

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

Steven Grossman
Treasurer and Receiver General

Kim J. Gainsboro, Esq.
Chairman

**MEMORANDUM AND ORDER ON
LICENSEE'S MOTION FOR RECONSIDERATION**

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

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 alleged violations 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).

After a hearing on May 24, 2011, the Commission found that the Licensee transferred its license without proper approval in violation of M.G.L. c. 138, §23, and filed a false statement in an application in violation of 204 CMR 2.01 (8). As a result, on February 24, 2012, this Commission indefinitely suspended Felt's license forthwith until further order from this Commission.

On or about February 27, 2012, the Licensee filed its first motion for reconsideration through successor counsel, Carolyn Conway¹. Thereafter on March 1, 2012, successor counsel withdrew her appearance and that first motion. On the same day, second successor counsel, Fred Riley², filed his appearance and a second motion for reconsideration on behalf of the Licensee. This Memorandum and Order addresses this second motion for reconsideration (the "Motion").

¹ Attorney Conway did not represent the Licensee at the May 24, 2011 hearing before the Commission.

² Attorney Riley did not represent the Licensee at the May 24, 2011 hearing before the Commission.

As a preliminary matter, this Motion is not supported by any factual statements under oath. This Motion attempts to persuade the Commission that Derek Brady performed some actions that could reasonably be described as due diligence. But the Motion contains no facts describing the actions taken by Derek Brady in performing any due diligence before he chose voluntarily to purchase the stock of a corporation that did not hold this license.

In the Motion, Derek Brady acknowledges that he did not conduct complete due diligence in determining the last-approved licensee, prior to purchasing the stock of a corporation that did not hold this license. A cursory examination of Commission records shows that the last-approved licensee is Felt Enterprises, LLC. Indeed, the license renewal applications issued by the Commission and signed on behalf of this LLC for the past ten (10) years, since 2002, have been in the name of this last-approved licensee, an LLC not a corporation.

The exercise of due diligence, whether complete or not, is irrelevant to the statutory violation of transferring a license without the required prior approvals. The facts in this case are not disputed. No application was even filed to secure these required approvals until after the Commission hearing notice dated March 23, 2011 issued.

In its decision dated February 23, 2012, the Commission reviewed certain of these renewal applications to determine whether the alleged violation of M.G.L. c. 138, §64 had been committed by the renewal of this license in violation of §16A. Since these renewals were in the name of the Licensee (an LLC not a corporation) and were signed by an individual who was disclosed and approved by both the local licensing authorities and the Commission, the Commission adjudicated that there was no violation of §64. This adjudication eliminated the Licensee's exposure to a statutorily mandated action of revocation of this license. See *In Re: Margaret's Restaurant, Inc. dba Hokey's*, Oxford (ABCC Decision dated October 18, 2005); *In Re: Trackside of Oxford, Inc. dba Trackside, Oxford* (ABCC Decision dated June 28, 2006); *In re: Pop's Café, Inc.*, Holyoke (ABCC Decision dated March 12, 2008).

In the Motion, Derek Brady admits that he violated M.G.L. c. 138 §23 (transfer of the privilege of a license) by transferring control of the alcoholic beverages license from the LLC that had been approved by this Commission to hold this license to a corporation that has not been approved by this Commission or the local licensing authorities to hold this license. Moreover, Mr. Brady admits that he has had operational control of the license without being approved by either the local licensing authorities or this Commission. The Commission found this as a fact in Paragraphs 31 and 32 of its decision dated February 23, 2012.

Mr. Brady admits that he bought fifty-five percent (55%) of the stock of a corporation that did not hold a license and that has yet to be disclosed and approved to hold this license. This admission does not persuade the Commission that the sanction imposed in the Commission's February 23, 2012 decision should be reconsidered.

Assuming *arguendo* that Felt Enterprises, Inc. was disclosed and approved to hold this license, which it is not, the plain language of M.G.L. c. 138, §15A provides, in pertinent part, that "[n]o stock in a corporation holding a license to sell alcoholic beverages shall be transferred, pledged, or issued **without first obtaining the permission of the local licensing authorities and the commission.**" (emphasis supplied) The Licensee does not argue that Mr. Brady or anyone else sought such approval before March 1, 2012. To date, neither the local licensing authorities nor the Commission has given such approval. Thus, Mr. Brady's contract to purchase and transfer the stock of such a corporation is contrary to the express provisions of chapter 138 of the General Laws.

The law is well-settled that contracts that are contrary to chapter 138 of the General Laws are unenforceable by the courts. Hastings Associates, Inc. v. 369 Building Fund, Inc., 42 Mass.App.Ct. 162, 177-178 (1997) ("[i]f a party is prohibited from doing an act because of his failure to comply with a licensing, registration or similar requirement, a promise in consideration of his doing that act or of his promise to do it is unenforceable on grounds of public policy if (a) the requirement has a regulatory purpose, and (b) the interest in the enforcement of the promise is clearly outweighed by the public policy behind the requirement." Restatement (Second) of Contracts §181 (1981). The requirement that a vendor of alcoholic beverages obtain a license from proper authorities is always at least in part for the protection of the public."). In Hastings Associates, the Appeals Court acknowledged "the 'heavy forfeiture' our decision works upon the plaintiff, [citation omitted and footnote omitted] and that such a harsh result favors an undeserving and equally culpable defendant, we nonetheless conclude that the range of considerations weighs in favor of this result on grounds of the strong public policy favoring enforcement of our licensing laws regarding the selling of alcoholic beverages. See Beacon Hill Civic Assn. v. Ristorante Toscano, Inc., *supra* at 320-324."

The Commission is not persuaded that Mr. Brady's illegal conduct in any way mitigates the violation committed by the last-approved licensee, Felt Enterprises, LLC or that Mr. Brady is victimized by anything other than his own choice to enter into unlawful transactions with un-named and unspecified individuals that are now labeled by him as "obstreperous." Indeed, such individuals are themselves unlawful shareholders, a fact acknowledged by Mr. Brady in the first two (2) factual paragraphs of the Motion. "[O]ne who has participated in a violation of the law will not be allowed to assert in court any right based upon or directly connected with the illegal transaction". Hastings Associates, 42 Mass. App. Ct at 176 quoting with approval 6 Williston on Contracts, §12.4, at 24.

The Commission is persuaded that Mr. Brady's legal difficulties regarding this license are self-inflicted wounds.³ The Commission is not persuaded that Mr. Brady, or any other person, may lawfully be allowed to hold or continue to hold any direct or indirect beneficial interest in, or continue any unlawful operation of, a license in which he has never been disclosed and approved as required by the plain and unambiguous language of the controlling statute.⁴ The Commission warns the licensee that future applications will be reviewed pointedly given the illegal conduct of Mr. Brady with this license. See In Re: Margaret's Restaurant, Inc. dba Hokey's, Oxford (ABCC Decision dated October 18, 2005); In Re: Trackside of Oxford, Inc. dba Trackside, Oxford (ABCC Decision dated June 28, 2006).

In support of the current Motion, Felt Enterprises, LLC also argues that the legal counsel filing the current Motion has been attempting to rectify this situation and eliminate the illegalities that resulted in the Commission sanction for the past six (6) months. However, counsel provides no facts of what, if any, actions were taken to eliminate the illegalities between March 23, 2011 (the date of the hearing notice first issued by the Commission) and September 2011.⁵

³ Moreover, the Commission applies its knowledge and recognizes that this is not Mr. Brady's first foray in the alcoholic beverages industry. Commission records show that he has been the disclosed and approved owner of a license held in the name of a corporation Metro Dining, Inc. located at 34 Harvard Ave Allston, MA since 2006. Further, Mr. Brady filed an application for another license in Boston on October 31, 2011 that was granted by the local licensing authorities and is pending before the Commission. Mr. Brady has demonstrated his actual knowledge of the statutory requirements for prior approval of any license transaction from both the local licensing authorities and the Commission.

⁴ The experience of the Commission includes a case in which the undisclosed and unapproved transfer of a license has been the subject of federal racketeering indictments and convictions. United States v. Gianelli, United States District Court, District of Massachusetts; See In Re: Canine Entertainment, Inc. dba The Big Dog, Lynnfield (ABCC Decision dated March 23, 2005).

Moreover, the Motion provides no facts on what, if any, actions were taken since the hearing of May 24, 2011 concluded and the date such actions were initiated by the legal counsel filing the current Motion. This unacknowledged delay, together with the licensee's failure to prove that the operation and control of this license has been re-gained by only those persons last disclosed and approved by both the local licensing authorities and the Commission identified in Paragraph 2 of the Commission's February 2012 decision, does not persuade the Commission that the Motion For Reconsideration should be granted.

The Commission Decision dated February 23, 2012 specifies facts that require five (5) applications to be filed and approved by both the local licensing authorities and the Commission to cure the substantial illegalities committed over the past ten (10) years. These five (5) applications are:

- (i) A transfer of the ownership of the license from Felt Enterprises LLC to Felt Enterprises Inc., maintaining as holders of a direct or indirect beneficial interest in Felt Enterprises, Inc. only those individuals identified in Paragraph 2 of the Commission's February 2012 decision, with each interest holder maintaining the respective percentage and nature of interest in the corporation that was held in the last-approved LLC;
- (ii) Application transactions required to legitimize the past illegal ownership structure found by the Commission in Paragraph 17 of the Commission's February 2012 decision, based on Exhibit 16 and the application form titled "Petition For Transfer Of Ownership" included within Exhibit 16;
- (iii) Application transactions required to legitimize the past illegal ownership structure found by the Commission in Paragraphs 18, 19, 21, 22, 25 and 27 of the Commission's February 2012 decision, based on Exhibit 16 and the four (4) separate stock transfer purchase and sale agreements included within Exhibit 16;
- (iv) Application transactions required to legitimize the past illegal ownership structure found by the Commission in Paragraph 31 of the Commission's February 2012 decision, as described by D.J. Seale; and,
- (v) Application transactions required to legitimize the past illegal ownership structure found by the Commission in Paragraph 32 of the Commission's February 2012 decision, as described by D.J. Seale.

Based on the Commission's February 2012 decision, more than two (2) applications are required to untie the Gordian Knot tied by the decade-long illegalities with the license held by Felt Enterprises, LLC.

For the reasons discussed herein, the Motion For Reconsideration is hereby DENIED. This Motion For Reconsideration does not provide good cause to reconsider the indefinite suspension. The current operation is being conducted by at least one (1) individual who is undisclosed and unapproved by the Commission to hold a direct or indirect beneficial interest in this license held by Felt Enterprises, LLC.

⁵ The exhibits of the Commission hearing include Exhibit A submitted by the licensee, 80 pages of documents regarding a transfer application from Felt Enterprises, LLC to Felt Enterprises, Inc. These documents prove the unlawful transfer of interests in Felt Enterprises LLC to undisclosed and unapproved persons thereby aggravating, not mitigating, the illegalities found. Further, the documents in Exhibit A conflict facially with the documents in Exhibit 16 that include the four (4) stock purchase and sale agreements that would have Emanuel Linoxilakis paying \$190,000.00 cash to buy 120,000 shares of stock. The documents in Exhibit A state that Emanuel Linoxilakis would hold only 33% of the stock, i.e., 66,666 shares of stock. Thus, these exhibits do not persuade the Commission that the sanction imposed in the Commission's February 23, 2012 decision should be reconsidered.

The Commission decision of February 23, 2012 remains in effect. The license of Felt Enterprises, LLC dba Felt remains INDEFINITELY SUSPENDED 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 last-approved licensee attends.

At any such hearing, in addition to the attendance of the last-approved licensee, the Commission shall compel the attendance and testimony of:

- a. Michael Moran;
- b. Emmanuel Linosilakis;
- c. Christopher Muller,;
- d. Brian M. O'Donnell;
- e. LAD Trust, Louis A. Delpidio Trustee
- f. any other Trustees of the LAD Trust;
- g. Konstantinos N. Grapsas;
- h. Louis A. Delpidio, in his individual capacity;
- i. Jack Gateman;
- j. Derek Brady;
- k. D.J. Seale; and,
- l. Joseph Sacchetta.

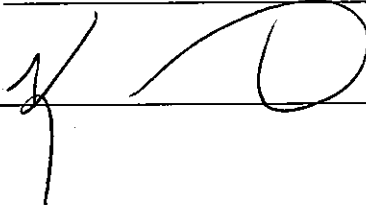
The Commission acknowledges the discretion of the last-approved licensee to request the Commission to terminate this license in place of indefinitely suspending it, provided that request is submitted in writing accompanied by supporting documentation showing the authority granted by the last-approved licensee to file such a written request with this Commission.

ALCOHOLIC BEVERAGES CONTROL COMMISSION

Susan Corcoran, Commissioner



Kim S. Gainsboro, Chairman



Dated: March 8, 2012

cc: Frederick Riley, Esq. via Facsimile
Douglas Martland, Assistant Attorney General
Frederick G. Mahony, Chief Investigator
Local Licensing Board
Administration
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