of License Commission, 3/13/2023;
3. Worcester License Commission Rules and Regulations for the Sale of Alcoholic Drinks to be Drunk on Premises;
  - (A) Raw Security Camera Video from Michael's Cigar Bar (37 minutes);
  - (B) Chronological Camera Video from Michael's Cigar Bar (17 minutes);
4. Slideshow/Presentation;
5. Aerial Photograph;
6. Pictures of Access Door to Adjacent Building (2);
7. Audio Recorded 911 Call of Incident;
8. Affidavit of Deborah Steele;
9. City of Worcester Fire Department Incident Records.
  - A. Worcester Police Dept. Incident Report for Incident #2022-62689, Officer Ciru;
  - B. Worcester Police Dept. Violation Report for Michael's Cigar Bar, Officer Stout;
  - C. Worcester Police Dept. Incident Report for Incident #2022-62689, Det. Molinari;
  - D. City of Worcester License Commission Meeting, Minutes, 2/23/2023.

There are two (2) audio recordings of the hearings, and eight (8) witnesses testified.

### FINDINGS OF FACT

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

1. 1 Exchange Place, Inc. d/b/a Michael's Cigar Bar ("Licensee" or "Michael's") holds an all-alcohol license exercised at 1 Exchange Place, Worcester, Massachusetts. (Commission Records)
2. On Monday, June 20, 2022, at approximately 2:14 a.m., a 911 operator received a call from a woman requesting help for an unresponsive person on the roof of Michael's Cigar Bar at One Exchange Place. She repeated and confirmed "the roof" and "Michael's Cigar Bar" as her location several times during the first 20 seconds of the call. The 911 call was then transferred to the ambulance dispatch where the caller identified her location as "One Exchange Place" "the roof" and "on the roof of Michael's Cigar Bar". During the call the dispatcher asked the caller to send someone down to the street to direct the first responders to the unresponsive person. (Exhibit 8, 10)
3. The 911 dispatcher again asked for the caller to send someone down to direct the first responders. The caller stated that someone was going down to meet first responders. (Exhibit 8)
4. Based on the information provided by the 911 caller, emergency responders believed there was a medical emergency on the roof of Michael's and that the 911 call came from Michael's. (Testimony)
5. The medical emergency occurred on the rooftop of an adjacent building, not the rooftop of Michael's or inside Michael's. (Testimony, Exhibit 4A, 4B, 6)
6. Michael's was closed at the time of the medical emergency. At approximately 2:12 a.m., Joao Pimental, an employee of Michael's, was on the premises cleaning and cashing out. In addition to Mr. Pimental, two employees: Macario Esperti and Shauna Boudreau, were behind the bar performing closing tasks. Dan Dasho, also an employee, was sitting at the bar using his phone. (Testimony, Exhibit 4A, 4B)
7. At approximately 2:13 a.m., Dan Dasho received a phone call, then stood up and spoke with Ms. Boudreau. They left the main bar area, went into the patio area and then across to the adjacent building's doors which were locked. Ms. Boudreau returned into Michael's and asked Mr. Pimental how to get into the adjacent building from Michael's. He showed Ms. Boudreau and Mr. Dasho how to get to the stairwell in the adjacent building and came back to Michael's to resume closing. (Testimony, Exhibit 4A, 4B)
8. At approximately 2:17:13 a.m., Mr. Suarez, a former employee, who had been at Michael's earlier in the evening, walked onto the patio and into Michael's. Within 50 seconds, he left Michaels and went up the stairwell of the adjacent building. The stairwell, which is across from Michael's patio, is visible through glass doors. (Testimony, Exhibit 4A, 4B)
9. Mr. Pimental was unaware that a medical emergency was occurring on the roof of an adjacent building. Id.

10. At approximately 2:19 a.m., first responders arrived outside of Michael's. Red flashing lights from emergency vehicles were visible from inside the licensed premises and Mr. Pimental immediately went outside using the main door. Id.
11. While outside, Mr. Pimental was asked by emergency personnel how to get on the roof of Michael's. Mr. Pimental pointed to the fire escape which was in the down position and unlocked. He then came back into Michael's. (Testimony)
12. At approximately 2:21 a.m., Mr. Pimental went back to the main door, spoke with emergency personnel and let them in to check the premises. (Testimony, Exhibit 4A, 4B)
13. Within three minutes of emergency responder arrival, at 2:22 a.m., a person emerged from the adjacent building into the courtyard and directed an emergency responder to the medical emergency. (Id.)
14. According to the local rules, all sales must cease at 1:45 a.m. and all patrons must be off the premises by 2.a.m. (Exhibit 3)
15. Earlier that night, the group of people on the roof of the adjacent building had been at Michael's. Some members of the group were off-duty employees of Michael's. The off-duty employees had not worked that night. (Testimony)
16. Michael's licensed premises includes a basement for storage. The basement hallway leads to an emergency exit door that accesses building common areas. The door opens out as an emergency egress but is self-locking to prohibit entry from the common area into the licensed premises. The emergency exit leads to a common hallway where there is a door leading to stairs to the adjacent building. (Testimony, Exhibit 5)
17. The Local Board held a hearing on February 23, 2023, and found Michael's violated Rule #1, Rule #14 and #29 of the Commission Rules and Regulations for the Sale of Alcoholic Drinks to be Drunk on Premises. (Testimony, Exhibit 1, 2, 3)
18. The Local Board imposed a 10-day suspension, with five (5) days to be served and five (5) days to be held in abeyance for one year. (Id.)
19. The Licensee timely appealed the Local Board's decision to the ABCC. (Commission Records)

#### 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) 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. 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, 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. 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). 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 (1979); 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.

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 June 20, 2022.

The Licensee is charged with a violation of Rule #1 of the Local Board’s Rules and Regulations, which provides, “the hours of ...General On Premises are Sunday, 11:00 a.m. to 2:00 a.m. the following morning (Sales to cease at 1:45 a.m.) ... All patrons off the premises by closing hours. ... Licensees and employees may remain upon such premises at any time for the purpose of cleaning, making emergency repairs to, or providing security for such premises or preparing food for the next day’s business or opening or closing the business in an orderly manner.” (Exhibit 2, 3)

Evidence was presented that Mr. Suarez had been a patron of Michael’s on the night of June 19, 2022, and left at approximately 11:45p.m. (Testimony) Mr. Suarez re-entered the licensed premises at approximately 2:17 a.m. and only remained inside for approximately 50 seconds. (Testimony, Exhibit 4A, 4B) The Local Board did not present any evidence that Mr. Suarez had permission to enter the licensed premises after-hours or that he ordered, consumed, or paid for any beverages during that 50 second period. Based on the evidence and testimony at the hearing, the Commission

is not persuaded the Licensee was operating outside of its approved hours and disapproves the action of the Local Board in finding a violation of Local Board Rule No. 1.

The Local Board also found a violation of Rule #14 and Rule #29 of the Local Board's Rules and Regulations. (Exhibit 2, 3) Rule No. 14 states, "[M]anagers of all licensed liquor establishments shall be responsible for all violations or infractions of the law occurring on the premises whether present or not. The Licensee is responsible for any disorder, disturbance or illegality of any kind taking place on licensed premises whether present or not." Rule No. 29 avers "[I]n the event that a disturbance or breach of the peace occurs on the licensed premises resulting in physical injury to any person(s), the licensee or responsible person shall promptly notify the police and shall take all responsible steps to assist such injured person and shall cooperate with police in their investigation." (Id.)

To prove a case of permitting an illegality, the Local Board must 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." 204 C.M.R. 2.05(2); see M.V.U.S.LLC d/b/a Odyssey (ABCC Decision January 17, 2017)

The Local Board argues the Licensee did not have control of its premises and allowed patrons to enter the adjacent property by accessing a common area through its basement and thereafter, the stairs in the common area to access the rooftop of the adjacent building. Evidence was presented that the people on the roof of the adjacent building had been patrons at Michael's Cigar Bar earlier in the night and that they cashed out and left. (Testimony) However, no evidence was presented that the group accessed the roof of the adjacent building utilizing the Licensee's premises or that any other disorder, disturbance or illegality occurred on the licensed premises.

The Local Board argues the Licensee's employees knew or should have known that a medical emergency was occurring on the roof of the adjacent building and were uncooperative with first responders. The Local Board cites the 911 call reporting the medical emergency on the early morning hours of June 20, 2022. (Exhibit 8) The panicked caller repeatedly identifies the location of the emergency as the roof of Michael's Cigar Bar and 1 Exchange Place. Id. However, the medical emergency occurred on the roof of the adjacent building not on the licensed premises. (Testimony, Exhibit 6) The Licensee's video surveillance shows that upon the arrival of the emergency responders, an employee immediately went outside, directed the responders to the fire escape, and then let them in the locked main door of Michael's Cigar Bar to look around. (Testimony, Exhibit 4A, 4B) No evidence was produced that any disturbance or breach of peace occurred at Michael's Cigar Bar or that the Licensee knew or should have known a medical emergency was occurring on the adjacent roof.

The events of the early morning hours of June 20, 2022, described in the 911 call made from the rooftop of the building adjacent to the licensed premises are tragic. However, without evidence a disorder, disturbance or illegality occurred on the licensed premises, the Licensee cannot be found responsible. The Commission is not persuaded that the Licensee committed the alleged violations of the Local Board's Rules #1, #14 and #29.

## CONCLUSION

The Alcoholic Beverages Control Commission **DISAPPROVES** the action of the City of Worcester in finding that 1 Exchange Place, Inc. d/b/a Michael's Cigar Bar committed a violation of Rules #1, #14 and #29 of the Rules and Regulations of the City of Worcester.

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

## **ALCOHOLIC BEVERAGES CONTROL COMMISSION**

Deborah Baglio, Commissioner

*Deborah A. Baglio*

Jean M. Lorizio, Chairman

*Jean M. Lorizio*

Crystal Matthews, Commissioner

*Crystal Matthews*

Dated: April 2, 2025

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: Robert J. Hennigan, Jr., Esq.  
Darina Griffin, Esq., City of Worcester  
Local Licensing Board  
Frederick G. Mahony, Chief Investigator  
Administration, File