

*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

February 23, 2012

**FELT ENTERPRISES, LLC DBA FELT**  
**531-35 WASHINGTON STREET**  
**BOSTON, MA 02111**  
**LICENSE #: 011600797**  
**HEARD: MAY 24, 2011**

After hearing on May 24, 2011, the Commission finds licensee Felt Enterprises, LLC dba Felt violated:

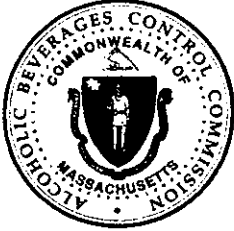
1. M.G.L. c. 138, §23 – Transfer of the privilege of a license without proper approval (2 counts); and,
2. 204 CMR 2.01 (8) – False statement in an application (1 count).

The above-captioned licensee's license is **suspended indefinitely forthwith** until further order from this 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.

Kim S. Gainsboro  
Chairman

cc: Nicholas Foundas, Esq. via Facsimile  
Frederick G. Mahony, Chief Investigator  
Local Licensing Board  
Administration  
File



*The Commonwealth of Massachusetts*  
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**DECISION**

**FELT ENTERPRISES, LLC DBA FELT**  
**531-35 WASHINGTON STREET**  
**BOSTON, MA 02111**  
**LICENSE #: 011600797**  
**HEARD: MAY 24, 2011**

Felt Enterprises, LLC dba Felt (the "Licensee" or "Felt") holds an all alcoholic beverages license issued pursuant to M.G.L. c. 138, §12. The Alcoholic Beverages Control Commission (the "Commission") held a hearing on May 24, 2011, regarding an alleged violation of:

- (a) M.G.L. c. 138, §23 – Transfer of the privilege of a license without proper approval (2 counts);
- (b) 204 CMR 2.01 (8) – False statement in an application (5 counts); and,
- (c) M.G.L. c. 138, §64 – License issued by local licensing authorities in violation of §16A or any other provision of this chapter (3 counts).

The following documents are in evidence:

1. Investigator Rose Bailey's Report;
2. Application Alcohol Beverage License for Retail Sale dated March 15, 2001;
3. Form 43 Application Approval dated 2/5/2002;
4. Form 43 Application Approval dated 01/21/2003;
5. License Renewal Application 2003;
6. License Renewal Application 2004;
7. Massachusetts Corporation 2003 Annual Report;
8. Form 43 Application Approval dated 03/31/2006;
9. Local Board Form 15B and Form A;
10. License Renewal Application 2007;
11. License Renewal Application 2009;
12. License Renewal Application 2010;
13. Form 43 Application Approval dated 03/22/2010;
14. Form 997 Local Board Form 15B and Form A;
15. Form 43 dated 12/09/2010;
16. Application and Supporting Documentation for New Officer/ Directors, Transfers of Stock;
17. Secretary of State Corporation Division Summary Screen-Felt Enterprises, LLC;
18. Felt Enterprises, Inc. filed of Articles of Organization;
19. Letter dated 12/27/2002 to Massachusetts Department of Revenue;
20. Filed Certificate of Change of Secretary of the Commonwealth Felt Enterprises, Inc. date 02/04/2003;
21. Felt Enterprises, Inc. filed Massachusetts Annual Report 2003, 2004, 2005, 2006 and 2008.
22. Felt Enterprises, Inc. filed Statement of Change dated 03/12/2010;

23. Felt Enterprises, Inc. Massachusetts Annual Report 2009; and
24. Copied Checks Account Holder Felt Enterprises, Inc.

Licensee Exhibit's

- A. Application for Transfer dated 05/05/2011;
- B. Affidavit from CPA dated April 21, 2011;
- C. Fire Permit 07/01/2010-06/30/2011;
- D. Entertainment License; and
- E. Health Permit 2011.

There is one (1) tape of this hearing.

FACTS

1. On February 5, 2002, the Commission approved an application filed by Felt for the transfer of an annual, all alcoholic beverages license under §12 of chapter 138 of the General Laws. Ex 1.
2. The disclosed individuals with a direct or indirect interest in the Felt license who were approved by the Commission are (Ex 2):
  - a. Michael Moran, twenty (20) percent interest, managing member of the LLC and approved license manager;
  - b. Emmanuel Linoxilakis, thirty (30) percent member of the LLC;
  - c. Christopher Muller, ten (10) percent member of the LLC;
  - d. LAD Trust, Louis A. Delpidio Trustee, thirty (30) percent, member of the LLC; and,
  - e. Brian M. O'Donnell, ten (10) percent member of the LLC.
3. On January 21, 2003, the Commission approved the pledge of the license of Felt, the LLC. Ex 4.
4. Felt admits that it changed the form of its business organization from an LLC to a corporation on December 30, 2002. Ex B.
5. This was approximately five (5) weeks before the Commission approved the pending application filed by Felt, the LLC. This was over a year before the Commission approved the pledge of license approved to be held by Felt, the LLC.
6. No application has ever been filed to transfer the ownership of the license from Felt, the LLC, to Felt, Inc., the corporation. This corporation was formed while the LLC's application was pending before the Commission and before the Commission gave approval to the application filed by Felt, the LLC.
7. On March 31, 2006, the Commission approved an application to change the license manager of Felt, the LLC, from Michael Moran to Brian O'Donnell. Ex 8.
8. Felt, the LLC, renewed its license for calendar year 2007 upon the signature of Brian O'Donnell. Ex 10.
9. Felt, the LLC, renewed its license for calendar year 2009 upon the signature of Brian O'Donnell on November 4, 2008. Ex 11.

10. On April 30, 2009, Felt, the LLC, was involuntarily dissolved by the Secretary of the Commonwealth. Ex 17.
11. Felt, the LLC renewed its license for calendar year 2010 upon the signature of Brian O'Donnell on November 25, 2009. Ex 12.
12. On March 22, 2010, the Commission approved an application to change the license manager of Felt, the LLC, from Brian O'Donnell to Konstantinos N. Grapsas. Ex13.
13. On or about January 7, 2011, the Commission received from the local licensing authorities an application it had granted for the "transfer of stock" and "New Officers/Directors" of Felt, the LLC, the last-approved holder of this license. Ex 15.
14. The application documents that had been submitted with that application were in the name of Felt Enterprises, Inc., an entity that has not been disclosed or approved by the Commission to hold this license. Ex 16.
15. These application documents (Ex 16) state a shifting of interests that varied from the interests last-approved by the Commission on February 5, 2002. Ex 2.
16. Exhibit 16 is an exhibit with more than one (1) document, with some documents containing multiple pages. Within Exhibit 16 is a single page ABCC application form titled "Petition For Transfer of Ownership" dated November 2, 2010 and endorsed as "granted" by the local licensing authority.
17. This form states that individuals with a direct or indirect interest in the undisclosed and unapproved corporation are:
  - a. Michael Moran, twenty (20 ) percent interest in that corporation;
  - b. Emmanuel Linoxilakis, thirty (30) percent interest in that corporation;
  - c. Christopher Muller, ten (10) percent interest in that corporation and one (1) of three (3) directors of that corporation;
  - d. Louis A. Delpidio, individually and not as trustee of a trust, thirty (30) percent interest in that corporation and one(1) of three (3) directors of that corporation; and,
  - e. Brian M. O'Donnell, ten (10) percent interest in that corporation and one (1) of three (3) directors of that corporation.
18. Exhibit 16 also includes a two (2) page document dated September 2010 and titled "Stock Purchase and Sale Agreement."
19. This document is signed and contains factual recitations that include:
  - a. "[Jack Gateman] is the owner of ten thousand (10,000) shares (or twenty percent) of the issued and outstanding shares of the common stock of Felt Enterprises, Inc.";
  - b. "[Emanuel Linoxilakis] is the owner of sixty thousand (60,000) shares (or 30 percent) of the of the issued and outstanding shares of the common stock of Felt Enterprises, Inc.";
  - c. [Felt Enterprises, Inc.] currently has issued and outstanding 200,000 shares of common stock";
  - d. "[u]pon execution of this agreement [Emanuel Linoxilakis] shall pay \$20,000.00 dollars to [Jack Gateman] for [Jack Gateman]'s 10,000 shares of common stock in [Felt Enterprises, Inc.];

- e. in the very next paragraph (numbered 2), “[Emanuel Linoxilakis] shall obtain ... the Corporations [sic] approval of the sale of [Jack Gateman]’s 40,000 shares of common stock of [Felt Enterprises, Inc.] to [Emanuel Linoxilakis]”; and,
  - f. in the very next paragraph (numbered 3), “[Jack Gateman] shall ... transfer his said 10,000 shares of common stock of [Felt Enterprises, Inc.] to [Emanuel Linoxilakis].”
20. Exhibit 16 also includes a second two (2) page document dated September 2010 and titled “Stock Purchase and Sale Agreement.”
21. This document is styled very similarly if not identically to the Agreement described in Paragraph 19 above. This document also contains factual recitations that include:
- a. “[Lou Delpidio] is the owner of 50,000 shares (or twenty percent) of the issued and outstanding shares of the common stock of Felt Enterprises, Inc.”;
  - b. “[Emanuel Linoxilakis] is the owner of 60,000 shares (or 30 percent) of the issued and outstanding shares of the common stock of Felt Enterprises, Inc.”;
  - c. [Felt Enterprises, Inc.] currently has issued and outstanding 200,000 shares of common stock”;
  - d. “[u]pon execution of this agreement [Emanuel Linoxilakis] shall pay \$100,000.00 to [Lou Delpidio] for [Lou Delpidio]’s 50,000 shares of common stock in [Felt Enterprises, Inc.]”;
  - e. And in the very next paragraph (numbered 2), “[Emanuel Linoxilakis] shall obtain ... the Corporations [sic] approval of the sale of [Lou Delpidio]’s 20,000 shares of common stock of [Felt Enterprises, Inc.] to [Emanuel Linoxilakis]”;
  - f. And in the very next paragraph (numbered 3), “[Lou Delpidio] shall ... transfer his said 50,000 shares of common stock of [Felt Enterprises, Inc.] to [Emanuel Linoxilakis].”
22. Included within this part of Exhibit 16 is a copy of check dated September 15, 2010 for one hundred thousand dollars (\$100,000.00) made payable to “Louie Delpidio.”
23. A hand written notation on this check in the memo portion of this check indicates this payment is for “purchase of 25% of stock only.”
24. Exhibit 16 also includes a third 2 page document dated September 15, 2010 and titled “Stock Purchase and Sale Agreement.”
25. This document is styled very similarly if not identically to the Agreement described in Paragraph 19 above. This document also contains factual recitations that include:
- a. “[Brian O’Donnell] is the owner of 20,000 shares (or ten percent) of the issued and outstanding shares of the common stock of Felt Enterprises, Inc.”;
  - b. “[Emanuel Linoxilakis] is the owner of 60,000 shares (or 30 percent) of the of the issued and outstanding shares of the common stock of Felt Enterprises, Inc.”;
  - c. [Felt Enterprises, Inc.] currently has issued and outstanding 200,000 shares of common stock”;
  - d. “[u]pon execution of this agreement [Emanuel Linoxilakis] shall pay \$20,000.00 to [Brian O’Donnell] for [Brian O’Donnell]’s 20,000 shares of common stock in [Felt Enterprises, Inc.] to [Emanuel Linoxilakis]”;
  - e. And in the very next paragraph (numbered 2), “[Emanuel Linoxilakis] shall obtain ... the Corporations [sic] approval of the sale of [Brian O’Donnell]’s 20,000 shares of common stock of [Felt Enterprises, Inc.] to [Emanuel Linoxilakis]”;

- f. And in the very next paragraph (numbered 3), “[Brian O’Donnell] shall ... transfer his said 20,000 shares of common stock of [Felt Enterprises, Inc.] to [Emanuel Linoxilakis].”
26. Exhibit 16 also includes a fourth two (2) page document dated September 2010 and titled “Stock Purchase and Sale Agreement.”
27. This document is styled very similarly if not identically to the Agreement described in Paragraph 19 above. This document also contains factual recitations that include:
- a. “[Michael Moran] is the owner of 40,000 shares (or twenty percent) of the issued and outstanding shares of the common stock of Felt Enterprises, Inc.”;
  - b. “[Emanuel Linoxilakis] is the owner of 60,000 shares (or 30 percent) of the issued and outstanding shares of the common stock of Felt Enterprises, Inc.”;
  - c. [Felt Enterprises, Inc.] currently has issued and outstanding 200,000 shares of common stock”;
  - d. “[u]pon execution of this agreement [Emanuel Linoxilakis] shall pay \$50,000.00 to [Michael Moran] for [Michael Moran]’s 40,000 shares of common stock in [Felt Enterprises, Inc.]”;
  - e. And in the very next paragraph (numbered 2), “[Emanuel Linoxilakis] shall obtain ... the Corporations [sic] approval of the sale of [Michael Moran]’s 40,000 shares of common stock of [Felt Enterprises, Inc.] to [Emanuel Linoxilakis]”;
  - f. And in the very next paragraph (numbered 3), “[Michael Moran] shall ... transfer his said 40,000 shares of common stock of [Felt Enterprises, Inc.] to [Emanuel Linoxilakis].”
28. Felt Enterprises Inc., the undisclosed and unapproved corporation, paid authorized suppliers for alcoholic beverages sold and delivered. Ex. 24.
29. Payment was made by check on an account standing in the name of the undisclosed and unapproved corporation only. Ex 24.
30. Commission investigators conducted an inspection of the licensed business in March 2011. Upon their arrival they immediately identified themselves to Ms. D.J. Seale, who identified herself as the office manager.
31. Upon questioning from the investigators, Ms. Seale stated Konstantinos Grapsos is the manager, she was hired in September 2010 by Konstantinos Grapsos, she is paid weekly for her employment and payment is made by check drawn on the account in the name of Felt Enterprises, Inc. that is owned by Derek Brady, Manos Linoxilakis, and Christophe Muller.
32. According to Ms. Seale, Derek Brady is the new owner as of October 2010.

## DISCUSSION

I. General Laws c. 138, § 23, Transferring Privilege of license without approval (2 counts). Implicit in the transfer of a license is the surrender of control. A “transfer of a business takes place when the person introduced to it runs the business for his own account.” *Griffin's Brant Rock Package Store, Inc. v. Alcoholic Beverages Control Commission*, 12 Mass.App.Ct. 768, 771, 429 N.E.2d 62, 65 (1981). The

Commission is instructed by the cases of *Cleary v. Cardullo's, Inc.*, 347 Mass. 337, 346-350, 198 N.E.2d 281 (1964) and *Number Three Lounge, Inc. v. Alcoholic Beverages Control Comm.*, 7 Mass.App. 301, 304-308, 387 N.E.2d 181 (1979). As characterized by the Appeals Court in the *Griffin's Brant Rock* case, "[i]n *Cleary*, the purported principal contributed no financial resources and was wholly dependent on his father and corporations controlled by his father." *Griffin's Brant Rock Package Store, Inc.*, 12 Mass.App.Ct. at 773, 429 N.E.2d at 65, and "[i]n *Number Three Lounge*, there was evidence that a son-in-law of a person who had been refused a license was substituted as an applicant, but the substitution lacked all economic substance. *Griffin's Brant Rock Package Store, Inc.*, 12 Mass.App.Ct. at 773-774, 429 N.E.2d at 66.

The Commission is convinced by satisfactory proof and finds that there was twice (at least) 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. The license was illegally transferred first when the license holder changed the form of its business organization from an LLC to a corporation on December 30, 2002. Ex B This was approximately five (5) weeks before the Commission approved the pending application filed by Felt, the LLC. This was over a year before the Commission approved the pledge of license approved to be held by the Felt, the LLC. No application was filed to transfer the ownership of the license from the LLC to the corporation formed while the LLC's was pending before the Commission and before the Commission gave approval to the application filed by Felt, the LLC.<sup>1</sup>

The license was illegally transferred a second time when, according to the application filed in the name of Felt Enterprises, Inc. as described in Paragraphs 15 and 16 above, a host of individuals were introduced into and allowed to control the license and operate it for their own benefit and account without first obtaining the statutorily required approval from both the local licensing authority and the commission.<sup>2</sup> The application documents described in Paragraphs 15 and 16, as well as the other documents filed with that application, persuade the Commission that this activity was a second unlawful transfer of the license from Felt, LLC to Felt Enterprises, Inc.

The Commission is convinced by satisfactory proof and finds that there was, at least twice, 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. The pattern of unlawfully transferring the license and interests in the license persuades the Commission that this is a pattern of conduct that appears to be the usual method of

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<sup>1</sup> The Commission recognizes that M.G.L. c. 156C, § 70(d) provides, in pertinent part, that "[a] limited liability company administratively dissolved continues in existence, but shall not carry on any business except that necessary to wind up and liquidate its affairs." Here, Felt LLC did not "wind up and liquidate its affairs." Felt LLC has consistently engaged in the licensed business without any documents or other evidence that it was merely winding up and liquidating its affairs.

<sup>2</sup> Exhibit 16 documents the transfer and shifting of a direct or indirect beneficial interest in this license from LAD Trust to Louis A. Delpidio individually. This Exhibit 16 also contains five (5) documents titled "Stock Purchase and Sale Agreement" in which Emmanuel Linoxilakis is described to be buying shares of stock from four (4) different individuals, Messrs. Gateman, Delpidio, O'Donnell and Moran. These documents raise additional questions of legality as well as questions of fact. These questions include, but are not limited to, when was Jack Gateman ever disclosed and approved to hold an interest in this license, when was Lou Delpidio ever disclosed and approved to hold an interest individually in this license, how many shares of stock does Mr. Gateman lawfully hold, how many share of stock does Mr. Delpidio lawfully hold, how does a lawful valuation of stock held in this corporation vary so widely from \$1.00 per share for Mr. O'Donnell, to \$1.25 per share for Mr. Moran, to \$.50 or \$2.00 per share for Mr. Gateman, to \$2.00 or \$5.00 per share for Mr. Delpidio. This wide variance of value and the inconsistent, if not contradictory, factual recitals in the Stock Purchase and Sale Agreements suggest that this group of individuals seem to be challenged in performing straight basic arithmetic. But the Commission need not in this decision address these questions of law and factual inconsistencies raised by the documented conduct of these individuals. So, the Commission leaves these issues for another day.

doing business and not any bona fide error or oversight. The Commission will thus impose the sanction specified below in the Conclusion portion of this decision.

**II. 204 CMR 2.01 (8) – False statement in an application (5 counts).** By regulation promulgated at 204 C.M.R. 2.01(8), false statements in an application “shall be a cause or ground for refusing to grant the license or permit or for suspending, cancelling or revoking a license or permit already granted.” In this case, the Commission is persuaded there was one (1) false statement within the meaning of this regulation. This one (1) false statement consists of the factual representation contained in Exhibit 12 as described in Paragraph 12 above.

Exhibit 12, the license renewal application for calendar year 2009 contains a factual representation that the licensee seeking renewal was Felt Enterprises, LLC when in truth this LLC had been dissolved over six (6) months earlier, on April 30, 2009. Signing this renewal application in the name of an entity that was dissolved is a false statement within the meaning of this Commission regulation.

**III. M.G.L. c. 138, §64 – License issued by local licensing authorities in violation of §16A or any other provision of this chapter (3 counts).** The theory of the prosecution of these violations appears to be that there was an unlawful signatory on three (3) different renewal applications in three (3) different renewal periods, the license held by Felt, the LLC, was renewed in violation of M.G.L. c. 138, §16A, and consequently the license must be revoked by the Commission pursuant to M.G.L. c. 138, §64.

As described in paragraphs 9, 10 and 12 above, Brian O’Donnell signed each application for renewal for each relevant license period in question, viz., 2007, 2009 and 2010. Back on March 31, 2006, the Commission approved Brian O’Donnell as the license manager, as described above in Paragraph 8. Further, Brian O’Donnell was disclosed and approved to be a ten (10) percent interest holder as a member of the LLC that was last-approved to hold this license.

The Commission has previously adjudicated that “the Commission’s longstanding past administrative practice is not only to acknowledge the last-approved licensee’s standing to sign the renewal application but also under M.G.L. c.138 §15A but also to allow ‘all persons who have direct or indirect beneficial interest on said license’ to sign the application for renewal.” *In Re: Jazzy Joe’s, Inc. and Irv’s Place, Inc.*, Gloucester (ABCC Decision dated July 8, 2009); *In Re: Mambo Nightclub, Inc. Lawrence* (ABCC Decision dated August 10, 2010) (“[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.”); *In Re: Jin Restaurant Group, LLC*, Saugus (ABCC decision dated November 24, 2009)(“the Commission allows the holder of the license standing to sign the renewal application as well as “all persons who have a direct or indirect beneficial interest in said license.” M.G.L. c.138, §15A *In re: Pop’s Cafe, Inc. and ATP. Inc., Holyoke* (ABCC Decision dated March 12, 2008).”)

In each of the three (3) renewal applications in question, the application was signed by the last-approved license manager who was also a disclosed and approved holder of a direct or indirect beneficial interest in this license. The Commission finds no violation of M.G.L. Ch. 138, §64 – License issued by local licensing authorities in violation of §16A or any other provision of this chapter for any of the three (3) counts alleged.

#### CONCLUSION

The Alcoholic Beverages Control Commission finds the licensee Felt Enterprises, LLC dba Felt violated:




- (1) M.G.L. c. 138, §23 – Transfer of the privilege of a license without proper approval (2 counts);  
and,
- (2) 204 CMR 2.01 (8) – False statement in an application (1 count).

The Commission **INDEFINITELY SUSPENDS** the license of Felt Enterprises, LLC dba Felt **effective forthwith** until further written order of the Commission.

The Commission will not issue any further order without a written request from the licensee showing good cause to reconsider this indefinite suspension and a hearing before the Commission that the licensee attends.

**ALCOHOLIC BEVERAGES CONTROL COMMISSION**

Susan Corcoran, Commissioner 

I, the undersigned, hereby certify that I have reviewed the hearing record and concur with the above decision.

Kim S. Gainsboro, Chairman 

Dated: February 23, 2012

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: Nicholas Foundas, Esq. via Facsimile  
Frederick G. Mahony, Chief Investigator  
Local Licensing Board  
Administration  
File