

NOTICE *cdz*

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT
CIVIL ACTION

NO. 2019-3415

2019-3427

COFFEESHOP LLC¹

vs.

ALCOHOLIC BEVERAGES CONTROL COMMISSION

MEMORANDUM OF DECISION AND ORDER ON DEFENDANT'S
MOTIONS TO DISMISS

The plaintiff Coffeeshop LLC, doing business as UpperWest, brought these actions pursuant to G.L. c. 30A appealing decisions of the defendant Alcoholic Beverages Control Commission ("ABCC"). This matter is before the court on ABCC's motions to dismiss both actions on the basis of mootness. For the following reasons, ABCC's motion to dismiss docket 2019-3415 is **DENIED** and ABCC's motion to dismiss docket 2019-3427 is **ALLOWED**.

notice sent 06.24.20 KSC EAS AAG (M)

BACKGROUND

The following facts are taken from the Complaints and are assumed to be true for the purposes of these motions.

At all relevant times, UpperWest conducted business at One Cedar Street in Cambridge, Massachusetts. UpperWest held a license pursuant to G.L. c. 138, § 12, permitting it to sell alcohol for on-premises consumption. On Saturday, September 29, 2018, two Cambridge fire officials and one Cambridge police officer went to UpperWest. Inside, the officials observed tea light candles burning on the tables. The officials informed the owners, Kimberly Courtney and

¹ d/b/a UpperWest

Xavier Dietrich (collectively, "Owners"), that use of the candles violated the law. Courtney and Dietrich asked the officials to step outside to discuss the matter.

Once outside, the Owners asked the officials to show them the law the officials sought to enforce. The Owners then told the officials that the provision they were citing to, Massachusetts Fire Safety Code § 20.1.5.2.4(2), prohibited the use of candles as "portable cooking equipment," not to create ambience as the Owners were doing. The officials asked the Owners to put the candles out, informing the Owners that if the candles were not put out, UpperWest would be closed. The officials went back inside UpperWest and began to take steps to shut it down. At that time, the Owners chose to extinguish the candles to prevent closure of the business. As the officials were leaving, Courtney stated, "You guys are going to regret behaving this way."

On October 28, 2018, the Cambridge Licensing Commission ("CLC") issued a notice of disciplinary hearing alleging that UpperWest had violated the law by burning candles, failing or refusing to cooperate in or hindering an investigation, threatening and/or intimidating the officials who came to the premises on September 29, and threatening to commit a crime against the officials. On November 13, 2018, after a hearing, the CLC issued a Notice of Decision finding UpperWest in violation on all counts. The CLC ordered a three-day suspension of UpperWest's § 12 license on the counts of failing or refusing to cooperate in or hindering an investigation and threatening to commit a crime against the officials. The CLC held a sanction on violating the law by burning the candles in abeyance pending resolution of a further hearing. Following that hearing, the CLC issued a two-day suspension for that violation, resulting in a total suspension of five days.

The Owners appealed the CLC decision to the ABCC. Hearings on the matter took place between March 7 and June 25, 2019. In an October 3, 2019, decision, the ABCC held that the

finding UpperWest had violated the law by burning the candles could not stand, as the law did not prohibit the use of the candles in the manner in which the Owners were using them. The ABCC upheld the three-day suspension issued by the CLC on the other violations. Specifically, the ABCC found that the Owners hindered or delayed the investigation by “argu[ing] with the agents of the City of Cambridge and refus[ing] to extinguish the candles despite more than 10 or 15 requests that they do so” for at least 35 minutes. The ABCC further found that Courtney had been “argumentative,” “aggressive,” “insulting,” “rude,” “very loud,” and “confrontational” and that, additionally, she “entered the agents’ personal space” when she “grabbed papers” from them. The ABCC upheld the suspension on the other violation, finding that Courtney “threatened two Cambridge Fire Department officials with retaliation by means of economic injury against their professional careers” by stating to the officials, “You will live to regret this.” The ABCC also found that this conduct supported a finding that Courtney threatened to commit a crime against the officials.

On November 30, 2018, UpperWest applied for a package store license with the CLC pursuant to G.L. c. 138, § 15. UpperWest sought a license permitting them to sell “wine, malt, and cordials” for consumption off the premises. On February 6, 2019, the CLC voted to deny the application. In so doing, the CLC found “that the §15 application as filed lacked merit Specifically, the [CLC] found no merit because under G.L. c. 138, §15, the [CLC] can only grant two types of package store licenses – all alcohol or malt and wine. The only provision in Chapter 138 which allows for a malt and wine license to have a cordials/liqueur permit is under G.L. c. 138, §12.” The Owners appealed the denial to the ABCC.

DISCUSSION

The ABCC has moved to dismiss both of UpperWest's claims on the basis of mootness. Litigation is considered moot when a party claiming to be aggrieved no longer has a personal stake in its outcome. *Acting Superintendent of Bournemouth Hosp. v. Baker*, 431 Mass. 101, 103 (2000). A party lacks standing when the injury claimed is moot because courts do not ordinarily decide moot questions. *Singer Friedlander Corp. v. State Lottery Comm'n*, 423 Mass. 562, 563 (1996). A case becomes moot "when the party who claimed to be aggrieved ceases to have a personal stake in its outcome." *Branch v. Commonwealth Employment Relations Bd.*, 481 Mass. 810, 816 (2019).

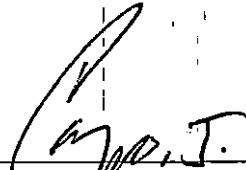
The ABCC contends that UpperWest's claim relative to its § 12 license is moot because UpperWest did not renew that license in November 2019 and, consequently, UpperWest's § 12 license expired on December 31, 2019, leaving UpperWest without a stake in this litigation. In *Solimeno v. State Racing Commission*, 400 Mass. 397, 400-401 (1987), the Supreme Judicial Court held that the issue of a license suspension is not moot if the suspension may adversely affect a plaintiff in the future. UpperWest argues, and the ABCC concedes, that the 2018 suspension of UpperWest's § 12 license may be considered and could negatively impact any application UpperWest files for a new § 12 license in the future. Consequently, the issue regarding the suspension of UpperWest's § 12 license is not moot. See *Solimeno*, 400 Mass. at 400-401.

The ABCC argues that the issue of UpperWest's application denial for a § 15 license is moot because UpperWest no longer occupies the premises for which it sought the § 15 license, One Cedar Street. UpperWest argues that it continues to have a personal stake in the denial of its § 15 license, despite vacating the premises for which the license was sought, because the license

could be moved. Pursuant to G.L. c. 138, § 15, a license issued under § 15 must “describe the premises to which it applies.” UpperWest has cited several examples of instances in which § 15 licenses were *re-issued* after a business vacated a property. However, UpperWest has cited no instances in which § 15 license has been *newly* issued to an individual or entity which has no location. UpperWest is not able to provide any information regarding the premises to which the § 15 license would apply. Even in the situation where a building has yet to be built, the space has an address to which an applicant can refer. As UpperWest is no longer at One Cedar Street, the location for which it sought a § 15 license, the issue of the denial of UpperWest’s application for a § 15 license is moot.

ORDER

For the foregoing reasons, the ABCC’s motion to dismiss docket number 2019-3415 is **DENIED**, and the ABCC’s motion to dismiss docket number 2019-3427 is **ALLOWED**.



Anthony M. Campo
Justice of the Superior Court

Dated: June 22, 2020