



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

Jean M. Lorizio, Esq.
Chairman

DECISION

PAKU CORPORATION D/B/A PAKU LOUNGE
215 CHANDLER STREET
WORCESTER, MA 01609
LICENSE#: 04463-RS-1508
HEARD: 7/25/2022

This is an appeal from the action of the City of Worcester Licensing Board ("Local Board" or "Worcester") in suspending the M.G.L. c. 138, § 12 all alcoholic beverages license of Paku Corporation d/b/a Paku Lounge ("Licensee" or "Paku Lounge") located at 215 Chandler Street, Worcester, Massachusetts for a total of 95 days. The Licensee timely appealed the Local Board's decision to the Alcoholic Beverages Control Commission ("Commission" or "ABCC"), and a remote hearing was held via Microsoft Teams on Monday, July 25, 2022.

The following documents are in evidence as exhibits:

1. Local Board's Notice of Hearing, 5/24/2022;
2. Licensee's Video Surveillance, 5/8/2022¹;
3. Photos of Exterior of the Licensed Premises;
4. Local Board's Notice of Decision, 6/6/2022;
5. City of Worcester License Commission Rules & Regulations for the Sale of Alcoholic Beverages to be Drunk on Premises;
6. Audio recording of Local Board's Hearing, 6/2/2022²;
7. Five (5) Still Photographs from Licensee's Exterior Video Surveillance, 5/8/2021;
8. TIPS Certifications of Two Employees;
9. Documents re: Commonwealth v. Angel Ortiz-Santos, Superior Court Indictment 21-0192 1-3 and Commonwealth v. Angel Ortiz-Santos, District Court, 2162-CR-001647;
10. Video of Unidentified Person Shooting at Paku Lounge from Mason Street.

¹ The hearing record was left open to allow the Licensee to submit Exhibits 2 and 6. The Commission was notified by letter dated July 21, 2022, that the Licensee was unable to provide said exhibits.

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- A. City of Worcester License Commission Rules & Regulations for the Sale of Alcoholic Beverages to be Drunk on Premises;
- B. Worcester Police Department Violation Report, 5/20/2022, for incident on 5/15/2022;
- C. Worcester License Commission Notice of Hearing of Violation, 5/24/2022;
- D. June 2, 2022 – Transcript and Meeting Minutes of Worcester License Commission;
- E. Local Board’s Notice of Decision, 6/6/2022;
- F. History of Police Incidents at 215 Chandler Street;
- G. Worcester Police Department Violation Report, 5/26/2021, for incident on 5/8/2021;
- H. Local Board’s Notice of Decision, 7/23/2021, for 5/8/2021 incident;
- I. Worcester Police Department Violation Report, 1/24/2020, for incident on 12/28/2019/12/29/2019;
- J. Local Board’s Notice of Decision, 3/5/2020, for 12/28/2019/12/29/2019 incident;
- K. Local Board’s Violation History for Paku Corporation;
- L. Condensed Video Surveillance submitted by the Worcester Police Department at the Local Board’s Hearing, 6/2/2022;
- M. Secretary of the Commonwealth, Corporations Division filing for Paku Corporation, 5/4/2022;
- N. Affidavit of Deborah Steele.

There is one audio recording of this hearing, and three (3) witnesses testified.

FINDINGS OF FACT

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

1. Paku Corporation d/b/a Paku Lounge (“Licensee” or “Paku Lounge”) holds an all-alcohol license approved in September 2018 and exercised at 215 Chandler Street, Worcester, Massachusetts. Ms. Ligia Mustafa is President, Secretary, and Director of the Corporation, and also the Manager of Record. (Commission Records, Exhibit M)
2. On May 15, 2022, at approximately 11:28 p.m., the Worcester Police Department was notified via a shot spotter activation alert of possible gunfire in the area of 215 Chandler Street. Officers responded. (Exhibit B)
3. Sergeant Thomas Needham and Officer Harrington, of the Alcohol Enforcement Unit, conducted the follow up investigation and on May 17, 2022 went to Paku Lounge. Neither Sgt. Needham nor Officer Harrington was present at the licensed premises on the night of May 15, 2022. (Testimony)
4. Officer Harrington attempted to contact Ms. Mustafa, Manager of Record, but was unsuccessful. Officer Harrington obtained and reviewed the Licensee’s video surveillance of the evening of 5/15/2022 beginning at 7:46 p.m. He observed what he believed to be violations of Rules Nos. 7, 14, 17, 28, 37 of the Worcester Commission Rules and Regulations for the

sale of Alcoholic Beverages to be Drunk on Premises and 204 CMR 2.04: to wit: M.G.L. c. 270 § 22(1) (Testimony, Exhibits B, D, L)

5. Video surveillance from the public street depicts an unidentified individual on the street near Paku Lounge who fired a weapon in the direction of the Licensee's outdoor patio area. (Exhibit 10)
6. The condensed version of the Licensee's video surveillance depicts different segments of time on May 15, 2022, including footage of a V.I.P. room and the outdoor patio. (Exhibit L)
7. The condensed version of the Licensee's video surveillance depicts the outdoor patio at the time the unidentified male on the street fired his weapon towards the patio. The video depicts patrons reacting to the gunfire, and individuals on the outdoor patio are observed brandishing firearms. One of the men observed with a firearm on the outdoor patio was observed on the surveillance video inside the licensed establishment earlier in the night of May 15, 2022. (Exhibit L)
8. On June 2, 2022, the Local Board held a hearing on the Licensee's alleged violations of the Rules and Regulations of the Local Board:

Rule #7 – Sale to persons under twenty-one (21) are prohibited and are punishable by fine or imprisonment, or both. (Chapter 138, Section 34)

Rule #14 – Managers of all licensed liquor establishments shall be responsible for all violations or infractions of 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 #17 – Taverns, Restaurants, General On-Premises, Hotels and Clubs are prohibited from purchasing alcoholic beverages, other than malt and wine, in bottles or original containers holding less than 1/5 gallon or .75 liters. Taverns, Restaurants, General On-Premises, Hotels and Clubs are prohibited from making sales by bottles or package to be taken away from the premises. No alcoholic beverages to be consumed except in areas specified on the license.

Rule #28 – Managers and all persons involved in the service of liquor are required to submit a Server Training Program certification, approved by the Worcester Police Department, within thirty calendar days of each person's first day of work, except that persons serving under the authority of one day special license shall be server trained prior to serving any alcoholic beverages. A copy of the manager's certificate must be on file at the Department of Planning & Regulatory Services. A copy of the server training certificate of each employee or volunteer involved in the service of liquor shall be kept on the premises.

Rule #37 – Bottle Service: the sale of alcoholic beverages by the bottle, except for malt beverages and wine as defined in Chapter 138 of the Massachusetts General Laws, shall not be allowed in the City of Worcester.

204 CMR 2.04: to wit: M.G.L. c. 270, §22(1) – It shall be the responsibility of the employer to provide a smoke free environment for all employees working in an enclosed workplace. (Exhibits A, D)

9. By decision dated June 6, 2022, the Local Board found the Licensee in violation of Rules Nos. 7, 14, 17, 28, 37 and 204 CMR 2.04: to wit: M.G.L. c. 270, § 22(1) and voted to impose a 90-day suspension to begin immediately, with a previous 5-day suspension which had been held in abeyance to be brought forward, for a total of 95 days to be served.³ The Local Board also placed several conditions on the license.⁴ (Exhibit 4)

10. The Licensee timely appealed the Local Board's decision to the ABCC. (Commission Records)

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

³ The Licensee orally stipulated at the Commission hearing to violations of Rules 17, 28, 37 and 204 CMR 2.04: to wit: M.G.L. c. 270, § 22(1). As such, the only violations which are the subject of the appeal before the Commission are those of Rules 7 and 14.

⁴ The Licensee orally agreed at the Commission hearing that the conditions placed upon the license were not the subject of this appeal.

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.

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 Worcester Licensing Board has the burden of producing satisfactory proof that the Licensee committed the violations that are alleged to have occurred on May 15, 2022.

The Worcester Licensing Board found the Licensee violated Rules 7 and 14. (Exhibit 4)

Rule 7 – Sale to persons under twenty-one (21) are prohibited and are punishable by fine or imprisonment, or both. (Chapter 138, Section 34)

The Licensee is charged with a violation of Rule 7 of the Local Board’s Rules and Regulations, “[s]ale to persons under twenty-one (21) are prohibited and are punishable by fine or imprisonment, or both. (Chapter 138, Section 34).” Massachusetts General Laws chapter 138, § 34 provides, in part, “[w]hoever makes a sale or delivery of any alcoholic beverage or alcohol to any person under 21 years of age...or whoever, furnishes any such beverage or alcohol for a person under 21 years of age shall be punished...” M.G.L. c. 138, § 34.

The Local Board did not produce any direct evidence as to the Licensee making a sale or delivery of an alcoholic beverage to an underage individual. The Local Board cites the Licensee’s video surveillance and argues it depicts an alleged youthful appearing individual on the outside patio area of the licensed premises, in possession of a cup. However, the Local Board did not offer any evidence as to either the identity or birth date of the individual, or the contents of the cup. (Exhibit L)

While the Local Board presented evidence through the testimony of Officer Patrick Harrington who was found to be professional and credible, he did not have first-hand knowledge of the identity and/or age of the youthful appearing male.

The Commission finds the Local Board has not proved by legally competent evidence that the Licensee violated M.G.L. c. 138, § 34.

Rule 14 – Managers of all licensed liquor establishments shall be responsible for all violations or infractions of 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.

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. 2d 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.

The Local Board presented evidence through the testimony of Worcester Police Sergeant Needham and Officer Harrington as to their observations of the Licensee’s surveillance video. Again, they were found to be professional and credible but were not present at the licensed premises on May 15, 2022, so had no firsthand knowledge as to the alleged violation.

The Local Board also presented a condensed version of the Licensee’s video surveillance from May 15, 2022, depicting the outdoor patio at the time of the shooting. A male individual, who was viewed inside the premises earlier in the video, is seen stepping onto the outdoor patio with a gun in his hand. (Exhibit L)

The Local Board argues the Licensee should have known that patrons may be in possession of firearms but did not produce direct evidence regarding any conduct on the licensed premises that would have put the Licensee or its employees on notice that patrons were in possession of guns. Further, the Local Board did not produce direct evidence of any conduct on the licensed premises that would have put the Licensee or its employees on notice of imminent harm.

The events of May 15, 2022, outside of Paku Lounge, depicted in the videos (Exhibits 10, L) are of great concern as public safety was seriously threatened. However, without evidence that the Licensee should have foreseen what took place, it cannot be found responsible. The Local Board has not proven by legally competent evidence and the Commission is not persuaded that the Licensee committed the alleged violation of Rule 14 of the Local Board.

CONCLUSION

The Alcoholic Beverages Control Commission ("Commission") **DISAPPROVES** the action of the City of Worcester Licensing Board in finding that Paku Corporation d/b/a Paku Lounge committed a violation Rules # 7 and #14 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 violation with regards to Rules #7 and #14 of the Rules and Regulations of the City of Worcester.

The Commission **DISAPPROVES** the action of the City of Worcester in suspending the license of Paku Corporation d/b/a Paku Lounge for 90 days.

As such, the Commission remands this matter to the Local Board to assess sanctions which are consistent with violations of Rules #17, #28 and #37 of the Rules and Regulations of the City of Worcester and 204 CMR 2.04: to wit: M.G.L. c. 270, §22(1).

ALCOHOLIC BEVERAGES CONTROL COMMISSION

Jean M. Lorizio, Chairman



Deborah Baglio, Commissioner



Dated: June 14, 2024

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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2022-000079-ad-enf

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