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TOWN OF ARLINGTON
MASSACHUSETTS 02476-4908

DECISION of the LOCAL LICENSING AUTHORITY

Licensee: Sagar Restaurant Corp.
Anil Kumar, Manager

Licensed Premises: 444 Massachusetts Avenue
(Punjabi Tadka)

License No.: 003000019

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

Expiration Date: December 31, 2015

On April 27, 2015, after proper notice and hearing, 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 Thursday) in June of 2015, the specific date to be designated by the Licensee and reported to the Board staff, but to be completed by no later than June 30, 2015. Further, Licensee is required to have all alcohol-serving staff complete TIPS training, and develop an internal training alcohol service program for future use before their suspension is completed. In

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

Procedural History. The Arlington Police Department (“Department”), as the duly appointed agent for the LLA, conducted alcohol compliance checks on January 22, 2015 and March 12, 2015. The Department later notified the LLA of the results of those operations, including advising the LLA of those licensees which failed the compliance check. In accordance with G.L. c. 138, § 23(4), the Board convened a hearing on April 27, 2015, at approximately 6:30 p.m. to consider the March 12, 2015 failure reports. The licensee was notified of the hearing by certified letter dated March 25, 2015, and acknowledged receipt of same.

Questions Presented.

- (1) Did a violation of the state liquor law occur on the above-referenced licensed premises on or about March 12, 2015, by the sale or delivery of alcoholic beverage(s) to one or more underage persons?
- (2) If so, what action, if any, will the LLA take concerning the above-referenced license as a result?

Evidence. The following documents were accepted and made part of the record:

(A) Arlington Police Department Incident Report #15005677/1 (March 12, 2015).

The following witnesses appeared and testified:

- (1) Inspector Stephen Porciello, Arlington Police Department
- (2) Anil Kumar, Owner/Manager of Punjabi Tadka

Findings of Fact. On the basis of the evidence presented at the April 27th Hearing, described above, the LLA made the following findings of fact:

1. On March 12, 2015, the Arlington Police Department, through Inspectors Stephen Porciello and Brian Fennelly, conducted alcohol compliance checks of twelve

(12) of the Town's restaurants licensed to sell alcoholic beverages for consumption on the premises under G.L. c. 138, § 12, and four (4) of the Town's licensed package stores under G.L. c. 138 § 15. Previous compliance checks had been conducted for other license holders on January 22, 2015. *Porciello Testimony; Incident Report.*

2. The compliance check was conducted in similar fashion to previous checks conducted in Arlington and in accordance with the Compliance Check Guidelines of the Alcoholic Beverages Control Commission. *Porciello Testimony.*

3. As part of this compliance check, two underaged operatives were sent into each establishment with no identification. The operatives attempted to purchase alcoholic beverages in each establishment. At the Licensed Premises on March 12, 2015, the two operatives ordered, and were each served bottles of Coors Light beer by a man working at the bar, later self-identified as Ghan Shyam to the Inspectors. The operatives paid for the beers and received change along with a receipt identifying a server as "Ajay." The operatives did not consume the beverages, but left the restaurant to return with the Inspectors and notify the server of the violation. *Porciello Testimony; Incident Report.*

4. The Licensed Premises has been in operation in the Town of Arlington and licensed to serve alcohol for approximately three (3) years and this is the first alcohol or liquor violation that has been documented. The Licensee did not dispute Inspector Porciello's rendition of the facts or the Incident Report. Owner/Manager Mr. Kumar expressed regret about the violation, promised it would not happen again, and explained that his server had been extremely busy on a day when the restaurant was not well staffed. *Kumar Testimony; Incident Report.*

5. The License Holder promised to take the TIPS training program and take additional measures to ensure that all alcohol-serving employees are sufficiently trained in preventing the service of alcohol to underaged persons. *Kumar 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 March 12, 2015, by the sale or delivery of alcoholic beverage(s) to one or more underage persons?

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 Thursday as selected by the Licensee on or after Thursday May 14, 2015, but to be completed before June 30, 2015, as well as a requirement that all alcohol-serving staff be TIPS trained and that the License Holder develop internal alcohol service training policies before the suspension period is concluded.

Discussion. Sections 12 and 34 of Chapter 138 of the General Laws prohibit sale or delivery of alcoholic beverages to any person under 21 years of age. G.L. c. 138, §§ 12, 34. On March 12, two underaged persons were sold alcoholic beverages by the Licensee's staff on the Licensed Premises. This 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

provides that a first offense of serving alcohol to an underaged person will presumptively lead to a license suspension of three to five days to commence on the same day of the week as the violation. See Policy at p. 8 Among the factors to be considered in fixing the penalty are the quality of the evidence of the violation, the licensee's procedures for avoiding underage sales, efforts made to check identification, nature and circumstances of the violation, and history of violations by the licensee. Id.

Here, the evidence is uncontroverted that the violation occurred and there was no effort made to check identification of the underaged operatives. Because it was undisputed that the violation occurred, the LLA has no choice but to impose a suspension. Additionally, the LLA expressed concerns about both the sufficiency of the Licensee's current training protocols to prevent alcohol service to underaged persons, as well as its overall substantive response to the violation. Specifically, the LLA notes that none of the License Holder's staff are TIPS trained and no evidence has been provided on internal alcohol service training procedures. As such, in light of the absence of any previous violations, the LLA chooses to implement the minimum three-day suspension called for in its guidelines for a first offense, but orders the License Holder to have all alcohol-serving staff TIPS trained and for the Licensee to develop an internal alcohol service training program before the end of the suspension period. 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 Thursday in this instance) and is completed before June 30, 2015.

Order. For the reasons stated herein, the above-referenced license is SUSPENDED for three days beginning on or after May 14, 2015, said days to be

consecutive and beginning on a Thursday, but otherwise selected by the Licensee to be completed before June 30, 2015 and reported to the Office of the Board of Selectmen in advance. Licensee is further ordered to have all alcohol-serving staff complete the TIPS training program, and develop an internal training alcohol service program for future use before the suspension is completed. 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: May 11, 2015

By:

TOWN OF ARLINGTON
BOARD OF SELECTMEN

Kevin F. Greeley, Chair

Diane M. Mahon, Vice-Chair

Daniel J. Dunn

Steven M. Byrne

Joseph A. Curro, Jr.

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DECISION of the LOCAL LICENSING AUTHORITY

Licensee: Menotomy Beer & Wine, Inc.
(Mary Parent, Manager)

Licensed Premises: 80 Broadway
(Menotomy Beer & Wine)

License No.: #00300046

License Type: Package Store License

Expiration Date: December 31, 2015

On April 27, 2015, after proper notice and hearing, the Town of Arlington Board of Selectmen, in its capacity as local liquor licensing authority (“LLA”), by vote of 4-1 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 Thursday), the specific date to be designated by the Licensee and reported to the Board staff, but to be completed by no later than July 31, 2015. In accordance with G.L. c. 138, § 23, the LLA hereby provides this statement of reasons for its action.

Procedural History. The Arlington Police Department (“Department”), as the duly appointed agent for the LLA, conducted alcohol compliance checks on January 22,

2015 and March 12, 2015. The Department later notified the LLA of the results of those operations, including advising the LLA of those licensees which failed the compliance check. In accordance with G.L. c. 138, § 23(4), the Board convened a hearing on April 27, 2015, at approximately 6:30 p.m. to consider the March 12, 2015 failure reports. The licensee was notified of the hearing by certified letter dated March 25, 2015, and acknowledged receipt of same.

Questions Presented.

- (1) Did a violation of the state liquor law occur on the above-referenced licensed premises on or about March 12, 2015, by the sale or delivery of alcoholic beverage(s) to one or more underage persons?
- (2) If so, what action, if any, will the LLA take concerning the above-referenced license as a result?

Evidence. The following documents were accepted and made part of the record:

- (A) Arlington Police Department Incident Report #15005677/1 (March 12, 2015).

The following witnesses appeared and testified:

- (1) Inspector Stephen Porciello, Arlington Police Department; and
- (2) Mary Parent, Manager/Owner of Menotomy Beer & Wine.

Findings of Fact. On the basis of the evidence presented at the March 30 hearing, described above, the LLA made the following findings of fact:

1. On March 12, 2015, the Arlington Police Department, through Inspectors Stephen Porciello and Brian Fennelly, conducted alcohol compliance checks of twelve (12) of the Town's restaurants licensed to sell alcoholic beverages for consumption on the premises under G.L. c. 138, § 12, and four (4) of the Town's licensed package stores

under G.L. c. 138 § 15. Previous compliance checks had been conducted for other license holders on January 22, 2015.

2. The compliance check was conducted in similar fashion to previous checks conducted in Arlington and in accordance with the Compliance Check Guidelines of the Alcoholic Beverages Control Commission. *Porciello Testimony.*

3. As part of this compliance check, two underage operatives were sent into each establishment with no identification. The operatives attempted to purchase alcoholic beverages in each establishment. At the Licensed Premises on March 12, 2015, the two operatives purchased a six-pack of Samuel Adams Boston Lager without having been asked for identification by a male cashier who was subsequently self-identified to Inspectors as Mike Dadmun. The operatives paid for the six-pack and received change, but were not given a receipt. The operatives then returned with the Inspectors and informed the cashier of the violation. *Porciello Testimony; Incident Report.*

4. The Licensed Premises has been in operation in the Town of Arlington for eight (8) years and this is the first liquor violation that has been documented. The Licensee did not dispute Inspector Porciello's rendition of the facts or the Incident Report, and Owner/Manager Ms. Parent expressed embarrassment at the violation. She noted that the violation was particularly surprising in light of the cashier's experience serving alcohol in restaurants and TIPS training, and that he made the error in part because he erroneously believed he knew the operatives to be of age from past transactions. Ms. Parent noted that Menotomy Beer & Wine has a policy of requesting identification for everyone who looks under thirty-five (35) and had previously employed a more aggressive policy of requesting identification of all patrons, until older patrons

repeatedly expressed complaints. The License Holder also noted that they are committed to having all their staff and management team re-take the TIPS training course. *Porciello Testimony; Incident Report; Parent Testimony.*

5. The cashier who served the operatives is aware of the gravity of the violation and the License Holder has met with all their staff about their policies and the importance of remaining vigilant in enforcing their carding policies. *Parent 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 March 12, 2015, by the sale or delivery of alcoholic beverage(s) to one or more underage persons?

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 Thursday as selected by the Licensee on or after Thursday May 14, 2015, but to be completed before July 31, 2015.

Discussion. Sections 12, 15 and 34 of Chapter 138 of the General Laws prohibit sale or delivery of alcoholic beverages to any person under 21 years of age. G.L. c. 138, §§ 12, 15, and 34. On January 22, 2015, two underaged persons were sold alcoholic beverages by the Licensee's staff on the Licensed Premises. This 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

provides that a first offense of serving alcohol to an underaged person will presumptively lead to a license suspension of three to five days to commence on the same day of the week as the violation. See Policy at p. 8. Among the factors to be considered in affixing the penalty are the quality of the evidence of the violation, the licensee's procedures for avoiding underage sales, efforts made to check identification, nature and circumstances of the violation, and history of violations by the licensee. Id.

Here, the evidence is uncontroverted that the violation occurred and there was no effort made to check identification of the underaged operatives. Because it was undisputed that the violation occurred, the LLA has no choice but to impose a suspension. With that said, the LLA took note of the License Holder's otherwise spotless record of compliance, contributions to the community, and commitment to the TIPS program. Given such a record and response at hearing, and in light of the practical economic impact of a minimum three day suspension for a package store, the LLA chooses to implement the minimum three-day suspension called for in its guidelines for a first offense and further, will allow the Licensee significant time 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 Thursday in this instance) to be completed by July 31, 2015.

Order. For the reasons stated herein, the above-referenced license is SUSPENDED for three days beginning on or after May 14, 2015, said days to be consecutive and beginning on a Thursday, but otherwise selected by the Licensee to be completed before July 31, 2015 and reported to the Office of the Board of Selectmen in advance.

Dated: May 11, 2015

By:

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