

Re: James J. Mawn Enterprises, Inc.
d.b.a.: Emerald Isle Bar
Premises: 1497-1501 Dorchester Avenue
City/Town: Dorchester, MA 02122
Heard: May 6, 2009

DECISION

This was an appeal from the action of the Licensing Board of the City of Boston for rejecting the 2009 License Renewal application of James J. Mawn Enterprises, Inc. d.b.a. Emerald Isle Bar.

The licensee is the holder of a C.V. seven (7) day all alcoholic beverages license with a 2:00 a.m. closing hour, located at 1497-1501 Dorchester Avenue, Dorchester. The license was suspended by recommendation of the A.B.C.C. until November 30, 2008 subject to the licensee providing evidence of a Fire and Building Safety Certificate. The licensee, having entered into an offer to sell the license failed to renew the license for 2009. Subsequent to this, the City of Boston held a hearing on the renewal at which the hearing for the renewal was denied due to the lack of a Fire and Building Safety Certificate.

Issue

Whether the licensee had to provide evidence of a Fire and Building Safety Certificate if he was about to transfer the license to another party?

Discussion

In 2004, then Governor Romney signed into law the Fire Prevention Act, an Act that called for the installation of sprinkler systems into bars with a capacity of over one hundred (100) patrons or more. A deadline of November 17, 2007 was established or penalties would be implemented and licensees would lose their license.

It is not in dispute that the licensee failed to renew the license for 2009. The licensee failed to file the proper renewal papers, the Fire and Building Safety Certificate and the renewal fee. No matter what was transpiring during this time, whether it was the intention of transferring a license or not, the licensee still needed to comply with the law and have the premises inspected by the Boston Fire Department. The Licensing Board for the City of Boston notified the licensee that if an application was not received by a certain date then the license would be canceled.

Subsequent to this, the Board received another letter from the licensee requesting additional time in which to transfer the license. This extension was granted. In fact another request by the licensee was received and the City also granted that extension. A third extension request was then brought by the licensee seeking additional time to file a transfer application.

The City of Boston's Licensing Board then held a violation hearing regarding the "non-use" of the license since the licensee had ceased operation of the establishment for 9 months. As a result, the Board voted to deny the last request for additional time and canceled the license for "cessation of the licensed business."

The licensee appealed the decision, which the A.B.C.C. remanded back to the City of Boston's Board with the recommendation that the licensee be suspended subject to the licensee providing evidence of a Fire and Building Safety Certificate. At no point in time did the licensee provide said certificate.

Counsel for the licensee stressed that his client "tried to follow the new Fire Safety Regulations enacted in 2007." The Fire Department denied the licensee an inspection because she was not in the process of opening. He articulated to the Commission that she ceased operation of the establishment and attempted to transfer her license. However, throughout this process, she did not obtain a Fire and Building Safety Certificate. The fact that she "tried" to follow the regulations does not satisfy the Commission. The licensee needed to obtain this certificate. The fact that she did not was fatal to her maintaining ownership of the license.

Conclusion

For the aforesaid reason, the Commission DENIES the appeal.

ALCOHOLIC BEVERAGES CONTROL COMMISSION

Susan Corcoran, Commissioner _____

Robert H. Cronin, Commissioner _____

Dated in Boston, Massachusetts this 14th day of December 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
Matthew J. McCarthy, Esq.
File