

Re: The Lanai Restaurant, Inc.
d.b.a.: The Pago Pago Restaurant
Premises: 396 East Main Street
City/Town: Milford, MA 01757
Heard: May 27, 2009

DECISION

This was an appeal from the action of the Licensing Board of the Town of Milford for suspending the license of The Lanai Restaurant, Inc. d.b.a. The Pago Pago Restaurant for a period of nine (9) days.

Facts

On February 27, 2009, as part of Milford's Police Department's operation to control underage drinking, Milford Police sent an eighteen (18) year old female into twenty (20) licensed establishments including the licensee's establishment, The Pago Pago Restaurant. At approximately 9:05 p.m., the underage was served a bottle of Bud Light Beer without being asked for any identification.

Prior to this offense, on September 9, 1996 a two (2) day suspension was imposed for a violation of Ch. 138, §34 for sale to a minor of an alcoholic beverage. A fine in lieu of suspension was paid to the Alcoholic Beverages Control Commission.

In June of 1997, the licensee paid a fine in lieu of a six (6) day suspension imposed by the A.B.C.C. for the same offense.

In May of 1999, the Milford Board of Selectmen suspended the license for a period of seven (7) days for the same offense.

The licensee is before the Commission now alleging that the nine (9) day suspension is arbitrary and capricious.

Discussion

This licensee has had three (3) prior violations regarding the same offense. The licensee argues that the last offense occurred ten years ago so the nine days is excessive. However, the licensee was given a seven day loss of license for the last offense and in each instance chose to pay a fine in lieu of suspension. With each offense, the amount of time the licensee was suspended increased ever so slightly (and it should be noted the licensee

committed the same offense in a short period of time) to argue that the length of time imposed on the license suspension is arbitrary and capricious is without merit.

Although time has passed since the last offense, the Local Licensing Authority only chose to increase the penalty by two (2) days since the last loss of license and could have chosen to increase it significantly more.

Conclusion

For the aforesaid reasons, the Commission DENIES the appeal.

ALCOHOLIC BEVERAGES CONTROL COMMISSION

Susan Corcoran, Commissioner _____

I, the undersigned, hereby certify that I have reviewed the hearing record and concur with the above decision.

Robert H. Cronin, Commissioner _____

Dated in Boston, Massachusetts this 21st day of July 2009.

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 days of receipt of this decision.

cc: Local Licensing Board
Frederick G. Mahony, Chief Investigator
Charles M. MacLean, Esq.
Gerald M. Moody, Esq.
File