

Re: Christopher Columbus Club, Inc.
Premises: 18 Raymond Place
City/Town: Winchester, MA 01890
License: AA Club
Heard: April 9, 2008

DECISION

This is an appeal from the action of the Licensing Board of the Town of Winchester (Local Board) in revoking the license of Christopher Columbus Club, Inc. (Licensee).

ISSUE

Is whether the Commission will approve or disprove the decision of the local licensing authority in finding the Christopher Columbus Club Italian Mutual Aid and Benevolent Society violated applicable laws, the conditions of the license or regulations of the local licensing authority; and, if approved, whether the Commission will approve or disprove the sanction of revocation of the license for the Christopher Columbus Club Italian Mutual Aid and Benevolent Society.

FACTS

Administrative review of the file indicates that since the 1930's the Christopher Columbus Club Italian Mutual Aid and Benevolent Society, Inc. has held a Club license at 18 Raymond Place, Winchester. On or about January 1998 the Local Board imposed 7 conditions on the Licensee's license (Exhibit 2). The conditions were as follows:

- When using the front parking spaces, members, guests, employees and persons attending functions shall back into the parking spaces as a safety consideration in view of the children in the neighborhood. The south lot of the Club should be used first, if space is available there.
- Compliance with Selectmen's Regulations: Christopher Columbus Club must comply in all respects with all provisions of the Board of Selectmen's regulations covering club licenses, a copy of which is attached and incorporated in the License by reference. To the extent that any particular conditions of the License are stricter than those Regulations, the particular conditions shall govern this license.
- Within ten days of the renewal of the license and at other times as requested by the Board or Chief of Police, Christopher Columbus Club will provide a current list of names and addresses of all members of the Club. An updated list will be furnished at reasonable intervals upon request. The Club will identify to the Town Manager the names

and addresses of three members of the Club's Board of Directors who shall serve as liaison to the neighbors during the time that the license is in effect. Should the identities of those designated persons change at any time, the Club will notify the Town Manager within three days of that fact.

- The Christopher Columbus Club shall maintain a log of all complaints received from neighbors or others regarding the operation of the Club (indicating the names of persons complaining, address, telephone, nature of complaint and response by the Club).
- No function shall serve alcohol after 11:00 PM and no function shall be in session after 12:00 midnight. Service in the bar area shall cease and the bar area shall be closed after 11:00 PM.
- All social functions must have police detail coverage.
- All social functions serving alcohol provide bartender/manager supervision on all floors of the Club.

J. Biassard, Middlesex Superior Court, MICV 1999-03214-F affirmed the legality of 6 of 7 conditions on September 28, 2000 (Exhibit 10).¹

On January 16, 2008 the Local Board held an adjudicatory hearing on January 16, 2008 to discuss the possible violations by the licensee of the imposed conditions.

Following the public hearing on February 11, 2008 the Local Board revoked the Licensee's license Exhibit A (letter of Notice dated February 15, 2008). The reasons for the revocation are not stated in the February 15, 2008 letter but incorporates by reference minutes of February 4 and 15 public meetings. The February 11, 2008 minutes state "...namely that the Club has failed to abide by the conditions of their license over a sustained period of time, including but not limited to failing to maintain neighborhood liaisons, failing to maintain an accurate and detailed list of complaints, and on the whole, failing to address the substance of the conditions and what and they were intended to address which is a sustained effort and a good faith effort to reach out to the neighbors who surround the Club and to try to exist with and within the neighborhood on a peaceful basis, which would not represent a constant disturbance and disruption to the neighborhood."

On behalf of the Local Board, Chief Albertelli testified that the Licensee's Club is located in the middle of a neighborhood. He testified that the Club creates a public safety issue because of the parking lot design in relationship to the sidewalk. The Chief testified that he did not originate this action nor did it result because of any liquor law violation. The Chief testified that the Licensee however violated the conditions of the agreement with the Local Board by not having 3 current community liaisons who would interact with the community and not keep a log of reported complaints. The Commission has had the opportunity of observing Chief Albertelli

¹ In Christopher Columbus Italian v. Alcoholic Beverages Control Commission, the Superior Court affirmed the Commission's decision upholding the Local Board's imposition of additional conditions, finding that G.L.c. 138, § 23 allows the local licensing authority to place "reasonable requirements" upon the licensee. Christopher Columbus Italian, Supra at 5. The Court further held that the Local Board failed to follow proper procedure with respect to reducing the hours of operation, which requires notice two weeks prior to the hearing pursuant to Section 12 (6) of Chapter 138. Id.; G.L.c. 138 § 12 (6).

and find him credible on the issues of the licensee's failure to have 3 current community liaisons and failure to keep a log of incidents.

On behalf of the Licensee, Steven DeMayo testified that he was a director of the Club and a bartender. He admitted that they, the Licensee, failed to keep current the liaison requirement. He stated that the community and the police knew the managing directors, who often attended community meetings. Mr. DeMayo testified that any complaint received from the public regarding the Club goes into their general logbook and is discussed among the directors. The Licensee introduced into evidence a photocopy of what appears to be a log Red Book (Exhibit 15 of 1/16/08 Local Board hearing) beginning February 1, 2006 through December 15, 2007 and Black Book (Exhibit 15 of 1/16/08 Local Board hearing) from October 5, 2002 through December 17, 2005. The Commission has had the opportunity to observe Mr. DeMayo and find him credible as to admission of no community liaisons and his representation as to the logbook data input and use.

There was also testimony from 3 abutters Mrs. O'Connell, Mrs. Guillaume and Mr. Darryl Gately. Mrs. O'Connell testified about her history of problems with the Club i.e. noise, deliveries by commercial vehicles, traffic and patron activities. She testified that she believes the neighborhood has out grown the Club and there is no need for it to exist any longer. The Licensee objected to Mrs. O'Connell's testimony as irrelevant and immaterial to the issues before the Commission. The Commission has had the opportunity to examine Mrs. O'Connell's demeanor, and finds her prior complaints and testimony to be unrelated, immaterial and irrelevant to the three charges raised by the Local Board. (See Mrs. O'Connell's personal diary Exhibit 16).

Mrs. Guillaume also testified that the Club is a nuisance and there are disturbances there. She testified that when she moved to the neighborhood the older Italian men who ran the Club were friendly, but the new managers are less sensitive to the community. She testified that the Club is however benevolent and donated a defibrillator. The Commission has had the opportunity to observe Mrs. Guillaume's demeanor and find her testimony to be immaterial and irrelevant to the three charges raised by the Local Board.

Darryl Gately, another abutter also testified that he came forward to tell the truth and speak up about the injustice(s) waged against the Club by the neighbors. He testified that he has never known the Club to have any problems or seen the police called for an incident. Gately admitted that he was a member in the past (1990s) but is no longer a member. The Commission has had the opportunity to examine Mr. Gately's demeanor and find him to have had a prior interest (membership) in the Club and personally biased.

DISCUSSION

The Licensee is charged with violating condition #3 (Exhibit 2), "Within ten days of the renewal of the license and at other times as requested by the Board or Chief of Police, Christopher Columbus Club will provide a current list of names and addresses of all members of the Club. An updated list will be furnished at reasonable intervals upon request. The Club will identify to the Town Manager the names and addresses of three members of the Club's Board of Directors who shall serve as liaison to the neighbors during the time that the license is in effect. Should the identities of those designated persons change at any time, the Club will notify the

Town Manager within three days of that fact.” The Licensee’s director Steve DeMayo did not contest that they violated the provisions of updating the liaison list, but in mitigation testified that the police and the community knew the names of the persons in charge and phone numbers to call. The Commission approves the Local Board’s finding that the licensee violated the community liaison provisions of the Local Board conditions on the license.

The Licensee is also charged with violating condition #4 (Exhibit 2), “The Christopher Columbus Club shall maintain a log of all complaints received from neighbors or others regarding the operation of the Club (indicating the names of persons complaining, address, telephone, nature of complaint and response by the Club).” Chief Albertelli testified that the Club did not keep an accurate logbook of complaints in compliance with condition #4. The Chief gave no specific information as to what incidents, which were not reported, nor did he contradict any of the information, which was provided by Mr. DeMayo in Exhibit 15.

Steve DeMayo testified that the Club did keep a logbook of all complaints and introduced the Black Book incident log (Exhibit 15 of 1/16/08 Local Board hearing) dating from 9/30/01-10/1/05 and the Red Book (Exhibit 15 of 1/16/08 Local Board hearing) dating from 2/1/06-12/15/07. A perusal of the two logbooks from September 30, 2001 to December 15, 2007 show that there is a chronological data entry of information from “no incidents on 6/23/06 to “someone who drove out of the parking lot swore at Dr. Ghosh (neighbor), 6/27/06 called Dr. Ghosh at 3:20 pm will come back to talk to one member, all sorted out.” The Local Board did not contest whether the Club logs of Exhibit 15 are true and accurate.

Two abutters, Mrs. O’Connell and Mrs. Guillaume testified about various problems with the Club but provided no details as to whether these incidents were included within the logs provided by the Licensee.

The Commission disapproves the finding of the Local Board that the Licensee did not keep sufficient logs of the incidents (that they were aware of) consistent with condition #4 and therefore find no violation of failure to “...maintain a log of all complaints received from neighbors or others regarding the operation of the Club...”

The Licensee is charged with a third charge of “failing to address the substance of the conditions and what they were intended to address which is a substantial effort and good faith effort to reach out to the neighbors who surround the Club and to try and exist with and with the neighborhood on a personal basis, which would not reflect a constant disturbance and disruption to the neighborhood.” This third charge was incorporated by reference in the February 15, 2008 letter, but it appears as a statement of reasons in the February 11, 2008 minutes. In comparing the third charge to the seven conditions (Exhibit 2), there is no condition, which requires the Licensee to comply with the requirements of the third charge. In essence, the third charge requires the Licensee to reach out to the neighbors and make a good faith effort to exist on a peaceful basis. Notwithstanding the difficulty in quantifying what the third charge means and what constitutes compliance or non-compliance, it is not a condition on the license. Moreover, it was never agreed to by the Licensee or ordered by the court (See Exhibit 2). Therefore, the Commission disapproves the third violation of “failing to address the substance of the conditions and what they were intended to address which is a substantial effort and good faith effort to reach out to the neighbors who surround the Club and to try and exist with and with the

neighborhood on a personal basis, which would not reflect a constant disturbance and disruption to the neighborhood.”

The Commission’s approval of the one violation for failing to maintain neighborhood liaisons is a far less aggregation of violations than the three violations that Local Board found and the Commission disapproved. The Local Board moreover has not parceled out a separate penalty for each violation.² The Commission is without knowledge of what the Local Board progressive penalties guidelines are if any or history of penalties for similar violations. Wherefore, the Commission remands this case with the recommendation that, for the violation of failing to maintain neighborhood liaisons, the Licensee’s license be suspended for 3 days.

ALCOHOLIC BEVERAGES CONTROL COMMISSION

Eddie J. Jenkins, Chairman _____

Robert Cronin, Commissioner _____

Dated in Boston, Massachusetts this 22nd day of July 2008.

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
John D. McElhiney, Esq.
File

² The Commission advises that, although this review constitutes a hearing de novo, the preferred practice for the Local Board is, as Town Counsel explained at the board’s February 4, 2008 meeting, to include a statement of reasons in the notice of board action. G. L. c. 138, § 23; See, Aristocratic Restaurant of Massachusetts, Inc. v. Alcoholic Beverages Control Commission, 374 Mass. 547 (1978).