



Commonwealth of Massachusetts
Alcoholic Beverages Control Commission
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Jean M. Lorizio, Esq.
Chairman

DECISION

PEREGRINE ENDEAVORS, INC., D/B/A INDUSTRY BAR ROOM/DISTRICT
107 A WATER STREET
WORCESTER, MA 01608
LICENSE#: 150800475
HEARD: 10/11/2018

This is an appeal of the action of the City of Worcester Licensing Commission (the "Local Board" or "Worcester") for suspending the M.G.L. c. 138, § 12 all alcoholic beverage license of Peregrine Endeavors, Inc. d/b/a Industry Bar Room/District ("Licensee" or "District") located at 107 A Water Street, Worcester, Massachusetts for 4 days for a violation of Rule #7 of the Worcester License Commission Rules and Regulations. The Licensee timely appealed the Local Board's decision to the Alcoholic Beverages Control Commission (the "Commission"), and a hearing was held on Thursday, October 11, 2018.

The following documents are in evidence:

1. Joint Pre-Hearing Memorandum;
2. Articles of Organization;
3. 2018 License of Peregrine Endeavors, Inc.;
4. Local Board Decision, 5/24/2018;
- A. Police Report, 3/2/18;
- B. License Commission Hearing Minutes, 5/10/18;
- C. Arrest Report, 2/2/18;
- D. DVD of Video Surveillance;
- E. Photo of bar on 2/2/18 from Video Surveillance; and
- F. Rules and Regulation of the Worcester License Commission.

There is one (1) audio recording of this hearing, and three (3) witnesses testified.

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

FINDINGS OF FACT

1. Peregrine Endeavors, Inc. d/b/a Industry Bar Room/District ("Licensee" or "District") located at 107 A Water Street, Worcester, Massachusetts holds an all alcoholic beverages restaurant license under M.G.L. c. 138, §12. (Commission Records)
2. On February 2, 2018, Officer Patrick Harrington of the License Division of the Worcester Police Department received information from the Leicester Police Department regarding alleged consumption of alcoholic beverages by underage individuals at the licensed premise. (Exhibit A)
3. Leicester Police reported receiving a call at approximately 2:35 A.M. on February 2, 2018 for a single car crash. Upon arriving at the scene, they found a 19-year old female operator (Female #1) and her 20-year old female passenger (Female #2). Officers learned that a second female passenger had fled the area. Officers reported a strong odor of alcohol emitting from the vehicle. After failing several field sobriety tests, Female #1 was placed under arrest for operating a vehicle while intoxicated. (Exhibit A)
4. The Leicester Police Arrest Report indicates that Female #1 has a tattoo of a sea turtle on her left shoulder. (Exhibit C)
5. While at the scene of the accident Female #1 and Female #2 stated that they had consumed alcohol inside the licensed premise. (Exhibit A)
6. Given the information received from the Leicester Police Department, members of the Alcohol Enforcement Unit of the Worcester Police Department spoke with management at the licensed premise and obtained the video surveillance and credit card receipts from the night of the accident. (Exhibit A)
7. The video surveillance shows a female with a turtle tattoo on her left shoulder in possession of an alcoholic beverage. (Exhibit D; Testimony)
8. The credit card receipts do not indicate that either Female #1 or Female #2 made a purchase via credit card at the licensed premise. (Testimony)
9. No member of the Worcester Police Department interviewed Female #1 or Female #2. (Testimony)

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. Ch. 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 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).

The Licensee was charged with a violation of Rule 7 of the Worcester License Commission’s Rules and Regulations which reads “sales to persons under twenty-one (21) are prohibited and are punishable by fine of imprisonment or both. (Chapter 138, Section 34.)”

In this matter, the Local Board produced direct evidence regarding Female #1’s presence in the licensed establishment but only offered direct evidence of her being in possession of an alcoholic beverage and no eyewitnesses or direct evidence as to the Licensee selling an alcoholic beverage to Female #1.

In regard to Female #2, the Local Board produced neither eyewitnesses nor direct evidence regarding her being in the licensed premise and did not produce eyewitnesses or direct evidence as to the Licensee selling an alcoholic beverage to Female #2.

The Worcester Police Officer who testified before the Commission was not present inside District when Female #1 and Female #2 were alleged to have been inside District. As a result, he had no direct knowledge of any of the elements necessary to support a violation of Rule 7.

There was no evidence presented at the Commission hearing as to the Licensee selling alcoholic beverages to Female #1 and/or Female #2.

Therefore, the Commission is persuaded and finds that the Local Board has not proved by legally competent evidence that the Licensee sold an alcoholic beverage to Female #1 and/or Female #2.

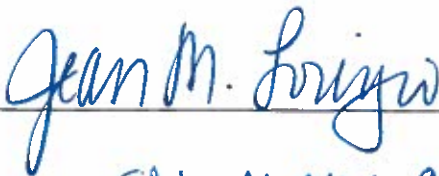
CONCLUSION

The Commission **DISAPPROVES** the action of the Local Board in finding a violation of Rule 7 of the Worcester License Commission's Rules and Regulations, and for suspending the M.G.L. c. 138, § 12 all-alcohol license of Peregrine Endeavors, Inc., d/b/a Industry Bar Room/District.

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

ALCOHOLIC BEVERAGES CONTROL COMMISSION

Jean M. Lorizio, Chairman



Elizabeth A. Lashway, Commissioner



Kathleen McNally, Commissioner



Dated: January 25, 2018

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: Wayne M. LeBlanc, Esq.
Brianna Thomas, Esq.
Frederick G. Mahony, Chief Investigator
Administration, File