

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

*Deborah B. Goldberg*  
*Treasurer and Receiver General*

*Kim S. Gainsboro, Esq.*  
*Chairman*

**NOTICE OF SUSPENSION**

September 21, 2016

**THE CLUB AT IL PANINO INC. D/B/A UMBRIA**

**295 FRANKLIN STREET**

**BOSTON, MA 02118**

**LICENSE#: 011600382**

**VIOLATION DATE: January 25, 2002 to the present (multiple violation dates)**

**HEARD: 06/21/2016**

After a hearing on June 21, 2016, the Commission finds The Club at Il Panino, Inc. d/b/a Umbria violated M.G.L. c. 138, §23- Transfer of the privilege of a license without proper approval.

The above-captioned Licensee's license is **SUSPENDED INDEFINITELY EFFECTIVE FORTHWITH<sup>1</sup>** until further written order of the Commission.

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

<sup>1</sup> The Commission is aware that the June 23, 2016, Decision's indefinite suspension is currently stayed by the Superior Court. The Commission's present order is to track the Superior Court's orders in the appeal of the June 23, 2016, Decision.

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这份文件是重要的，应立即进行翻译.

cc: Local Licensing Board  
Frederick G. Mahony, Chief Investigator  
Christopher Temple, Investigator  
William G. Ferullo Esq. via fax: 617-946-4624  
Thomas Orlandi Esq. via email  
Administration, File



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**DECISION**

**THE CLUB AT IL PANINO INC. D/B/A UMBRIA**  
**295 FRANKLIN STREET**  
**BOSTON, MA 02118**  
**LICENSE#: 011600382**  
**VIOLATION DATE: January 25, 2002 to the present (multiple violation dates)**  
**HEARD: 06/21/2016**

The Club at Il Panino, Inc. d/b/a Umbria (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, June 21, 2016, regarding alleged violations of M.G.L. c. 138, §23- Transfer of the privilege of a license without proper approval, which occurred on January 25, 2002 to the present, and alleged violations of M.G.L. c. 138, § 15A – Failure to disclose all persons who have a direct or indirect beneficial or financial interest in said license, which violations occurred on January 25, 2002 to the present.

The following documents are in evidence as exhibits:

1. Investigator Temple's Report dated December 15, 2015;
2. Application for Transfer of Stock for L.B.E. Inc.<sup>2</sup> dated April 29, 1999;
3. Articles of Amendment for L.B.E. Inc. dated March 14, 2000;
4. Certificate of Change of Fiscal Year End for L.B.E. Inc. dated January 4, 2002;
5. Annual Report for L.B.E. Inc. dated April 14, 2001;
6. Annual Report for L.B.E. Inc. dated April 14, 2001;
7. Annual Report for L.B.E. Inc. dated February 1, 2002;
8. Annual Report for L.B.E. Inc. dated March 15, 2003;
9. Articles of Amendment for L.B.E. Inc. dated June 18, 2004;
10. Annual Report for L.B.E. Inc. dated March 9, 2004;
11. Articles of Amendment for Umbria Inc. dated September 21, 2004;
12. Annual Report for Umbria Inc. dated March, 15, 2005;
13. Annual Reports for Club at Il Panino Inc. dated 2005 through 2008;

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<sup>2</sup> L.B.E. Inc. is the former corporate name of The Club at Il Panino, Inc. d/b/a Umbria. The name change was approved by the Commission in March of 2005. See Commission file.

14. Articles of Amendment for Club at Il Panino Inc. dated December 17, 2009;
15. Annual Reports and Statement of Change of Supplemental Information for Umbria Prime Inc. dated 2009 through 2013;
16. Articles of Amendment for Umbria Prime dated November 4, 2014;

### FINDINGS OF FACT

1. L.B.E. Inc. ("LBE Inc.") a/k/a The Club at Il Panino Inc., d/b/a Umbria is a § 12 all alcohol licensee with a place of business at 295-297 Franklin Street, Boston, Massachusetts. (Commission File, Exhibit 1)
2. LBE Inc. is a Massachusetts corporation. Secretary of Commonwealth records indicate the corporation registered on November 1, 1973, and was originally comprised of the following officers: Jackson Gateman as president, director, and treasurer; Samuel Gateman as clerk and director; and Linda Distasio as director. (Exhibit 1)
3. On June 16, 1999, the Commission approved LBE Inc.'s application for New Officers, Directors, Transfer of Stock, Pledge of License and Stock with the Commission. The Commission approved the following breakdown of ownership and stock (Exhibit 1):
 

Frank Depasquale, President and Treasurer	Shares 1200
Jackson Gateman, Clerk	Shares 400
Louis Delpedio	Shares 100
Lawrence Cohen	Shares 100
Fernando Sostilio	Shares 100
Bruno Gagliotta	Shares 100
4. The Commission approved an application for a change of corporate name and d/b/a to The Club at Il Panino, Inc. d/b/a Umbria on March 4, 2005. (Exhibit 1)
5. On May 19, 2015, an investigator of the Commission was assigned to investigate an application for new officers and director, transfer of stock, and new stockholder for the Licensee. (Exhibit 1, Commission File)
6. During the course of the investigation of the application, the investigator uncovered several transactions that were not approved by the Commission between 2000 and the present, other than the 1999 application for New Officers, Directors, Transfer of Stock, Pledge of License and Stock, and the 2005 change of corporate name and d/b/a to The Club at Il Panino, Inc. d/b/a Umbria.
7. The Commission adopts by reference all of the investigator's findings in 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 to sell alcoholic beverages is set out in M.G.L. c. 138. Licenses must be approved by both local licensing authorities and the ABCC. M.G.L. c. 138, §§12, 67; Beacon Hill Civic Assn. v. Ristorante Toscano, Inc., 422 Mass. 318, 321 (1996). Section 23 of c. 138 provides, in pertinent part: "Any license under this chapter held by an individual, partnership, or corporation may be transferred to any individual, partnership or corporation qualified to receive such a license in the

first instance, if, in the opinion of the licensing authorities, such transfer is in the public interest.” Section 2 of c. 138 provides, in pertinent part: “No person shall . . . sell . . . alcoholic beverages or alcohol, except as authorized by this chapter [.]”

“The powers of the States in dealing with the regulation of the sale of intoxicating liquors are very broad. What they may wholly prohibit, they may permit only on terms and conditions prescribed by the Legislature.” Connolly v. Alcoholic Beverages Control Comm’n, 334 Mass. 613, 619 (1956), citing Supreme Malt Products Co., Inc., v. Alcoholic Beverages Control Comm’n, 334 Mass. 59, 61 (1956); Ziffrin, Inc. v. Reeves, 308 U.S. 132, 138-139; and Carter v. Virginia, 321 U.S. 131, 137-143.

In dealing with a trade, which, because of its great potential evils, can be wholly prohibited, a wide power is given to the Legislature with respect to the delegation of discretionary powers. Particularly in view of the extent to which the policy of c. 138, and the basis for action under it, have been specified, as already indicated, there is no invalid delegation of authority to the commission in leaving to it, as was done in § [12], the power to approve or disapprove applicants for licenses.

Connolly, 334 Mass. at 619, citing Butler v. East Bridgewater, 330 Mass. 33, 36-37 (1953).

As the SJC has made clear, “the powers of the commission were not intended to be perfunctory or limited. . . . [T]he Commission [is] charged with important responsibilities and [it is] not to be narrowly restricted in performing them.” Connolly, 334 Mass. at 617.

The Licensee is charged with one count of M.G.L. c. 138, § 23 (transfer of the privilege of a license without proper approval) and violations of M.G.L. c. 138, § 15A (failure to disclose all persons who have a direct or indirect beneficial or financial interest in said license).

As an initial matter, the Commission recognizes its June 23, 2016, Decision wherein it indefinitely suspended the Licensee’s license for a violation of M.G.L. c. 138, § 15A, that occurred on May 15, 2000. The Commission conducted the hearing on the May 15, 2000, violation separately from the instant hearing at the request of the Licensee. On April 12, 2016, the Commission intended to hear both the alleged violation that occurred on May 15, 2000, along with the alleged violations presently before the Commission. However, due to a notice issue, only the May 15, 2000, alleged violation could be heard. While the Commission intended to continue the entire hearing, it agreed to the Licensee’s request to hear the May 15, 2000, allegation at that first hearing because Mr. Correiro, one of the Licensee’s witnesses, was very ill, and it would have posed an extreme hardship for him to return for a second date. The Commission heard the May 15, 2000, alleged violation hearing and issued its decision on June 23, 2016, resulting in an indefinite suspension. Because the Commission has already determined that there was a violation on May 15, 2000, that date’s allegations are not before the Commission for this decision. At the Licensee’s request at the hearing on the instant allegations, the Commission agreed to the Licensee’s request that it consider Mr. Correiro’s previous testimony for the instant allegations.

The Commission’s “determination of the substantiality of the evidence must be made upon consideration of the entire record, including whatever in the record fairly detracts from its weight.” Med. Malpractice Joint Underwriting Ass’n of Massachusetts v. Comm’r of Ins., 395 Mass. 43, 55 (1985) (quotations and citations omitted). The Commission is convinced by satisfactory proof and finds that there was a transfer of license without first obtaining permission from both the local

board and the ABCC as required by statute, M.G.L. c.138, § 23, and that the Licensee intentionally failed to disclose all persons with a beneficial interest in its license. The Commission need not engage in a recitation of the evidence presented by the investigator in support of his allegations that the Licensee violated § 23 and § 15A because nothing in the record contradicts or detracts from the weight of the investigator's evidence. Indeed, the Licensee has not denied the allegations made by the investigator or otherwise challenged the veracity of the investigator's findings.

Rather, the Licensee has made a legal argument that no violations should be found based on two separate reasons. First, the Licensee argues that there were no violations because no new shareholders were ever brought in; that what occurred was as individuals left the corporation, the shares were sold back to the corporation and the remaining owners split them. This argument can be summarily rejected because it is no defense to the fact that all beneficial interests and changes in corporate structure must be disclosed and approved by the Commission.

Second, the Licensee asks the Commission for leniency and a finding of no violations because the Licensee has worked with the investigator every step of the way to assist in clearing up the deficiencies in its ownership with the Commission. The Commission is unsympathetic to this plea. As the Commission admonished the Licensee at the hearing, it is the Licensee's responsibility and obligation to proactively comply with Chapter 138 and seek approval of all changes of officers and directors, and corporate structure. That the Licensee now has not impeded the investigator's investigation into the license – a legal obligation in and of itself, see M.G.L. c. 138, § 63A – does nothing to change the fact that the Licensee went for years knowingly violating Chapter 138 and concealing from the Commission the changes in officers and directors and its corporate structure. “[T]he licensing authorities have the legitimate right to expect full disclosure of holdings in the nature of substantial indirect as well as direct beneficial interests in an entity which seeks to own a license, particularly where specific inquiry is made on the issue, so that the agencies will be able to properly discharge their obligations of ensuring that the applicant meets the requirements imposed upon a prospective licensee.” Number Three Lounge, Inc. v. Alcoholic Beverages Control Comm’n, 7 Mass. App. Ct. 301 (1979). The Commission finds that the Licensee has violated both § 23 and § 15A, based on all of the instances cited in the investigator's report, Exhibit 1.

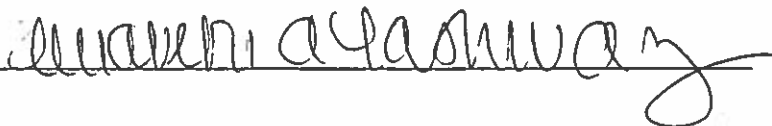
Section 23 authorizes the imposition of a suspension for noncompliance. Cleary v. Cardullo's, 347 Mass. 337, 346-350 (1964). The Commission therefore imposes an indefinite suspension for the violations it has found. However, as the Licensee's license is currently indefinitely suspended based on the Commission's June 23, 2016, Decision, this indefinite suspension is to be served concurrently with the indefinite suspension ordered in the June 23, 2016, Decision.

## CONCLUSION

Based on the evidence, the Commission finds the Licensee violated M.G.L. c. 138, §23- Transfer of the privilege of a license without proper approval. Therefore, the Commission **INDEFINITELY SUSPENDS** the license of The Club at Il Panino, Inc. d/b/a Umbria. This indefinite suspension is to be served concurrently with the indefinite suspension ordered in the June 23, 2016, Decision.<sup>3</sup>

## **ALCOHOLIC BEVERAGES CONTROL COMMISSION**

Kathleen McNally, Commissioner  (KG)

Elizabeth Lashway, Commissioner 

Dated: September 21, 2016

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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