

STATE OF CONNECTICUT
DEPARTMENT OF CONSUMER PROTECTION

IN THE MATTER OF
Pavilion Restaurant
Stephanie Livesey, Permittee
Restaurant Consultants, Inc., Backer
Liquor Permit No. LCA.5820
Case Nos. 2008-4486 and 2008-5448

Docket No. 10-1123
August 10, 2010

MEMORANDUM OF DECISION REGARDING REMAND

Procedural History

This matter involves a café liquor permit issued to the Pavilion Restaurant, 85 Swan Avenue, Old Lyme, Connecticut. On January 8, 2009, the Department of Consumer Protection held a formal administrative hearing concerning specified alleged violations of the Liquor Control Act. Following such hearing, on March 26, 2009, the department issued a Memorandum of Decision finding the Respondent in violation of the charges alleged and imposing a suspension of the Respondent's liquor permit. The Respondent appealed the adverse decision to the Superior Court in the matter of *Restaurant Consultants, Inc., et al v. Department of Consumer Protection, Liquor Control Commission*, CV 09 4020833S.

On February 11, 2010, after proceedings before Hon. Henry S. Cohn, the matter was remanded to the department for the taking of further evidence and issuing findings of fact regarding the following issues:

Issue #1: Prior to October, 1979, what was the practice and policy of the Liquor Control Commission in regard to defining a “premises”?

Issue #2. Prior to October, 1979, what was the practice and policy of the Liquor Control Commission in regard to permitting outdoor service of alcohol?

Issue #3. In 1979, what was the authority of a liquor agent to make representations to a permittee that would have the effect of binding the Liquor Control Commission?

On June 10, 2010, a hearing was held before the Department of Consumer Protection for the purpose of taking evidence and issuing findings on the remanded issues. Notice of the proceedings was provided and Frank Maratta, president of the backer corporation, appeared, with counsel.

Findings of Fact

Based upon the testimony and evidence presented and made part of the record, we find the following facts:

1. Gerald C. Langlais was hired by the Department of Liquor Control in 1978 as an agent. In 1988 he became the Permit Manager or Deputy Director. In 1992 he became the Director or Administrator. (Testimony of Gerald C. Langlais, Transcript of January 8, 2009, hearing, p. 35) He held the position of Administrator until he retired on July 1, 2009. (Testimony of Gerald C. Langlais, Transcript of June 10, 2010 hearing, p. 6)

2. Steven F. Hennessey was employed with the Department of Liquor Control starting in 1974. He left that department in 1995. He held the positions of Agent, Supervisor, Chief Inspector and Deputy Director. (Testimony of Steven F. Hennessey, Transcript of June 10, 2010 hearing, p. 22)

As to Issue #1: Prior to October, 1979, what was the practice and policy of the Liquor Control Commission in regard to defining a “premises”?

3. For the service, delivery or presence of alcoholic beverages, a café premises or a restaurant premises, which were treated similarly, is defined as the physical structure of the building or a portion of a building in which the business was located. (Testimony of Gerald C. Langlais, Transcript of June 10, 2010 hearing, p. 7)

4. A café premises or a restaurant premises was defined as being within a building, either as the building or a portion of the building. (Testimony of Gerald C. Langlais, Transcript of June 10, 2010 hearing, p. 7)

5. Café premises and restaurant premises were confined within the four walls of the building. (Testimony of Steven F. Hennessey, Transcript of June 10, 2010 hearing, p. 23)

6. The term “building” is equated with “premises.” (Testimony of Gerald C. Langlais, Transcript of June 10, 2010 hearing, p. 14)

7. Prior to October 1, 1979, premises would not include the outside portion of the building. (Testimony of Gerald C. Langlais, Transcript of June 10, 2010 hearing, p. 14)

As to Issue #2. Prior to October, 1979, what was the practice and policy of the Liquor Control Commission in regard to permitting outdoor service of alcohol?

8. Prior to October 1, 1979, premises with café or restaurant permits were not allowed outdoor service of alcohol. (Testimony of Gerald C. Langlais, Transcript of June 10, 2010 hearing, p. 16)

9. If an agent observed the outdoor service of alcohol, a violation of the Liquor Control Act would be charged by the agent for alleged "off-premises consumption". (Testimony of Gerald C. Langlais, Transcript of June 10, 2010 hearing, p. 8)

10. Holders of a hotel liquor permit (Sec. 30-51 Connecticut General Statutes) which operated as a resort were allowed to serve alcohol in areas other than the main hotel building and also on the roof. (Testimony of Gerald C. Langlais, Transcript of June 10, 2010 hearing, p. 15-16)

11. There were no permanent patio approvals from the Liquor Control Commission prior to October 1, 1979. (Testimony of Steven F. Hennessey, Transcript of June 10, 2010 hearing, p. 23-24)

12. The sole isolated exception would be a charity fundraiser for a day or two in which case, approval by the Liquor Control Commission would be given to the café or restaurant in writing. In order to obtain such approval for the benefit of a charity, it would be necessary to submit a written request to the Liquor Control Commission, with a specific date and sketch provided. (Testimony of Steven F. Hennessey, Transcript of June 10, 2010 hearing, p. 23-24)

13. While prior to October 1, 1979, restaurant or café patrons may have been in possession of alcohol outside the legal premises, it would not have been sanctioned or with permanent approval from the Liquor Control Commission

prior to the enactment of the patio law on October 1, 1979. (Testimony of Steven F. Hennessey, Transcript of June 10, 2010 hearing, p. 25)

14. Prior to October 1, 1979, except for isolated incidents for the benefit of a charity, outdoor service of alcohol at a café was not allowed. (Testimony of Steven F. Hennessey, Transcript of June 10, 2010 hearing, p. 26)

15. There were no café or restaurant permit premise which were legally allowed to include outside areas for the service of alcohol, although service of food was allowed outside the premises. (Testimony of Steven F. Hennessey, Transcript of June 10, 2010 hearing, p. 30)

16. On the day of the original hearing, January 8, 2009, the file for the Pavilion, liquor permit LCA.5820, contained no permanent patio approvals and at least two temporary, one-day patio approvals. (Testimony of Gerald C. Langlais, Transcript of January 8, 2009, hearing, p. 42-43)

17. Agent Wyborny was aware that outside service of alcohol was expressly prohibited by regulations or laws. (Testimony of Ronald A. Wyborny, Transcript of January 8, 2009 hearing, p. 77)

As to Issue #3: In 1979 what was the authority of a liquor agent to make representations to a permittee that would have the effect of binding the Liquor Commission?

18. In 1979, the chain of command was the Chairman of the Liquor Control Commission who was in effect the head of the Department of Liquor Control, the Liquor Control Commission, the Director and the Deputy Director, the Chief of Inspection, Supervisor Agent and the Agents. The chain of command was followed very strictly. A supervising agent would have no

authority or ability to make representations that would bind the commission. The ultimate decision maker was Jack Healy, Chairman of the Liquor Control Commission. (Testimony of Gerald C. Langlais, Transcript of June 10, 2010 hearing, p.8-9)

19. In 1979 an agent did not have authority to freelance, make policy decision or bind the Liquor Control Commission. (Testimony of Gerald C. Langlais, Transcript of June 10, 2010 hearing, p. 8) An agent had no authority to bind the commission; the Liquor Control Commission bound the agent. (Testimony of Gerald C. Langlais, Transcript of June 10, 2010 hearing, p. 19)

20. Neither an agent nor a supervisor had the authority to bind the Commission. Agents reported on their observations to their superiors who presented them to the Commission which made a determination as to what action was taken. (Testimony of Steven F. Hennessey, Transcript of June 10, 2010 hearing, p. 27)

21. Ultimate authority rested with the Commission; Agent Wyborny always had to report back to them. (Testimony of Ronald A. Wyborny, Transcript of January 8, 2009 hearing, p. 7)

Discussion

Based upon the substantial evidence presented, we find that prior to October 1979, a café or restaurant “premises” was defined as the space within the building or portion of a building in which the permitted business operated. We further find that prior to October 1979, the Liquor Control Commission did not grant permanent approval for the outdoor service of alcohol to any café or restaurant.


The Commission occasionally granted one- or two-day temporary permits solely for charitable functions on a case-by-case basis, in writing. Lastly, we find that in 1979, a liquor control agent had absolutely no authority to bind the Liquor Control Commission.

**DEPARTMENT OF CONSUMER PROTECTION
LIQUOR CONTROL COMMISSION**

BY:



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