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TOWN OF ARLINGTON
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DECISION of the LOCAL LICENSING AUTHORITY

Licensee: BLOG Inc. d/b/a "Common Ground"

Licensed Premises: 319 Broadway
(Common Ground)

License No.: 003000064

License Type: Restaurant Liquor License (Sale of All Alcoholic
Beverages to be Consumed on the Premises)

Expiration Date: December 31, 2016

On December 7, 2015, after proper notice and hearing and granted request for a postponement, the Town of Arlington Board of Selectmen, in its capacity as local liquor licensing authority ("LLA"), unanimously voted to order suspension of the above-referenced license for three consecutive (3) days beginning on the same day of the week

that the violation was committed (a Wednesday) in February of 2016, the specific date to be designated by the Licensee and reported to the Board staff, but to be completed by no later than February 29, 2016. Further, an additional two weeks (fourteen days) license suspension shall be held in abeyance for a one-year probationary period to end on January 25, 2017. Should this LLA find the license holder in violation of G.L. c. 138, any regulation promulgated by the Alcoholic Beverages Control Commission (“ABCC”) or its own regulations, within such a period, the license shall be immediately suspended for fourteen days in addition to any suspension or other sanction for the new violation. The license holder shall also be prohibited from receiving so-called extended hours on its license for the same probationary period. Finally, this decision also codifies the license holder’s agreement to stipulate that it shall 1) terminate its previous practice of permitting “shift drinks” – a free drink for restaurant employees after their shift ends, 2) ensure that all employees read and sign Common Ground’s alcohol service policy.

In accordance with G.L. c. 138, § 23, the LLA hereby provides this statement of reasons for its action.

Procedural History. Following a lengthy investigation by the Arlington Police Department (“Department”), including joint interviews and inquiries conducted with ABCC staff, toxicology information provided by the Middlesex District Attorney’s Office, and further evidence collected, the Department determined that on or about January 1, 2015, Arlington resident James McLaughlin was driving his car while at or near twice the legal limit for blood alcohol content (“BAC”) when he fatally crashed into a tree on Pleasant Street at approximately 1:28 a.m. Mr. McLaughlin had been drinking alcohol at Common Ground immediately prior to his accident. As a duly appointed agent

for the LLA, the Department in conjunction with the Arlington Legal Department recommended a hearing to determine if any violations of state or local alcohol laws occurred.

In accordance with G.L. c. 138, § 23(4), the Board convened a hearing on December 7, 2015, at approximately 7:15 p.m. to consider whether or not any violation of c. 138, ABCC regulations or LLA regulations occurred at Common Ground. The licensee was notified of the hearing by certified letter dated November 16, 2015, and acknowledged receipt of same, and was granted a brief postponement of the initially scheduled November 23, 2015 hearing date.

Questions Presented.

- (1) Did a violation of the state liquor law occur on the above-referenced sale or delivery of alcoholic beverages to intoxicated persons, as well as 204 C.M.R. 2.05(2), which prohibits any illegality on licensed premises.?
- (2) If so, what action, if any, will the LLA take concerning the above-referenced license as a result?

Evidence.

The following witnesses appeared and testified:

(1) Douglas Heim, Town Counsel on behalf of the Town of Arlington Legal Department and Arlington Police Department, summarizing undisputed facts between the parties based upon Arlington Police Department Incident Report No. 15000006/1, Joint Interview Notes conducted with the ABCC, Surveillance Camera Footage provided by the License Holder, and a Toxicology Report.¹

(2) Robert D. O'Guin , Co-Owner of Common Ground with John D. Leone, Esq., his counsel.

¹ Counsel for the License Holder, Mr. John Leone, Esq. was provided copy or an opportunity to review each of the listed evidentiary sources in advance of the hearing by the Legal Department.

Findings of Fact. On the basis of the evidence presented at the December 7, 2015 Hearing described above, the LLA made the following findings of fact:

1. At approximately 1:28 a.m. on January 1, 2015, Mr. McLaughlin crashed his vehicle into a tree in the vicinity of 135 Pleasant Street. *Heim Testimony from Incident Report.*
2. Mr. McLaughlin was accompanied by two adult passengers – his daughter, and a person believed to be his daughter’s friend and co-worker, both of whom are employees of Common Ground. *Heim Testimony from Incident Report.*
3. Mr. McLaughlin, who was not wearing a seatbelt at the time of the accident, ultimately succumbed to injuries he sustained while the passengers suffered non-life threatening injuries. *Heim Testimony from Incident Report.*
4. Subsequent blood tests revealed that Mr. McLaughlin’s Blood Alcohol Content at the time of the accident was approximately 0.18%. *Heim Testimony from Incident Report and Toxicology Report.*
5. There were no remarkable conditions on Pleasant Street at the time of the accident noted by responding APD personnel. *Heim Testimony from Incident Report.*
6. One passenger provided false information asserting that Mr. McLaughlin came to pick the passengers up at Common Ground before the accident, while the other would not say where Mr. McLaughlin had been prior to the accident. *Heim Testimony from Incident Report.*

7. Mr. McLaughlin had in fact been at Common Ground with the passengers immediately prior to the accident, leaving at approximately 1:22 a.m. *Heim Testimony from Incident Report, Video Surveillance Records, Investigative Notes.*
8. Mr. McLaughlin had been served food and alcohol at Common Ground throughout the day beginning sometime between 2:00 and 3:00 p.m., leaving and returning several times for a total of at least four (4) visits to the restaurant. Various bartenders and staff recalled he ordered one to two drinks during each visit totaling approximately five (5) drinks throughout the day and evening. *Heim Testimony from Video Surveillance Records and Investigative Notes.*
9. During his final visit he returned sometime between 11:00 and 11:30 p.m. on December 31, 2014, and is believed to have been served a Guinness lager and a “small glass of champagne” between such time and last call. *Heim Testimony from Video Surveillance Records and Investigative Notes.*
10. Further during at least three (3) of his visits to Common Ground, Mr. McLaughlin was drinking and socializing with Common Ground employees who had completed their shifts, including one of the passengers in his car at the time of the accident. *Heim Testimony from Video Surveillance Records, Investigative Notes.*
11. The License Holder, Mr. O’Guin and his counsel, Mr. Leone, confirmed that it was the restaurant’s practice at the time of the incident to allow staff members over 21 years of age who complete their shifts to have a free

alcoholic drink, as well as a half-priced drink and meal (a practice referred to as a “shift drink.”) *O’Guin Testimony, Leone Testimony.*

12. None of the serving bartenders or other witnesses recall Mr. McLaughlin appearing intoxicated. *Heim Testimony from Investigative Notes.*

13. Mr. O’Guin, and his counsel noted in the course of the investigation and at hearing that that McLaughlin was a regular patron at Common Ground, friendly and familiar to many staff, but insist that alcohol can only be served from the bar, consistent with their internal alcohol policies and regulations. *O’Guin Testimony, Leone Testimony.*

14. The License Holder further strongly denies that any bartender had any indication that Mr. McLaughlin was drunk at any time in the bar, let alone when he was last served. *O’Guin Testimony, Leone Testimony.*

Conclusion. On the basis of the findings of fact recited above, the LLA made the following conclusions on the Questions Presented:

- (1) Did a violation of the state liquor law occur on the above-referenced licensed premises on or about December 31, 2014, by the sale or delivery of alcoholic beverage(s) to an intoxicated person?

Yes.

- (2) If so, what action, if any, will the LLA take concerning the above-referenced license as a result?

3-day license suspension for consecutive days to commence on a Wednesday as selected by the Licensee on or after Wednesday January 27, 2016, but to be completed before February 29, 2016, as well as a 14-day license suspension held in abeyance for a probationary period of one year ending on January 25, 2017, disqualification from extended service hours for such same period, and requirement that all staff be required to read and sign for Common Ground’s updated alcohol training policy, which shall

prohibit the aforementioned practice of “shift drinks” for employees and be completed on or before February 29, 2016.

Discussion. Section 69 Chapter 138 of the General Laws prohibits sale or delivery of alcoholic beverages to an intoxicated person. G.L. c. 138, § 69. On January 1, 2016, Mr. McLaughlin’s blood alcohol content was approximately 0.18%, at the time of (twice the limit in the Commonwealth) his accident with a tree on Pleasant Street at 1:28 a.m. He had left the licensed establishment approximately six minutes earlier, where he had been served alcohol (and food) throughout the day and evening of December 31, 2014 leading unto the early morning of January 1, 2015, including two alcoholic drinks during his last visit to the restaurant beginning at approximately 11:30 p.m. on the 31st. This Board recognizes that there remain many unknowns in this circumstance, but finds such sale was in violation of Chapter 138, as well as the regulations of the Alcoholic Beverages Control Commission at 204 C.M.R. 2.05(2).

The LLA has adopted a policy governing the sale of alcoholic beverages by restaurants. See Alcohol Licenses and Regulations, at Policies, Rules, and Regulations of Alcohol Licenses for Restaurants (revised January 12, 2015) (“Policy”). The Policy does not provide a specific guideline for this type of alcohol violation, but does provide generally that any suspension is to be served on the same day as the violation occurred. Generally speaking, the suspension terms of license holders found in violation of §69 vary depending on the facts and circumstances presented, not only in the underlying matter itself, but the history, response, and cooperation of the license holders in the investigation as well. Indeed, a survey of neighboring communities finds that some violations of §69 have resulted in warnings, and others license revocations.

Here, the evidence that the patron in question was intoxicated is irrefutable and not contested. It is also uncontested that the patron was served alcohol at multiple, distinct intervals throughout the day at the premises. What is contested turns on evidence with varying degrees of subjectivity and significance, which inform the point at which the LLA believes a reasonable person knew or should have known the patron was intoxicated. The LLA finds that while the total number of drinks (approximately five) was low given the period of time question, the balance of evidence yields sufficient basis to find the violation occurred. The LLA understands the License Holder's strong disagreement with this conclusion, but also acknowledges that the license holder was very cooperative throughout the investigation and pre-hearing process even given significant disagreement at hearing. Further, despite such disagreement, the License Holder has agreed not to appeal this determination and stipulated to certain conditions that recognize mutual concern even in the presence of ultimately differing conclusions.

Therefore, LLA chooses to issue a three (3) consecutive day suspension, with an additional (14) fourteen days suspension held in abeyance for a one-year probationary period to end on January 25, 2017, as well as a one-year probation disqualifying the – license holder from any application for extended hours on its license. The LLA notes that the License Holder also stipulates that it shall terminate its “shift drink” practice as described herein ensure that all employees read and sign for Common Ground's updated alcohol service policy on or before February 29, 2016.

The LLA will also allow the Licensee to determine when the suspension shall begin so long as it is served on three consecutive days beginning on the day of the week

when the violation was committed (a Wednesday in this instance) and is completed before February 29, 2016.

Order. For the reasons stated herein, the above-referenced license is SUSPENDED for three (3) days beginning on or after January 25, 2016, said days to be consecutive and beginning on a Wednesday, but otherwise selected by the Licensee to be completed before February 29, 2016, and reported to the Office of the Board of Selectmen in advance. An additional fourteen (14) days suspension shall be held in abeyance for a one-year probationary period in which the Licensee shall also be prohibited from being granted extended hours of service for any reason. It is further stipulated and ordered that the Licensee shall terminate its “shift drink” practice as described herein, and that all employees shall read and sign for Common Ground’s alcohol service policy on or before February 29, 2016.

This order does not affect the Licensee’s Common Victualler permit, so the Licensee may remain open for serving food and non-alcoholic beverages on those days, as long as no alcoholic beverages are exposed for sale.

Dated: January ___, 2016

By:

TOWN OF ARLINGTON
BOARD OF SELECTMEN

Kevin F. Greeley, Chair

Diane M. Mahon, Vice-Chair

Daniel J. Dunn

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Steven M. Byrne