

COMMONWEALTH OF MASSACHUSETTS  
COMMISSION AGAINST DISCRIMINATION

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MASSACHUSETTS COMMISSION  
AGAINST DISCRIMINATION and  
PAUL V. RAMESH,  
Complainant

v.

DOCKET NO. 07-SPA-00587

CITY OF SPRINGFIELD,  
ET AL.,  
Respondents

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Appearances: Richard Greenberg, Esq., for Complainant  
John Liebel, Esq., for Respondent

DECISION OF THE HEARING COMMISSIONER

I. INTRODUCTION

On March 1, 2007, Complainant Paul V. Ramesh filed a Complaint with this Commission against Respondents City of Springfield, Mayor Charles Ryan's Office, and the City of Springfield Board of License Commissioners, alleging that he was discriminated against in a place of public accommodation on the basis of his national origin and race in violation of M.G. L. c. 272, s. 98. Complainant specifically alleged that Respondents denied him a liquor license for a new establishment that he intended to open in downtown Springfield based on his national origin (Puerto Rican), race and color (Black). Respondents denied the allegations of discrimination. The Investigating Commissioner found probable cause to credit the allegations of the Complaint and conciliation efforts were unsuccessful. The matter was certified for public hearing and a hearing was held before the undersigned Hearing Commissioner on December 8, 2011 and February 2-3,

2012. Both parties submitted post-hearing briefs. Having reviewed the parties' submissions and the entire record of the proceedings, I make the following findings of fact and conclusions of law.

## II. FINDINGS OF FACT

1. Complainant, Paul V. Ramesh, is a Latino (Puerto Rican) individual who owns three establishments (bars or nightclubs) that serve liquor in downtown Springfield. (Tr. Vol. 1, p. 7)
2. Complainant testified that his establishments are frequented primarily by a Latino and African-American clientele. (Tr. Vol. 1, p. 14)
3. Complainant's establishments are located in the Entertainment District, which is an area in downtown Springfield known distinctly for featuring bars and restaurants. (Tr. Vol. 1, p. 12.). The Entertainment District was created during the administration of Mayor Michael Albano, who served as mayor of Springfield from 1995 to 2004.
4. Mayor Charles Ryan served as the mayor of Springfield from 1962 to 1968, and from 2004 until 2008. (Tr. Vol. 2, p. 124)
5. In order to obtain a liquor license for a bar or restaurant in Springfield, one must submit an application to the Board of License Commissioners (hereinafter "the Board"). This Board consists of citizens appointed by the mayor, subject to confirmation by the City Council. Pursuant to Session Law Chapter 336 of the Acts of 2002, four members of the Board are appointed by the mayor and the fifth member of the Board is recommended for appointment by the neighborhood councils. (Exhibit S)
6. In April 2006, the five members of the Board were Robert Casey, Mary Jenewin-Caplin, Melvin McLaurin, Juan Rivera and Peter Sygnator. Casey, Jenewin-Caplin, McLaurin and Rivera were appointed to the Board by Mayor Ryan. Sygnator was appointed to the Board by Ryan's predecessor, Mayor Albano, and was appointed Chairman when Ryan became the mayor. (Tr. Vol.

2, pp. 6, 43, 77; Vol. 3, pp. 7, 112)

7. In late 2005, Complainant and a business partner, William Quarterman<sup>1</sup>, formed Exile Entertainment Corporation, d/b/a Halo Lounge, and filed an application for a license to sell alcoholic beverages at the proposed establishment, which was to be located in the Entertainment District. The specific type of license sought was a “General on Premises” license, which authorizes a license holder to serve only liquor, and not food. (Tr. Vol. 1, 62; Exhibit T)

8. Complainant testified that the clientele he believed would frequent his proposed establishment would be “American/Latino.” (Tr. Vol. 1, p. 28)

9. Mayor Ryan testified that when he began serving as mayor in 2004, there was “an enormous amount of crime in Springfield” in general and a high volume of “illegal activity” in the Entertainment District in particular. He stated that this illegal activity was “chewing up on a regular basis every Thursday, Friday, and Saturday night the entire compliment [sic] of police officers that were on duty.” Mayor Ryan also testified about the “enormous escalation in crime,” which he described specifically as “serious crime” and “violent crime,” noting that in 2006, Springfield ranked ninth in the United States for violent crime, on a per capita basis, out of 419 cities with a population over 75,000. (Tr. Vol. 2, pp. 147-149)

10. Between January 2004 and April 2006, the Springfield Police Department received 44,595 calls for service in the Entertainment District, and police officers wrote up 268 reports that led to criminal complaints issuing. (Exhibit Q)

11. On February 15, 2006, the Springfield Planning Board held a hearing to consider the Halo Lounge application and determine what recommendation it would provide to the Board of License Commissioners. At that hearing, the Springfield Planning Board received a recommendation from the Planning Department advising denial of the license and specifically stating: “Deny. Given the

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<sup>1</sup> Quarterman is not a party to this complaint and he did not testify at the public hearing.

proximity to a dense residential population the staff feels that this proposed use would have a negative impact on the surrounding abutters.” (Exhibit D)

12. Attorney David Hodge appeared at the February 15, 2006 hearing representing the Morgan Square Apartments (“Morgan Square”), a complex of almost 200 units located in close proximity to the proposed Halo Lounge. Attorney Hodge’s client opposed the opening of the Halo Lounge, on the grounds that there were already sufficient establishments serving liquor in the downtown area adjacent to the apartment complex, that the area did not need another bar, and that the residents of Morgan Square were concerned about increased noise, crime and traffic that would likely ensue, particularly around the 2:00 a.m. closing time. Attorney Hodge also stated that there was a history of complaints to Morgan Square management in recent years regarding noise emanating from liquor establishments in general and particularly from the building where the Halo Lounge was to be located, where a non-alcohol serving club called the Asylum had previously operated. (Exhibit D)

13. At the February 15, 2006 Planning Board hearing, no party spoke in favor of the Halo Lounge. (Exhibit D)

14. The Springfield Planning Board’s vote on whether to recommend to the Board of License Commissioners that it grant the “General on Premises” license to Complainant resulted in a tie, with four members voting for and four voting against the proposed action. (Exhibit D)

15. The Board of License Commissioners scheduled a hearing on March 9, 2006 to address the liquor license application for Halo Lounge, as well as another application. However, in a letter, Mayor Ryan requested that the Board postpone the hearing since he wished to express his opinion about the applications, and was unable to attend the March 9<sup>th</sup> hearing. (Tr. Vol. 3, p. 129; Exhibit K)

16. The Board rescheduled the hearing for April 13, 2006. During the hearing, Mayor Ryan stated that he was dismayed with “the continued inability to abate criminal activity and violence,

especially in the so-called Entertainment District” and noted his previously expressed view that the well-being of the City was threatened by “continued felonious activity by the people who frequented the bars” in the Entertainment District. (Exhibit B, p. 6) He explained that he was concerned about the two applications under consideration because, if both projects were granted, it would increase the number of individuals frequenting bars downtown by some 800 people. He noted that activity in the Entertainment District was already at a level that required the presence, on some nights, of “every single police officer on duty in the City of Springfield.” (Exhibit B, pp. 2, 14) In his appearance before the Board, Mayor Ryan cited reports he had received from the Police Department regarding certain establishments, stating he had “not been happy with the reports that come across [his] desk with respect to the zone,” and could not ignore incidents of “shootings or stabbings or assaults on police officers or citizens.” (Exhibit B, p. 7)

17. Police Commissioner Edward Flynn also testified at the April 13<sup>th</sup> hearing. He told the Board that, in 2005, police responded to calls from the Entertainment District “nearly 2,000 times” between the hours of 10:00 p.m and 4:00 a.m. He also stated that the City had spent over \$366,000 for police overtime to respond to incidents in the Entertainment District, and that a maximum police response was required especially “when the bars are letting out.” (Exhibit N, p. 5) Commissioner Flynn told the Board that the data clearly indicated the Entertainment District “is a problem for the police department and by extension is a problem for the community,” and that this “particular area has gone past the tipping point,” and “reached the saturation point,” with respect to establishments serving liquor. He opined that having 46 establishments serving alcohol, with 30 of those 46 selling alcohol as their primary business, “clearly creates a dynamic in this location that has very significant consequences with police response.” (Exhibit N, pp. 6-7) Commissioner Flynn stated his intention to partner with the Board in order to “create a climate there in which we have fewer, rather than more taverns, bars,” and to work with the Board in making the neighborhood “more

restaurant-oriented and less tavern-oriented.” (Exhibit N, p. 11)

18. Attorney David Hodge, who had testified at the February 15<sup>th</sup> hearing before the Springfield Planning Board, also testified at the April 13 Board of License Commissioner’s hearing. Hodge spoke on behalf of Morgan Square, stating that it opposed the license because the bar would necessarily generate an increase in traffic and noise. He noted that when the subject building had previously housed Asylum, a non-alcohol club that catered to teenagers, Morgan Square tenants experienced a “significant amount of interference with the quiet enjoyment of their apartments because of the noise of rowdy Asylum patrons.” (Exhibit C)

19. At the April 13<sup>th</sup> hearing, the Board also heard from Robert Lauder, a resident of Kimball Towers, a condominium complex located in the Entertainment District. Lauder opposed the license, as he believed that the area could not support an additional 400 to 700 patrons exiting another bar at the 2:00 a.m. closing time. (Exhibit C)

20. Following the hearing, the Board denied the application by a 3-1 vote. The Board cited the following factors as important considerations in its decision:

- a. The already adequate number of existing dispensaries within 500 and 1000 feet (15 and 35 respectively);
- b. The size of the proposed operation;
- c. The views of the inhabitants of the locality and the nearby property management;
- d. The likelihood of increased traffic congestion if this application was allowed;
- e. The likelihood of increased noise and boisterousness from customers leaving at closing hour if this transfer was allowed;
- f. The type of operation (GOP) license. (Exhibit C)

21. The Board also considered prior violations that arose at an establishment called Logan’s Lounge on State Street in downtown Springfield, which had been managed by William Quarterman, Complainant’s business partner. The Board noted that, in 2004, at 3:15 a.m., a person was shot in the chest five times at that establishment and that Mr. Quarterman, the licensee, was found to have violated the terms of his license by permitting disorder, disturbance or illegality on the premises, failing to remove all alcoholic beverages from tables, counters, booths and bars by fifteen minutes

after the 2:00 a.m. closing hour, and failing to ensure all drinking cease by fifteen minutes after the closing hour. Quarterman had received a reprimand for this conduct. Also, in 2005, Quarterman was found to have violated M.G.L. c. 138, s. 15A and 204 C.M.R. s. 2.05(2) by failing to disclose all persons having a direct or indirect interest in his license. In addition, the Board noted that Quarterman had falsely affirmed under oath that he had paid taxes on his 2004 and 2005 license renewal applications, thereby violating 204 C.M.R. s. 2.05(8), and that Logan's Lounge was ultimately evicted from the premises because Quarterman failed to pay the rent on time. (Exhibits C, M)

22. Mayor Ryan testified that he was particularly concerned about the Halo Lounge application once he learned that Quarterman was a co-applicant. Ryan cited as specific reasons for his concern the shooting incident at Logan's Lounge and Quarterman's eviction by his landlord. (Tr. Vol. 2, pp. 141-144) Ryan testified that he was unaware that Complainant was involved in the Halo Lounge application until the night of the hearing. He stated, "As far as I was concerned, it was Quarterman." (Tr. Vol. 2, pp. 144-145)

23. The Board specifically included the following in its Findings:

Although it was represented at the hearing that Mr. Quarterman would have no management responsibility, the board infers, by virtue of his ownership, his presence would be an influence on management.

In support of this finding, the Board quoted language from Union Liquors Co. v. Alcoholic Beverages Control Comm'n, 416 N.E. 2d 977 (Mass. App. Ct. 1981): "Persons in a highly sensitive, closely scrutinized business (such as the liquor business) have need to know about and appraise the persons behind corporations with whom they are doing business." (Exhibit C.)

24. Four Board members were present at the April 13 Board of License Commissioner's hearing, namely Robert Casey, Melvin McLaurin, Juan Rivera and Peter Sygnator. Three of the four members present voted to deny the subject application.

25. Robert Casey voted to deny the application. Casey stated at the public hearing that Mr. Quarterman's part-ownership of Halo Lounge was a consideration in the denial of the application, in addition to the fact that Quarterman would have been in control of the bar's operations since Complainant had a full-time job in another city and was responsible for three other establishments with liquor licenses. (Tr. Vol. 2, pp. 84-85) Casey testified that the Entertainment District was an overcrowded area with "far too many people having imbibed too much alcohol getting out at the same hour," that were "sucking the entire police out of the outer-lying areas into downtown." Given these facts, the Board "sought to reduce the types of licenses and their proximity to an overcrowded area." (Tr. Vol. 2, pp. 91, 102) Casey stated that the Board specifically considered the type of license being considered, namely a license for an alcohol-only establishment as opposed to one for a restaurant. (Tr. Vol. 2, p. 109) According to Casey, that there was no testimony at the April 13, 2006 hearing regarding the ethnicity or race of the clientele expected to frequent the proposed Halo Lounge. (Tr. Vol. 2, pp. 83-84.) Casey also testified that he was never instructed by Mayor Ryan, either explicitly or indirectly, to vote a certain way on any application. (Tr. Vol. 2, p. 112)

26. Melvin McLaurin voted to deny the application. McLaurin testified that his primary consideration was "the preponderance of people that were actually against it that lived in that particular neighborhood," and stated he considered the views of these residents an appropriate factor to take into account. (Tr. Vol. 2, pp. 18, 28) McLaurin testified that he did not believe it was inappropriate for Mayor Ryan to testify before the Board since Ryan represented the City of Springfield. He also testified that Police Commissioner Flynn's testimony was appropriate, "especially in light of what's been going on in the city." (Tr. Vol. 2, p. 32) McLaurin stated it was his belief that Ryan favored granting more licenses to eating establishments as opposed to alcohol-only bars as the former "would lead to more family-oriented establishments" in the Entertainment



District. (Tr. Vol. 2, p. 41) In addition, McLaurin testified that Mayor Ryan advised him, prior to his (McLaurin's) appointment to the Board, to be "fair and candid." He never received instruction of any kind from Ryan directing him to vote in a particular way on Complainant's application. (Tr. Vol. 2, pp. 30-31, 34)

27. Juan Rivera voted in favor of the application. Rivera testified that he recalled there were "a lot of people against" granting the application at the April 13<sup>th</sup> hearing. (Tr. Vol. 3, pp. 8-9) Rivera acknowledged that it is appropriate for the Board, in deciding whether or not to grant a new license, to consider the views of local residents, the number of existing licenses in the vicinity of the proposed establishment, the type of license under consideration, the size of the proposed establishment, and concerns regarding traffic and noise, as these are all legitimate factors. (Tr. Vol. 3, pp. 22-24) Rivera stated that he did not believe that Mayor Ryan's speech to the Board was intended to encourage members to deny Complainant's application on the basis of race. (Tr. Vol. 3, p. 32) Rivera stated that no party appeared before the Board expressing opposition to the license based on the owner's ethnicity or the anticipated ethnicity of the clientele. (Tr. Vol. 3, p. 35) In addition, Rivera testified that prior to his appointment to the Board, Mayor Ryan advised Rivera to be "tough and fair," and that they never had any discussions regarding the racial composition of license holders, *i.e.*, minority or non-minority. (Tr. Vol. 3, pp. 8, 28)

28. Peter Sygnator voted to deny the application. Sygnator testified that in deliberating upon applications for new licenses, the Board considers the following criteria: the number of existing liquor licenses in the immediate vicinity of the new location, traffic, noise, the input of the local inhabitants, the size of the proposed establishment, and the reputation of the applicant. Sygnator stated that these factors were all considered in connection with Complainant's application.

Sygnator acknowledged that there was opposition from local residents at the April 13, 2006 hearing to the proposed Halo Lounge, and that there had been prior problems and complaints from residents

regarding the previous facility at that location. (Tr. Vol. 3, p. 121) Sygnator testified that the race of the applicant was “certainly not” considered. (Tr. Vol. 3, pp. 116-118) Sygnator also stated that the issue of the racial composition of the venue’s clientele was not addressed at the April 13, 2006 hearing, and that the racial composition of the clientele had “absolutely” never been a factor in his or anyone else’s vote on this or any other application. (Tr. Vol. 3, p. 132) In addition, Sygnator testified that he and Mayor Ryan never had discussions about the race of a liquor license applicant or the expected clientele of an establishment. He did not believe that Ryan’s presence at the hearing was related in any way to Complainant’s race or the expected race of the Halo Lounge clientele. (Tr. Vol. 3, pp. 131-132)

29. Mayor Ryan testified that his decision to go before the Board on April 13, 2006 was not based upon the race or ethnicity of the Halo Lounge’s anticipated clientele. (Tr. Vol. 2, p. 189)

30. The Board approved the second application for a new license that was under consideration on April 13, 2006. This application was for a Common Victualer license, which permits the licensee to serve both food and alcohol, and was for a proposed establishment called the Alumni Club to be located in the Entertainment District. The Alumni Club was previously located in the Entertainment District, and the newly proposed location had housed several restaurants dating back to the 1970s, all of which held liquor licenses. (Tr. Vol. 3, p. 120; Exhibit V)

31. Complainant testified that the owner and expected clientele of the Alumni Club were white. (Tr. Vol. 1, p. 32.) He noted that Mayor Ryan did not oppose the issuance of a license to the Alumni Club at the hearing on April 13, 2006, but confined his remarks to concerns about the Halo Lounge. Complainant testified about Ryan’s view at the April 13<sup>th</sup> meeting as follows: “he has no issue with the [Alumni Club] license being approved, he would like to see them open, but he didn’t want to see any more of those people downtown, and he signaled me.” (Tr. Vo. 1, pp. 32-33) I do not credit this testimony because it is self-serving and not corroborated by any other witness or

documented evidence.

32. Peter Sygnator testified about several distinctions between the applications for the Halo Lounge and the Alumni Club, including:

One was for a general on premise, no food. The other was for a restaurant, serving food. One was for a restaurant, the manager was an experienced manager with virtually no problems before the Commission. The other one, general on premise – involved a business owner who had problems with the Commission, was for a much larger venue, and there was neighborhood opposition for that, where there was none for a restaurant.

(Tr. Vol. 3, p. 147)

33. Mayor Ryan testified that he drew a distinction between the two applications when he appeared in front of the Board and spelled that out very clearly that the City's strategy was "to turn this area around from predominantly bars to predominantly restaurants." (Tr. Vol. 2, p. 184)

34. Neither Police Commissioner Flynn nor Attorney David Hodge spoke in opposition to the Alumni Club at the April 13, 2006 hearing.

35. On June 13, 2006, the Board granted a request from an establishment called Rain to expand its existing liquor license to include the serving of drinks on its roof. Rain, a club located in the Entertainment District, was owned by two white individuals. In exchange for being granted the additional space, the club agreed not increase its occupancy limit and to open its roof only during the summer months. (Tr. Vol. 2, pp. 111-112; Exhibit U)

36. Juan Rivera testified that when the Board is presented with an application for a new license or change of ownership, it has no way of knowing the race or ethnicity of the individual or individuals associated with the application. He acknowledged that often the manager or attorney for the proposed establishment appears at the hearing rather than the applicant. Rivera stated that during the time he was on the Board there was no statistical analysis performed with respect to the number of Caucasian or non-Caucasian license holders. (Tr. Vol. 3, pp. 25-26) Peter Sygnator testified that it would be improper for the Board to consider the number of establishments that cater to a specific

group as defined by race or ethnicity. (Tr. Vol. 3, p. 146)

37. Complainant's counsel made several references to a document comprised of handwritten notes taken by the clerk or clerk's secretary at the April 13, 2006 hearing. (Exhibit O) Complainant's counsel represented that the document contained the words "Afraid of minorities or to minorities in downtown." (Tr. Vol. 3, p. 14.) The only language mentioning "minorities" in the notes of the meeting appears in the following list:

- New license
- Halo
- Assist mgr @ zone intends to be on premises
- Tips cert
- Not a restaurant Assylum [sic] was a problem
- Afraid to minorities in downtown hearing
- Money everyone resp security in Place
- 35-40 hrs wk
- 14 gardens
- 2 manage

(Exhibit O) There is no attribution for this portion of the notes, and it is impossible to determine whose words the note taker was transcribing. When Rivera was asked by Complainant's counsel if he recalled who made that statement, Rivera replied, "No, I do not." When asked further whether he believed that there was a "fear of minorities in downtown," Rivera replied, "I would say no." (Tr. Vol. 3, pp. 14, 16) Complainant's counsel also asked Peter Sygnator whether he recalled hearing any testimony at the April 13, 2006 meeting about "a fear of minorities in the downtown area" and Sygnator replied, "No." (Tr. Vol. 3, p. 146) I credit the testimony that this was not a view expressed by anyone representing the City.

38. Complainant testified that he was unjustly charged with a violation of the liquor laws by the Springfield License Commission in August of 2006 and that Mayor Ryan wrongly suspended his entertainment license for fourteen days with respect to the Shadow Lounge, a business he owned. Complainant stated that his liquor license was not suspended. Complainant stated that the suspension of the entertainment license resulted from an incident involving two women fighting, in

which one hit the other with a bottle. According to Complainant, other establishments experienced incidents involving violence and criminal activity, but were not subject to suspension of their entertainment license by Mayor Ryan. Complainant stated that the clientele at these establishments was primarily white. Complainant explained his view of the reason for the alleged disparate treatment was that he and his business partners are Latino. (Tr. Vol. 1, pp. 17-21)

39. On May 15, 2006, Springfield police officers responded to a call that a woman had been struck in the head with a bottle at the Shadow Lounge, a club operated by Complainant. On May 28, 2006, the police were again summoned to the Shadow Lounge because another woman had been struck in the head with a bottle. (Exhibit E) Mayor Ryan testified that he and the Springfield License Commission held a joint hearing to determine if these incidents involved possible license violations. (Tr. Vol. 2, pp. 186-187) Peter Sygnator testified that the Board found no violations of Complainant's liquor license at that hearing. (Tr. Vol. 3, p. 131) Mayor Ryan testified that he suspended Complainant's entertainment license for fourteen days following that hearing because of "personal injury," resulting from "two criminal attacks on innocent people." (Tr. Vol. 2, p. 187) In a letter dated July 31, 2006 to the Assistant City Solicitor for the City of Springfield, Complainant's counsel asserted that the suspension would cause irreparable harm to Complainant's business and requested that the suspension be served between Sunday and Wednesday, days when the Shadow Lounge was closed, over a period of four weeks. (Exhibit F) On August 7, 2006, Mayor Ryan sent a letter to Complainant granting this request. (Exhibit E.)

40. Mayor Ryan testified that he could not recall whether or not he suspended the entertainment license of the Hippodrome, one of the clubs Complainant cited as experiencing violence and crime but not receiving a suspension. Ryan stated that he did recall meeting with the Hippodrome owners and expressing vociferously his concern about crime in general and incidents at that club in particular, and stressing the need for Entertainment District business to be more vigilant in exerting

control on their premises. He testified, “we were getting a reputation that was in part probably earned but was devastating to us in trying to run a city.” (Tr. Vol. 2, pp. 159-162)

41. On January 26, 2007, Complainant filed an appeal of the Board’s decision denying a license to the proposed Halo Lounge with the Alcoholic Beverage Control Commission. (Exhibit G) On April 3, 2007, Complainant voluntarily withdrew such appeal before any action was taken upon the matter. (Exhibit H)

### III. CONCLUSIONS OF LAW

#### A. Issue Preclusion

As a preliminary matter, Respondents assert that the decision in Quarterman v. City of Springfield, Civil Action No. 07030185-MAP (June 15, 2010) should be entered into as evidence. This case dealt with Board’s actions in 2005 on an application for a license transfer by Complainant’s business partner, William Quarterman. Prior to the start of the Hearing, there was some discussion about this case but I declined to accept this case in evidence because the issues and parties were not identical. For the same reason, the case would not have any preclusive effect on the matter before me. For the prior decision to be dispositive of the issues in the present case, the facts and issues in both proceedings must be found to be identical. I concluded that they were not. Accordingly, my rejection of this decision as evidence that is dispositive of the issues raised in this case was appropriate under the circumstances, particularly where I did not restrict testimony about the decision or its findings and where the focus of this matter is the Board’s action in 2006 and not a prior decision in 2005.

B. Jurisdiction

Massachusetts General Laws c. 272, s. 98 prohibits any distinction, discrimination, or restriction relative to the admission of any person to a place of public accommodation based on race. The Commission is authorized to enforce the public accommodations statute pursuant to c. 151B, s. 5. Ekhatov v. Stop & Shop Supermarket Co. 24 MDLR 147, 149 (2002)

Respondents argue as a threshold matter that the determination of the Licensing Board to grant or deny a license permitting the sale of alcoholic beverages is not an activity that falls within the coverage of M.G.L. c. 272, s. 98, and that, therefore, the Commission does not have jurisdiction in this matter. Respondent asserts that denial of a liquor license is not tantamount to denial of admission to, or discrimination in, a place of public accommodation.

The threshold issue before me is whether the issuance of a liquor license is activity that falls within the protections granted by the public accommodations law, and whether the Commission has jurisdiction to decide the matter. While Respondent did not raise this issue at the hearing, it is an issue that nonetheless may be considered because it implicates the Commission's jurisdiction to hear and decide this matter and, as such, may be raised at any time.

Subsequent to the hearing in this matter, the MCAD addressed the issue of an individual who was denied the opportunity to apply for a taxi driver's license by a municipal police department and claimed the denial was because of his race and ethnicity and a violation of the public accommodations law. MCAD & Adam Apache v. City of Springfield Police Department, 34 MDLR 59 (2012). In Apache, the City argued that the decisions of a municipal police department with respect to issuing licenses fell outside the purview of the Commission's jurisdiction. The Hearing Officer noted that "the protections of M.G.L. c. 272 s. 98 have been held to include the

provision of certain services or benefits such as insurance, and the Commission has interpreted the statute broadly to extend beyond access to physical structures, thus, it had jurisdiction to adjudicate the matter. Samartin v. Metropolitan Life Insurance, 27 MDLR 210, 213-214 (2005). The *Apache* decision is consistent with prior Commission precedent that the activity contemplated by the public accommodations law, which is admission to, and treatment in, a place of public accommodation is one of fairness in access to a place or the services or benefits provided therein. In *Apache*, the Complainant was denied access to the application process. Contrast: Monteiro v. City of Brockton, 33 MDLR 185 (2011) where the MCAD Hearing Officer concluded that the decision of a municipal zoning board is not reviewable by MCAD pursuant to c. 272 § 98, because the zoning board serves a quasi-adjudicatory function and legislature has created a statutory scheme which provides for a mechanism for review and appeal through the courts.<sup>2</sup> The Commission concluded that it is not within the Commission's authority to review such decision.

I concur with the distinction between denying access to a public place, benefit, process or proceeding and the determination by a governmental body specifically created and authorized to adjudicate the criteria for granting or denying such benefit. In *Apache*, the Hearing Officer concluded that she could decide the question of whether Complainant was denied equal access to the public process because this implicated the protections of the public accommodation law granting equal access, an issue which the Commission is statutorily authorized to decide.

In this case, the Complainant was not denied access to the application process or restricted in the hearings process. The decision of the local Licensing Board of Commissioners was appealable to the state Alcoholics Beverage and Control Commission. Since Complainant appealed the decision to the ABCC, presumably there was a right to an administrative hearing before that

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<sup>2</sup> Similarly, the Commission has held that the public accommodations law G.L. c. 272 s. 98, does not apply in the education context where there is an existing comprehensive statutory scheme for addressing educational issues. Beagan v. Town of Falmouth School Department 9 MDLR 1209 (1987); Barrett v. City of Worcester School Department 23 MDLR 22 (2001)



state agency with a commensurate right to court review of the administrative decision pursuant to G. L. c. 30A. Where the decisions of a municipal body are quasi-judicial in nature, and there is a statutory scheme for review of the decision through an administrative body and an appeal to the courts, the Commission is constrained from re-adjudicating the validity of the municipal body's decision. Therefore I conclude that the Commission lacks jurisdiction to review the decision of the Board of License Commissioners.

C. Discrimination Based on National Origin and Race

Assuming, for argument's sake only, that the Commission were deemed to have jurisdiction to declare the decision of the Licensing Board to be in violation of the law, the evidence in this matter supports the position that Respondent utilized legitimate non-discriminatory criteria in reaching its determination. The Commission analyzes complaints of public accommodation discrimination in accordance with the disparate treatment standard set forth in Wheelock v. MCAD, 371 Mass. 130, 134-136 (1976). See also Lipchitz v. Raytheon Co., 434 Mass. 493, 495 (2001); Reese v. May Dept. Store, 24 MDLR 395, 399 (2002). If the Complainant establishes a prima facie claim of discrimination, the burden shifts to Respondent to articulate a legitimate, non-discriminatory reason for its conduct. If Respondent meets this burden, Complainant must prove, by a preponderance of the evidence that Respondent's articulated reasons are a pretext for discrimination, that is, that it acted with discriminatory intent, motive, or state of mind. Lipchitz, supra. at 504.

Pursuant to this analysis, Complainant established a prima facie case of discrimination, in that he is a member of a protected class by virtue of his national origin and race, and he was denied the issuance of a liquor license for a business that would operate as a place of public

accommodation. However, Respondents have met their burden of establishing legitimate, non-discriminatory reasons for their actions in this matter which implicate significant public peace, welfare, and safety concerns.

The Board of License Commissioners cited in its Findings the following factors as important considerations in its decision to deny Complainant the liquor license at issue: the already adequate number of existing dispensaries within 500 and 100 feet (15 and 35 respectively); the size of the proposed operation; the views of the inhabitants of the locality and the nearby property management; the likelihood of increased traffic congestion if the application were allowed; the likelihood of increased noise and boisterousness from customers leaving at closing hour if the license transfer was allowed; and the type of operation (General on Premises, alcohol-only license). The Board's determination was based upon the extensive and detailed presentations at the April 13, 2006 hearing by Mayor Ryan and Police Commissioner Flynn regarding the significant incidence of criminal activity in the Entertainment District related to establishments serving only liquor and the outsized demand for a police presence that deprived other parts of the city of needed law enforcement personnel. Both Ryan and Flynn provided concrete data and statistical evidence to the Board supporting the connection between the high concentration of bars in the area, the incidents of violent crime and the need for increased police presence. The substance of these presentations was echoed at the MCAD Hearing in credible testimony from Mayor Ryan.

The Board's findings were based also, in part, upon consideration of the presentations made at the April 13, 2006 hearing by Attorney David Hodge, who spoke on behalf of Morgan Square, a residential complex located across the street from proposed establishment, and Robert Lauder, a resident of Kimball Towers, a condominium complex also located in the Entertainment District. Both Hodge and Lauder opposed the license on the basis that another drinking establishment would

necessarily generate increased traffic and noise in the wee hours of the morning.

The three Board members who voted not to grant the liquor license to Complainant testified credibly at the public hearing about the factors they considered which were cited in the Board's written Findings. Robert Casey testified that the Entertainment District was an overcrowded area with "far too many people having imbibed too much alcohol getting out at the same hour" that were "sucking the entire police out of the outer-lying areas into downtown," and that the Board "sought to reduce the types of licenses and their proximity to an overcrowded area." He stated that the Board specifically considered the type of license being considered, namely a license for an alcohol-only establishment as opposed to one for a restaurant.

Melvin McLaurin testified that the primary factor affecting his vote was "the preponderance of people that were actually against it that lived in that particular neighborhood." Peter Sygnator testified that in deliberating upon applications for new licenses, the Board regularly considers the number of existing liquor licenses in the immediate vicinity of the new location, traffic, noise, the input of the local inhabitants, and the size of the proposed establishment. He stated that these factors were all considered in connection with Complainant's application. Sygnator also testified about the opposition from local residents to the proposed Halo Lounge at the April 13, 2006 hearing, and specifically about prior problems and complaints from residents regarding the facility when it housed the Asylum club at that location.

The sole Board member who voted in favor of granting Complainant the license, nonetheless conceded in his testimony at the Hearing that there were "a lot of people against" granting the application on April 13, and that it is appropriate for the Board to consider the views of local residents, the number of existing licenses in the vicinity of the proposed establishment, the type of license under consideration, the size of the proposed establishment, and concerns regarding traffic and noise, as these are all legitimate factors.

The evidence also demonstrates that Board members were concerned about the involvement of Complainant's business partner, William Quarterman, in the Halo Lounge enterprise. This concern was based upon a history of problems requiring police intervention at Logan's Lounge another downtown entertainment establishment for which he held the license. In addition to a violent shooting incident that occurred there, Quarterman, as licensee, was found to have violated the terms of his license by permitting disorder, disturbance or illegality on the premises, failing to remove all alcoholic beverages from tables, counters, booths and bars by fifteen minutes after the closing hour (2:00 a.m.), and failing to cease all drinking by fifteen minutes after the closing hour. Quarterman had received a reprimand for this conduct. He was also found to have violated the law by failing to disclose all persons having a direct or indirect interest in his license, and by falsely affirming under oath that he had paid taxes on his 2004 and 2005 license renewal applications. Further, Quarterman's enterprise was ultimately evicted after failing to pay the rent on time. Robert Casey testified credibly that Mr. Quarterman's part-ownership of Halo Lounge was a prime consideration in the denial of Complainant's application, particularly where it was likely Quarterman would have been in control of the Halo Lounge operations.

The collective evidence including the Board members' credible testimony at the public hearing establishes that Respondents articulated numerous legitimate, non-discriminatory reasons for denying Complainant the liquor license for the proposed Halo Lounge. These reasons were largely related to concerns of safety and security, prevention of criminal activity, keeping the public peace and the operational needs of the police department. These are legitimate, non-discriminatory reasons that were supported by credible testimony and data. Once legitimate non-discriminatory reasons have been established, Complainant must show by a preponderance of evidence that Respondents' proffered reasons are a pretext for discrimination. Complainant contends that Respondents' denial of the license was motivated not by the legitimate stated concerns, but by

concerns about Complainant's and Mr. Quarterman's national origin and the race of the anticipated clientele of the proposed establishment. However, there is no evidence to suggest that the legitimate articulated reasons were a pretext for discriminatory animus. Given that the numerous legitimate reasons which were supported by credible evidence, Complainant has failed to prove that Respondents acted out of an unlawful motive related to impermissible considerations. In addition, since Mr. Quarterman did not testify at the Hearing, I was unable to assess the reliability of statements or observations regarding bias against Mr. Quarterman. .

Complainant asserts that there was an overt reference to race made during the April 13, 2006 hearing and that such reference evinces discrimination by Respondents. Complainant states in his post-hearing brief that "[t]estimony taken" at the hearing mentioned "a fear of minorities." However, this statement is not attributed to any particular speaker and the notes of the meeting do not reflect the context in which any discussion of minorities arose. None of the witnesses recalled any such discussion at the Licensing Board Hearing and none of the City's representatives or Board members raised this issue. This vague reference is insufficient to support a claim of pretext.

Furthermore, there is no credible evidence that any member of the Board harbored any racial animus toward Complainant. All the Board members testified credibly that they were not unduly influenced by Mayor Ryan's testimony. Even so, there is no evidence that the Mayor's views on the subject were motivated by racial animus towards Complainant, but rather by concerns for public safety, security and peace, and the police department's operational needs.

Contrary to Complainant's argument, there is also no credible evidence that the Board had knowledge of the percentage of applicants for licenses who were minorities, as the Board maintains no records pertaining to such information. Juan Rivera testified that when the Board is presented with an application for a new license or change of ownership, it frequently does not know the race or ethnicity of the individual or individuals seeking the license and more often, the manager and/or

attorney for the proposed establishment appears at the hearing rather than the applicant. The lack of any relevant statistical evidence regarding denial of licenses to minority applicants, coupled with the credible testimony of all four Board members who voted on Complainant's application, further undercuts Complainant's claim of pretext in this matter.

Finally, Complainant produced no credible evidence that Respondents had discriminated against him or any other applicant on an impermissible basis prior to the application in question. It is undisputed that Complainant received favorable action with respect to his other applications before the Board, as evidenced by the undisputed fact that, at the time of the public hearing, he was licensed to operate three other bars in downtown Springfield, and all of these licenses were renewed. This evidence tends to refute the allegations of discrimination in this matter, and suggests that the legitimate non-discriminatory factors considered by the Board were the operative reasons for its decision to deny the license. The fact that the Board granted a license at that time to an establishment that sought to serve food and alcohol in the area is not indicative of pretext, since there was a legitimate distinction between restaurants and bars.

Mayor Ryan, as well as others at the license hearing, took pains to distinguish between a license for a restaurant and a bar that serves only alcohol. Complainant refers to Mayor Ryan's suspension of the entertainment license for the Shadow Lounge as evidence of pretext because other, white-owned establishments were not subjected to the same treatment under circumstances Complainant alleges to be similar. However, the facts support that Ryan was clearly justified in concluding that public safety and order had been adversely affected at the establishment in question. In addition, the evidence shows that Ryan readily granted Complainant's request that the suspension be served on days that the Shadow Lounge was closed, over a period of four weeks, so that the Shadow Lounge would incur no financial harm whatsoever. Further, while Mayor Ryan could not recall whether or not he suspended the entertainment license of Hippodrome, a club Complainant

pointed to as experiencing violence and crime yet not receiving a suspension, Ryan testified that he did meet with Hippodrome's owners and expressed profound concern about crime in general and incidents at that club in particular, and also stressed the need for Entertainment District business to be more vigilant in exerting control on their premises. Given that the suspension of Complainant's license was nominal and exacted no financial impact upon the Shadow Lounge, there is insufficient evidence of disparate treatment based on race or ethnicity of the establishment's owner.

Complainant himself acknowledges that after Ryan and the Springfield License Commission held a joint hearing regarding possible license violations for these incidents, the Board did not suspend Complainant's liquor license. Complainant here undercuts his central argument that Mayor Ryan influenced the Board to deny him a liquor license for the Halo Lounge on the basis of his race and national origin, where the Board subsequently reached a conclusion at odds with Ryan's on another of Complainant's establishments. Complainant cannot have it both ways: it is not credible to suggest that Mayor Ryan controlled the Board so powerfully in April 2006 that he convinced its members to discriminate against Complainant, but that a few months later he was unable to exert any influence at all over the Board's decision.

Finally, Complainant attempted to demonstrate disparate treatment by the Board's granting an application to the Alumni Club on the same day that the Board denied his application.

Complainant's reliance on this comparison is problematic, as the Alumni Club is not similarly situated to the Halo Lounge and is therefore not an apt comparator. Where Complainant applied for a "General on Premises" license, namely one to serve only alcohol, the Alumni Club's owner applied for a "Common Victualer" license, which authorizes the sale of both alcohol and food. Complainant's application was for a bar, while the Alumni Club's application was for a restaurant. As is made clear under Ballarin, Inc. v. Licensing Board of Boston, 49 Mass. App. Ct. 506 (2000), the particular type of operation that will carry the license is a relevant factor to consider when

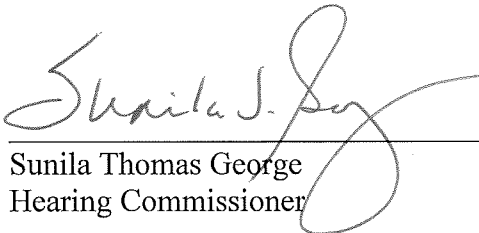
determining whether or not a license should be granted. The Board's decision reflected a consensus that given the number of bars in the area it was inadvisable to add another alcohol-only establishment to the Entertainment District due to the existing prevalence of an inordinate number of bars, crime and disturbance of the peace associated with these establishments, and the burden on law enforcement.

Given the evidence before me, and the jurisdictional caveat discussed earlier, I am not persuaded that Respondents acted out of unlawful motives and conclude that they did not violate M.G. L. c. 272, s. 98. For reasons related to the Commission's jurisdiction and the evidence before me, I order that the complaint be dismissed.

#### IV. ORDER

This decision constitutes the final order of the Hearing Officer. Pursuant to 804 CMR 1.23, any party aggrieved by this decision may file a Notice of Appeal with the Full Commission within ten (10) days of receipt of this Order and a Petition for Review to the Full Commission within thirty (30) days of receipt of this Order.

SO ORDERED, this 18<sup>th</sup> day of February, 2016.

  
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Sunila Thomas George  
Hearing Commissioner