



*Commonwealth of Massachusetts
Department of the State Treasurer
Alcoholic Beverages Control Commission
239 Causeway Street
Boston, MA 02114
Telephone: 617-727-3040
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Jean M. Lorizio, Esq.
Chairman

NOTICE OF REVOCATION

August 14, 2018

**LIQUOR STORES USA MASSACHUSETTS I, INC. D/B/A LIQUOR BARN
15 HIGHLAND COMMONS EAST [Berlin]
HUDSON, MA 01749
LICENSE#: 0094-00004
VIOLATION DATE: 06/04/2018
HEARD: 08/07/2018**

After a hearing on August 7, 2018, the Commission finds Liquor Stores USA Massachusetts I, Inc. d/b/a Liquor Barn violated:

- 1) M.G.L. Ch. 138, § 64 License issued under this chapter by the local licensing authorities in violation of § 16 A or any other provision of this chapter. To wit: Ch. 138, § 16 A license renewed for 2018 provided said license covers the same licensed premises (1 count);
- 2) M.G.L. Ch. 138 § 77 The Licensing Authorities may, after hearing or reasonable opportunity therefore, cancel any license issued under this chapter if the licensee ceases to conduct the licensed business (1 count).

On the charge, M.G.L. Ch. 138, § 64 License issued under this chapter by the Local Licensing Authorities in violation of § 16A or any other provision of this chapter, the Commission **REVOKES** the license of **Liquor Stores USA Massachusetts I, Inc. d/b/a Liquor Barn** **EFFECTIVE FORTHWITH.**

Since the Commission **REVOKES** the license based on the statutory requirements under M.G.L. c. 138, § 64 License issued under this chapter by the Local Licensing Authorities in violation of § 16A or any other provision of this chapter, it need not impose a penalty for the other violation found.

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.

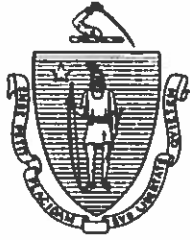
ALCOHOLIC BEVERAGES CONTROL COMMISSION



Jean M. Lorizio
Chairman

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cc: Local Licensing Board
Frederick G. Mahony, Chief Investigator
Jack Carey, Investigator
Town of Berlin
John Ferriter Esq. via facsimile 413-535-4201
Administration, File



Jean M. Lorizio, Esq.
Chairman

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DECISION

**LIQUOR STORES USA MASSACHUSETTS I, INC. D/B/A LIQUOR BARN
15 HIGHLAND COMMONS EAST [Berlin]
HUDSON, MA 01749
LICENSE#: 0094-00004
VIOLATION DATE: 06/04/2018
HEARD: 08/07/2018**

Liquor Stores USA Massachusetts I, Inc. d/b/a Liquor Barn (the "Licensee") holds an alcohol license issued pursuant to M.G.L. c. 138, § 15. The Alcoholic Beverages Control Commission (the "Commission" or "ABCC") held a hearing on Tuesday, August 7, 2018, regarding alleged violations of:

- 1) M.G.L. Ch. 138, § 64 License issued under this chapter by the local licensing authorities in violation of § 16 A or any other provision of this chapter. To wit: Ch. 138, § 16 A license renewed for 2018 provided said license covers the same licensed premises (1 count);
- 2) M.G.L. Ch. 138 § 77 The Licensing Authorities may, after hearing or reasonable opportunity therefore, cancel any license issued under this chapter if the licensee ceases to conduct the licensed business (1 count).

The above-captioned occurred on June 4, 2018, according to Investigator Carey's Report.

The following documents are in evidence:

1. Investigator Carey's Investigative Report.
 - A. Licensee's 2018 Renewal: signed by Stephen Bebis, dated August 6, 2018;
 - B. Licensee's 2018 Package Store License; and
 - C. Highland Commons LQR LLC's Application to Transfer the License.

The Commission took Administrative Notice of the Licensee's Commission files.

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

FINDINGS OF FACT

1. Liquor Stores USA Massachusetts I, Inc. d/b/a Liquor Barn ("Licensee" or "Liquor Barn") holds an alcohol license issued pursuant to M.G.L. c. 138, § 15. (Exhibit 1)
2. On Monday, June 4, 2018, Investigator Carey ("Investigator") conducted an investigation of the business operation of Liquor Stores USA Massachusetts I, Inc. d/b/a Liquor Barn located in Berlin, Massachusetts, to determine the manner in which its business was being conducted, and to investigate a complaint filed with this Commission. (Exhibit 1)
3. Administrative review of the Licensee's file indicated the ABCC approved this license application on August 15, 2015, with Stephen Bebis as the approved manager of record, sole director, and president, treasurer, and secretary of the corporation. No further changes were approved by the Town of Berlin or the ABCC since the license was originally approved. On or about November 14, 2017, an individual named Peter Lynch signed the 2018 Retail License Renewal Application which was approved by the Town of Berlin. (Exhibit 1) Peter Lynch is not an approved corporate officer, a director, a shareholder, a license manager, or an individual owner corporate officer authorized to sign the renewal application nor to name a manager for this license. (Exhibit 2)
4. On Thursday, May 24, 2018, Investigator Carey traveled to the Town of Berlin to investigate this complaint. Investigator Carey spoke with Mary Arata, the administrative secretary to the Board of Selectmen. Ms. Arata informed Investigator Carey that the Licensee had yet to open its doors and conduct business since obtaining its license in August of 2015. Ms. Arata stated that the Town has had difficulty in getting in touch with the Licensee. (Exhibit 1)
5. Investigator Carey then traveled to the location of the premises, which is located in a large retail shopping center that appeared to have some empty stores. The location of the Licensee was completely empty and there was no signage of any kind. (Exhibit 1)

DISCUSSION

Licenses to sell alcoholic beverages are a special privilege subject to public regulation and control, Connolly v. Alcoholic Beverages Control Comm'n, 334 Mass. 613, 619 (1956), for which States have especially wide latitude pursuant to the Twenty-First Amendment to the United States Constitution. Opinion of the Justices, 368 Mass. 857, 861 (1975). The procedure for the issuance of licenses and required conduct of licensees who sell alcoholic beverages is set out in Massachusetts General Laws, Chapter 138.

Chapter 138 gives the Commission the authority to grant, revoke and suspend licenses. Chapter 138 was "enacted ... to serve the public need and ... to protect the common good." M.G.L. c. 138, §23. "[T]he purpose of discipline is not retribution, but the protection of the public." Arthurs v. Bd. of Registration in Medicine, 383 Mass. 299, 317 (1981). The Commission is given "comprehensive powers of supervision over licensees." Connolly, 334 Mass. at 617.

M.G.L. C. 138, §64, To Wit: M.G.L. C. 138, §16A – Annual Renewal Signed by a Person Other Than Those Authorized by the Commission

Under the pertinent provisions of M.G.L. c. 138, § 16A, a license “shall be automatically renewed for the next annual license period upon application by the holder thereof during the month of November and shall be automatically renewed...provided that said license is of the same type as the expiring license and covers the same licensed premises. If the application does not meet the conditions hereunder it shall be treated as an application for a new license and all the procedures set forth under section 15A shall be applicable thereto.” A corporate officer, a director, a shareholder, a license manager, or an individual owner must sign the renewal form. The Commission also has a longstanding administrative practice under M.G.L. c. 138, § 15A to allow “all persons who have a direct or indirect beneficial interest in said license” to sign the application for renewal.

The 2018 annual license renewal form filed by the Licensee with the Commission bears the signature of Peter Lynch. Mr. Lynch was not an individual who possessed a direct or indirect interest in this license in 2018. (Exhibit 1)

The Local Board approved this Licensee’s 2018 renewal application although they did not comply with the renewal requirements expressly set forth in M.G.L. c. 138, § 16A. Consequently, Liquor Stores USA Massachusetts I, Inc.’s license was renewed by the Local Board contrary to the requirements of, and in violation of, M.G.L. c. 138, § 16A.

Notwithstanding the fact that the Local Board approved the Licensee’s 2018 annual renewal with an unauthorized person’s signature, the Commission cannot let stand an action of the Local Board that it could not lawfully authorize in the first place. See Hastings Associates, Inc. v. Local 369 Building Fund, Inc., 42 Mass. App. Ct. 162, 178 (1997) (there is a “strong public policy favoring enforcement of our licensing laws regarding the selling of alcoholic beverages.”); Beacon Hill Civic Assn. v. Ristorante Toscano, Inc., 422 Mass. 318, 320-324 (1996)(private contract purporting to transfer control of license held to be illegal and unenforceable under public policy expressed in the Liquor Control Act, Chapter 138); Zelman v. ABCC, 335 Mass 515 (1957).

The Commission finds that the 2018 annual renewal of the license of Liquor Stores USA Massachusetts I, Inc. violated M.G.L. c. 138 § 64 – License issued under this chapter by the Local Licensing Authority in violation of section 16A or any other provision of this chapter.

The specific language of this chapter mandates that the Commission revoke the license of Liquor Stores USA Massachusetts I, Inc. Rigali v. Cahill, Hampden Superior Court C.A. No. 2008-00362, Memorandum and Order dated July 22, 2009 (Veils, J.)(where renewal of license was “in clear violation of the plain language of M.G.L. c. 138, § 16A, the ABCC was obligated to revoke the license pursuant to M.G.L. c. 138, § 64.”); See In Re: Margaret’s Restaurant, Inc., d.b.a. Hokeys, Oxford MA (ABCC Decision dated July 12, 2005); In re: Pop’s Cafe, Inc., Holyoke, MA (ABCC Decision dated March 12, 2008). As the Commission acknowledged in Margaret’s, no other sanction is available for the Commission to consider given the express language of the statute. Id. The Commission has no discretion here and must revoke the license forthwith.

The Commission finds that the renewal of the license of Liquor Stores USA Massachusetts I, Inc. d/b/a Liquor Barn for calendar year 2018 violated Ch.138 § 64 – License issued under this chapter by the LLA in violation of section 16A or any other provision of this chapter.

CONCLUSION

Based on the evidence, the Commission finds the Licensee violated:

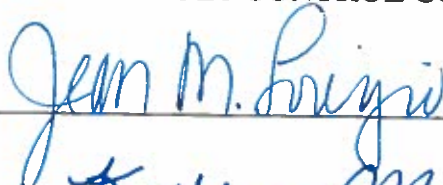
- 1) M.G.L. Ch. 138, § 64 License issued under this chapter by the local licensing authorities in violation of § 16 A or any other provision of this chapter. To wit: Ch. 138, § 16 A license renewed for 2018 provided said license covers the same licensed premises (1 count);
- 2) M.G.L. Ch. 138 § 77 The Licensing Authorities may, after hearing or reasonable opportunity therefore, cancel any license issued under this chapter if the licensee ceases to conduct the licensed business. (1 count)

On the charge, M.G.L. Ch. 138, § 64 License issued under this chapter by the Local Licensing Authorities in violation of § 16A or any other provision of this chapter, the Commission **REVOKES the license of Liquor Stores USA Massachusetts I, Inc. d/b/a Liquor Barn effective forthwith.**

Since the Commission REVOKES the license based on the statutory requirements under M.G.L. c. 138, § 64, the Commission does not address, and leaves for another day, the question of a penalty for violation of: M.G.L. Ch. 138 § 77 The Licensing Authorities may, after hearing or reasonable opportunity therefore, cancel any license issued under this chapter if the licensee ceases to conduct the licensed business.

ALCOHOLIC BEVERAGES CONTROL COMMISSION

Jean M. Lorizio, Chairman



Kathleen McNally, Commissioner



Dated: August 14, 2018

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.

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