



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

July 17, 2013

FLOUR N WATER CORP DBA HALE STREET TAVERN & OYSTER
717 HALE ST
BEVERLY, MA 01915
LICENSE#: 010000073
VIOLATION DATE: 7/26/2012
HEARD: 11/06/2012

After a hearing on November 6, 2012, the Commission finds Flour N Water Corp dba Hale Street Tavern & Oyster in violation of M.G.L. c. 138, §15A - Failure to disclose all persons who have a beneficial interest in the license.

The Commission **suspends the licensee's license for a total of thirty (30) days to be served. The suspension shall commence on Wednesday, September 11, 2013 and terminate on Thursday, October 10, 2013.** The license will be delivered to the Local Licensing Board or its designee on Wednesday, September 11, 2013 at 9:00 A.M. It will be returned to the licensee Friday, October 11, 2013.

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
Paul Capurso, Investigator
Stephen Miller, Esq. via Facsimile 617-946-4624
Administration
File

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DECISION

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BEVERLY, MA 01915
LICENSE#: 010000073
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HEARD: 11/06/2012

Flour N Water Corp dba Hale Street Tavern & Oyster (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, November 6, 2012, regarding an alleged violation of M.G.L. c. 138, §15A - Failure to disclose all persons who have a beneficial interest in the license, according to Investigator Capurso's Report.

The following documents are in evidence:

1. Investigator Capurso's Investigative Report dated July 26, 2012

There is one (1) audio recording of this hearing, and three witnesses testified.

FACTS

1. Flour N Water Corp., is a Massachusetts corporation organized and filed under M.G.L. Chapter 156D on July 23, 2007, with the following corporate officers: Mr. Jeffrey Cala as President and Director, and Mr. Mark McDonough as Treasurer, Secretary, and Director.
2. The above referenced corporation submitted an application for the transfer of a §12 annual all alcoholic beverages license dated August 17, 2007.
3. The application included a Vote of the Corporation, signed by Mr. Cala as President and Director, to enter into a Purchase and Sales agreement; enter into a Lease agreement; apply for an All Alcoholic Beverages License; and appoint Brian Partelow as License Manager.
4. The application also included a second Vote of the Corporation, dated August 17, 2007, accepting the resignation of Mr. Cala as President and Director, and appointing Mr. McDonough as President.
5. On August 17, 2007, Mr. McDonough signed a Statement of Change of Supplemental Information regarding Mr. Cala's resignation. However, the Statement was not stamped and was never properly filed with the Secretary of State's Office. Therefore, it was not valid.

6. The application also included an affidavit from Mr. McDonough, dated November 27, 2007. The affidavit was filed in support of the license application which he signed under pains and penalties of perjury:
 - a) "I do not have any additional partners or other business associates that I have failed to disclose as part of this application process";
 - b) "The Corporation will not employ, directly or indirectly, any person or entity, as an employee or consultant to the Corporation that will have any interest, financial or otherwise, in the business affairs of the Corporation";
 - c) "I have disclosed in the license application, pursuant to Massachusetts General Laws Chapter 138 §15A, the names and addresses of all persons who have a direct or indirect beneficial or financial interest in said license."
7. The Commission approved the transfer application on March 13, 2008 based on the sworn statements in the application and the supporting documents.
8. On November 26, 2008, the licensee renewed its license for calendar year 2009. The renewal form was not signed by a person who was authorized under the pertinent provisions of chapter 138, §16A to act on behalf of the corporation for this purpose. The signature is believed to be that of Mr. Cala.¹
9. An article from the Beverly Citizen posted on Wicked Local Beverly on March 12, 2008, describes Mr. Cala as the owner.
10. On March 14, 2008, the corporation's 2007 Annual Report was filed. It identifies Mr. Cala as President and Director, with Mr. McDonough as Treasurer, Secretary and Director. The report is signed by Mr. Cala.
11. On February 12, 2009, the corporation's 2008 Annual Report was filed. It identifies Mr. Cala as President and Director, with Mr. McDonough as Treasurer, Secretary and Director. This report is signed by Mr. McDonough.
12. The City of Beverly's 2009 file for this Licensee includes a form listing Mr. Cala and Mr. McDonough as persons having a direct or indirect financial interest in the license. The form was signed by Mr. Cala under the pains and penalties of perjury.
13. The Licensee filed a Statement of Change of Supplemental Information, dated June 30, 2009, making Mr. McDonough the sole officer and Director of the corporation.
14. An article from the North Shore Magazine posted on www.nshoremag.com on November 8, 2010, regarding Serenitee Restaurant Group describes Mr. Cala as "corporate chef and managing partner" of the businesses which it operates.

¹ This presents the question whether this license was renewed in violation of M.G.L. c. 138, §16A. The Licensee was not charged with this offense. Therefore, the Commission refers this matter back to the Investigative Division through the Commission's chief investigator for the required investigation and prosecution of this issue.

or indirect beneficial financial interest in a license must be disclosed on the application. (Testimony, Ex. 1)

16. During the hearing, Mr. McDonough testified that he “cured” the defects that existed from the prior applications.
17. As of the date of the Commission hearing, McDonough is listed as being the only person who has an interest in this licensed business.
18. Mr. Cala is a salaried employee.
19. McDonough, in filing curative documents, defined and documented clearly Mr. Cala’s current, limited role in the business.

DISCUSSION

M.G.L. c. 138, §15A requires that a licensee or applicant for an alcoholic beverages license disclose all individuals who have a direct or indirect beneficial interest in the license. The concept of a “direct or indirect beneficial interest” in a license can range from an ownership interest to an absolute proprietary interest to a mere possessory right and includes the right of control. The Number Three Lounge, Inc. v. Alcoholic Beverages Control Commission, 7 Mass. App. Ct. 301 (1979). The officers and directors of a corporation are the control group of that corporation.

Mr. McDonough is the sole shareholder of the licensee. This license application was approved by the Commission, based in part on Mr. McDonough’s representations. Mr. McDonough submitted an affidavit dated November 27, 2007 signed under the pains and penalties of perjury with his application. In this affidavit, Mr. McDonough swore that he did not have any additional partners or other business associates that he failed to disclose as part of this application process, the Corporation would not employ, directly or indirectly, any person or entity, as an employee or consultant to the Corporation that would have any interest, financial or otherwise, in the business affairs of the Corporation, and he had disclosed in the license application, pursuant to Massachusetts General Laws Chapter 138 §15A, the names and addresses of all persons who had a direct or indirect beneficial or financial interest in the license.

Yet, on November 26, 2008, the licensee renewed its license for calendar year 2009. The renewal form was signed by a person who is believed to be Mr. Cala. But for this action by Mr. Cala, the license would have expired by operation of law on December 31, 2008. M.G.L. c. 138, § 23 (“Every license ... granted under the provisions of this chapter, unless otherwise provided in such provisions, shall expire on December thirty-first of the year of issue.”)

Moreover in 2009, Mr. McDonough signed the Licensee’s annual report, listing Jeff Cala as the president and a director of the corporation. Mr. Cala was never approved by the Local Board or this Commission to hold a beneficial interest in this license. Mr. McDonough deceived this Commission.

The Licensee changed the officers and directors without the statutorily required prior approval from both the Local Board and the Commission. The Licensee neither sought nor received the statutorily required approvals for Mr. Cala to hold this role in the Licensee. This is a violation of M.G.L. c. 138 §15A. In re: Melinda Industrial Group, Inc. dba Melinda's Restaurant, (ABCC Decision dated September 12, 2012).

During the hearing, Mr. McDonough testified that he “cured” the defects that existed from the prior applications. He testified that all of the corporate papers and all necessary documents were signed by him. He also testified that under no terms, did he mean to mislead anyone by having it be represented that

Jeffrey Cala was an owner of the establishment. Mr. McDonough's testimony was corroborated by documents filed with the Commission. Thus, the Commission finds Mr. McDonough's testimony credible on this point.

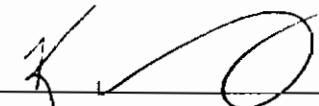
Mr. McDonough, in filing curative documents, that now clearly define Cala's limited role in Mr. McDonough's establishment, while persuasive proof of the violation as alleged, also mitigates the offense. In further mitigation of the offense, Mr. McDonough made representations to the Commission that Mr. Cala's role now is only that of a salaried employee only and that Cala is not an owner of this license². Although these actions by McDonough mitigate the offense, these actions do not excuse or justify the misconduct.

CONCLUSION


Based on the evidence, the Commission finds the Licensee violated M.G.L. c. 138, §15A - Failure to disclose all persons who have a beneficial interest in the license, that being the interest of Jeff Cala. Therefore, the Commission **suspends the license for thirty (30) days.**

ALCOHOLIC BEVERAGES CONTROL COMMISSION

Kim S. Gainsboro, Chairman



Susan Corcoran, Commissioner



DATE: July 17, 2013

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
Paul Capurso, Investigator
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² Mr. Cala acts as McDonough's operations manager for all the restaurants. Mr. McDonough stated and put in an affidavit that Mr. Cala's involvement in the business is limited to aspects of day-to-day management including menu development, personnel policies, negotiating with vendors, maintenance of all facilities, developing new concepts, and administering the building of new restaurants. According to Mr. McDonough, Mr. Cala is the person whom everyone calls when there are problems and he has all phone numbers of persons who need to be called for emergency situations.