
M.V.S. Corp.
d/b/a Martha's Vineyard Surfside Motel

v.

C Vivor, LLC
d/b/a Danny Quinn's Pub

DECISION ON DENIAL OF APPEAL WITHOUT HEARING

The request for reconsideration of the Commission's denial of M.V.S. Corp. d/b/a Martha's Vineyard Surfside Motel's ("MVS") appeal without a hearing is denied.¹ On December 4, 2009 MVS attempted to appeal to this Commission pursuant to M.G.L. c. 138, § 67 the action of the Oak Bluffs Board of Selectmen in approving the application for an alteration of premises of the alcoholic beverages license of C Vivor, LLC d/b/a Danny Quinn's Pub, at 9 Oak Bluffs Avenue, Oak Bluffs, MA.

Appeals to this Commission are governed by M.G.L. c. 138, § 67 which provides in pertinent part, "[a]ny **applicant for a license** who is aggrieved by the action of the local licensing authorities in refusing to grant the same, or by their failure to act within the period of thirty days limited by section sixteen B, **or any person who is aggrieved by the action of such authorities in modifying, suspending, canceling, revoking** or declaring forfeited the same, may appeal there from to the commission within five days following notice of such action or following the expiration of said period, upon petition in writing, setting forth all the material facts in the case.

The commission shall hold a hearing upon each such appeal, requiring due notice to be given to all interested parties. The decision of the commission shall be made not later than thirty days after the completion of the hearing." (emphasis supplied).

MVS does not allege, nor can it, that it is an "applicant for a license who is aggrieved by the action of the local licensing authorities in refusing to grant the same, or by their failure to act within the period of thirty days limited by section sixteen B." However MVS does allege that it falls within another category of individuals with the right to appeal under this statute as "a person aggrieved by the action of such authorities in modifying, ... the same." M.G.L. c. 138 § 67. A

¹ MVS argues in its Motion for Reconsideration, that M.G.L. c. 138, §15A is inapplicable to this matter. Therefore, the Commission need not base its decision on that statute.

modification of a license occurs when a local licensing authority rolls back a licensee's hours of operation, or changes a license when a licensee fails to comply with M.G.L. c. 138. Casa Loma, Inc. v. Alcoholic Beverages Control Commission, 377 Mass. 231 (1979).

The Supreme Judicial Court has held that, "a local board's refusal of a licensee's request to make a change in the description of premises does not qualify as an action that modifies ... a license." See Boston Licensing Bd. v. Alcoholic Beverages Control Com., 404 Mass. 1008 (1989). Under the same analysis, a Local Board's allowance of an alteration of premises also does not qualify as a modification of a license. Moreover, the Commission has consistently maintained that an alteration of premises or denial of same does not qualify as a modification under M.G.L. c. 138, §67. As such, this Commission has consistently maintained it lacks jurisdiction to hear these matters. The commission's interpretation is entitled to some weight in resolving an ambiguity in a statute it is charged with administering. See Board of Educ. v. Assessor of Worcester, 368 Mass. 511, 515-516 (1975); Cleary v. Cardullo's, Inc., 347 Mass. 337, 344-345 (1964)

Therefore, the Motion for Reconsideration is DENIED. This Commission will not schedule any appeal hearing and this Commission will take no other action regarding this purported appeal.

ALCOHOLIC BEVERAGES CONTROL COMMISSION

Kim S. Gainsboro, Chairman _____

Robert H. Cronin, Commissioner _____

Dated in Boston, Massachusetts this 26th day of February 2010.

cc: Oak Bluffs Board of Selectmen
Eugene R. Richard, Esq.
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