



The Commonwealth of Massachusetts
Department of the State Treasurer
Alcoholic Beverages Control Commission
Boston, Massachusetts 02114

Steven Grossman
Treasurer and Receiver General

Kim S. Gainsboro, Esq.
Chairman

NOTICE OF SUSPENSION

May 21, 2014

KATHMANDU SPICE RESTAURANT INC.
166 MASSACHUSETTS AVE
ARLINGTON, MA 02474
LICENSE#: 003000015
VIOLATION DATE: 08/06/2013
HEARD: 04/01/2014

After a hearing on April 1, 2014, the Commission finds Kathmandu Spice Restaurant Inc. in violation of

- 1) 204 CMR 2.05 (2) Permitting an Illegality on the licensed premises, to wit: M.G.L. c.138 §23- Sale of alcoholic beverages other than those purchased under §18 or §19 or from a holder of a special permit under §22A;
- 2) M.G.L. c. 138, §34D Failing to Post Notices of Penalties.

The Commission **suspends the licensee's license for a total of thirty (30) days to be served. The suspension shall commence on Wednesday, July 9, 2014, and terminate on Thursday, August 7, 2014.** The license will be delivered to the Local Licensing Board or its designee on Wednesday, July 9, 2014 at 9:00 A.M. It will be returned to the licensee Friday, August 8, 2014.

You are advised that pursuant to the provisions of M.G.L. c.138 §23, you may petition the Commission to accept an offer in compromise in lieu of suspension within twenty (20) calendar days following such notice of such suspension. If accepted, you may pay a fine using the enclosed form. All checks must be certified and accompanied by the enclosed form, which must be signed by a Massachusetts Licensed Accountant.

You are advised that you have the right to appeal this decision under M.G.L. c. 30A to Superior Court within thirty (30) days upon receipt of this notice.

ALCOHOLIC BEVERAGES CONTROL COMMISSION

Kim S. Gainsboro
Chairman

cc: Local Licensing Board
Frederick G. Mahony, Chief Investigator
Tara Kelleher, Investigator
Christopher Temple, Investigator
File

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DECISION

KATHMANDU SPICE RESTAURANT INC.
166 MASSACHUSETTS AVE
ARLINGTON, MA 02474
LICENSE#: 003000015
VIOLATION DATE: 08/06/2013
HEARD: 04/01/2014

Kathmandu Spice Restaurant Inc. (the "Licensee") holds an alcohol license issued pursuant to M.G.L. c. 138, §12. The Alcoholic Beverages Control Commission (the "Commission") held a hearing on Tuesday, April 1, 2014, regarding an alleged violation of:

- 1) 204 CMR 2.05 (2) Permitting an Illegality on the licensed premises, to wit: M.G.L. c.138 §23- Sale of alcoholic beverages other than those purchased under §18 or §19 or from a holder of a special permit under §22A.
- 2) M.G.L. c. 138, §34D Failing to Post Notices of Penalties.

Prior to the commencement of the hearing, the Licensee stipulated to the violation alleged in Investigator Kelleher's Report.

The following documents are in evidence:

1. Licensee's Stipulation of Facts; and
 2. Investigator Kelleher's Violation Report dated August 6, 2013.
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- A. Horizon Beverage Company Invoice dated August 13, 2013;
 - B. United Liquors Invoice dated September 4, 2013;
 - C. Harpoon Brewery Invoice dated September 6, 2013;
 - D. Martignetti Companies Credit Application dated August 8, 2013;
 - E. Horizon Beverage Company Credit Application dated August 12, 2013;
 - F. Photograph of Licensed Premises Interior Displaying Commission's Criminal Penalty Sign; and
 - G. Photograph of Licensed Premises Interior Displaying Commission's Criminal Penalties Signs.

There is one (1) audio recording of this hearing.

The Commission took administrative notice of the Licensee's records.

FACTS

1. On Tuesday, August 6, 2013, Investigators Temple and Kelleher conducted an investigation of the business operation of Kathmandu Spice Restaurant Inc. to determine the manner in which its business was being conducted.
2. Investigators entered the licensed premises, identified themselves to a female individual, and asked to speak with the owner or manager.
3. The female advised investigators that the owner was unavailable, and she provided them with the owner's business card in the name of Sheela Manandhar.
4. Investigators asked the female individual to contact the owner so that investigators could speak with her.
5. The female individual responded that she was unable to contact the owner.
6. Investigators then requested identification from the female individual, who presented a driver's license in the name of Sheela Manandhar.
7. Investigators then asked Ms. Manandhar if she was, in fact, the owner. She responded, Yes, I didn't know what you wanted. ABCC has not ever been in here and I was nervous."
8. Investigators then proceeded to inspect the bar area.
9. Investigators asked Ms. Manandhar who was in charge of ordering the beer and liquor, to which she responded, "I am."
10. When investigators asked Ms. Manandhar from where she purchased the alcoholic beverages, she responded, "Ball Square Liquors."
11. Investigators asked if the alcoholic beverages were delivered to her or did she pick them up. Ms. Manandhar stated, "Half and half, sometimes they deliver, sometimes I go and pick up."
12. Investigators asked Ms. Manandhar if Ball Square Liquors knew that she was ordering for a restaurant. She stated, "Yes, they deliver here."
13. Investigators asked Ms. Manandhar to whom she spoke when placing orders. She stated, "I used to order from Chris (Lianos) but now I always order from Jonathon."
14. Investigators asked her when was the last time she ordered. Ms. Manandhar stated "Well, I called Jonathon yesterday, but he told me they do not take orders over the phone anymore and that I would have to order from Nathan by emailing him."
15. Investigators asked if she had emailed Nathan and Ms. Manandhar stated, "No, not yet."
16. Investigators asked Ms. Manandhar if she had the email address available, and she responded, "No, I left it at home." Ms. Manandhar then showed investigators her cell phone contacts which had contact information for Ball Square Liquors.
17. Investigators then inspected the liquor storage area where they observed a partially full 24-pack case of Samuel Adams beer and a partially full 24-pack case of Harpoon IPA (India Pale Ale).
18. Ms. Manandhar advised investigators that she does not receive a discount [from Ball Square Liquors] and up until "2 -3 months ago" they extended her credit." When she "get a delivery and maybe she pay next time or the time after that." Ms. Manandhar advised investigators that Ball Square Liquors stopped [extending credit] because she "did not order enough or often enough."
19. Ms. Manandhar stated that buying from a wholesaler is extremely difficult due to the minimum order requirements, "I don't need that much, I only need a little beer."
20. Investigators observed that the Licensee failed to display any notice of penalties, and they advised Ms. Manandhar to obtain the signs [from the Arlington Town Hall] and display them as soon as possible.
21. Investigators informed Ms. Manandhar of the violation and that a report would be filed with the Chief Investigator for review.
22. It should be noted that investigators had gathered evidence from Ball Square Liquors in Somerville, MA which included information of the Licensee as a customer in their database.

23. The records of Ball Square Liquors indicated the Licensee had made 105 visits, between 9/21/2007 and 4/26/2013, and purchases by the Licensee totaled approximately \$14,320.00. The Licensee's final balance was listed as approximately \$179.00.
24. Since the inspection, Ms. Manandhar has provided investigators with cancelled checks drawn on an account belonging to "Kathmandu Spice Restaurant Inc." from Lender Bank.
25. Ms. Manandhar also provided seven credit card receipts for purchases made from 8/10/2012 to 7/13/2013.

CONCLUSION

Based on the evidence, the Commission finds the licensee violated

- 1) 204 CMR 2.05 (2) Permitting an Illegality on the licensed premises, to wit: M.G.L. c.138 §23- Sale of alcoholic beverages other than those purchased under §18 or §19 or from a holder of a special permit under §22A.
- 2) M.G.L. c. 138, §34D Failing to Post Notices of Penalties.

For the violation of 204 CMR 2.05 (2) to wit: M.G.L. c.138 §23, the Commission **suspends the license for thirty (30) days.**

For the violation of M.G.L. c. 138, §34D, the Commission issues a **WARNING.**

ORDER OF DESTRUCTION

Per M.G.L. c. 138, § 2, the alcoholic beverages may not be offered for sale in Massachusetts and these alcoholic beverages must be destroyed by the owner. The Commission **orders the Licensee to destroy the alcoholic beverages pursuant to this Order of Destruction.** The licensee must submit the required plan for this Order of Destruction on or before June 21, 2014, as a condition of its license. The plan should include:

1. A written inventory of all alcoholic beverages to be destroyed;
2. The implementation of the plan in detail, with the scheduled date of destruction;
3. The name, address and qualifications of the waste disposal agent/company/facility;
4. An affirmation that the plan complies with all laws of the Commonwealth, including but not limited to, the health and environmental laws; and
5. An acknowledgement that destruction and disposal of all alcoholic beverages shall be conducted only in the presence of a Commission Investigator.

ALCOHOLIC BEVERAGES CONTROL COMMISSION

Susan Corcoran, Commissioner *Susan Corcoran*

Kathleen McNally, Commissioner *Kathleen McNally*

Dated: May 21, 2014

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 (30) days of receipt of this decision.

cc: Local Licensing Board
Frederick G. Mahony, Chief Investigator
Tara Kelleher, Investigator
Christopher Temple, Investigator
Administration
File