



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

DECISION

BK & PF, LLC DBA THE NORTH STAR
222 FRIEND STREET
BOSTON, MA 02116
LICENSE#: 011600669
VIOLATION DATE: 12/31/2012
HEARD: 05/28/2013

BK & PF, LLC d/b/a The North Star (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, May 28, 2013, regarding alleged violations of:

- 1) 204 CMR 4.03 (1) (d) No licensee or employee or agent of a license shall (d) Sell, offer to sell or deliver to any person an unlimited number of drinks during any set period of time for a fixed price, except at private functions not open to the public; and
- 2) 2.04 CMR 4.03 (2) - No licensee shall advertise or promote in any way, whether within or without the licensed premises, any of the practices prohibited under 2.04 CMR 4.03.

The above captioned occurred on December 31, 2012, according to Investigator Doyle's Report.

The following documents are in evidence as exhibits:

1. Investigator Doyle's Investigative Report dated December 31, 2012 (2 pages);
 2. New Year's Eve 2013 Tickets (8 pages);
 3. Commission Notice of Compliance Issues During the Holiday Season (3 pages) and
 4. Copy of Bill/Contract for New Year's Eve, December 31, 2012 Event (2 pages).
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- A. Daily Detailed Sales Report for Alcohol Sales on December 31, 2012 (1 page); and
 - B. Food Bill for New Year's Eve, December 31, 2012 Event (1 page);
 - C. Guest List for New Year's Eve, December 31, 2012 Event (6 pages).

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

FACTS

1. On Monday, December 31, 2012, at approximately 9:00 p.m., Investigators Kujawski, Bailey and Doyle investigated the business operation of BK & PF, LLC d/b/a The North Star to determine the manner in which their business was being conducted.
2. Investigators entered the premises and observed that patrons submitted a paper invitation before they were allowed entry.

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3. Investigators asked the bartender to speak with the manager on duty. While waiting to speak to the manager, investigators observed that the bartenders served alcoholic drinks but did not collect any form of payment for the drinks.
4. Investigators asked a bartender if they were charging for the drinks.
5. An identified bartender stated that all drinks were being put on a tab.
6. Investigators spoke to the manager on duty, David Adkins, who identified himself as the night manager.
7. Mr. Adkins contacted the owner, Peter Fiumara, by phone. Mr. Fiumara arrived about fifteen minutes later and identified himself as an owner.
8. Investigators asked Fiumara why individuals were not being charged for their drinks.
9. Mr. Fiumara stated, "It's an invitation only private party. All the drinks are being paid by the promoter."
10. Investigators Kujawski and Doyle followed Mr. Fiumara to the kitchen area where they met with Lena Vorias, who stated that she was the promoter of the event.
11. Ms. Vorias stated that tickets were sold via an internet site named, "Event Brite." She stated only individuals who purchased a ticket online would be granted entry and provided with a food buffet and "open bar."
12. Ms. Vorias stated that she sold approximately 300 tickets at \$100.00 each.
13. Ms. Vorias stated that she would pay North Star the price of food and the total bar tab.
14. Investigators asked to view the tickets sold by Event Brite and about Ms. Vorias' agreement with them.
15. Ms. Vorias presented investigators with printed tickets and explained that Event Brite charged individuals a service fee for the tickets purchased from their website.
16. Ms. Vorias stated that she is not an employee of Event Brite. She only used their service to sell tickets to the event at North Star.
17. Mr. Fiumara and Ms. Vorias stated that they were allowed to do this because it was a private party.
18. Investigators informed Mr. Fiumara that per a Commission Advisory, licensees who intend to host private functions must be in compliance with Commission decisions issued in May 2004. A copy of these compliance issues were shown to Mr. Fiumara and Ms. Vorias.
19. These decisions list the factors the Commission will consider in determining whether a §12 licensee is holding an event that will be considered a "private function" within the meaning of 204 CMR §§ 4.00, *et seq.* The licensee must meet six listed criteria:
 - a) The private function has a host.
 - b) Access to the private function is restricted to invited guests.
 - c) Invited guests are not charged indirectly or directly.
 - d) The host is the only individual responsible for payment to the licensee.
 - e) The function was not publicly advertised.
 - f) Written records containing the guest list exist and are available for inspection by the licensing authorities.
20. Investigator Doyle asked for a copy of the contract for the event. Mr. Fiumara provided an unsigned draft.
21. Investigators informed Mr. Fiumara of the violation and that a report would be filed with the Chief Investigator.

DISCUSSION

At the hearing before the Commission the Licensee testified that the event had a hostess, Miss Lena Vorias, who was responsible for paying the total costs of the food and alcohol consumed at the event to the licensee. The licensee testified that there was a guest list for this event, and that access to the event was restricted to only those persons in possession of a ticket presented at the door. The Licensee testified that this event was a private event for Syracuse University; however, this information was not communicated to the Investigators during the inspection.

The event was advertised on a public website called Event Brite, which was described as a website that sells tickets for events. Miss Vorias presented investigators with printed tickets. Miss Vorias explained that she was the promoter of the event, and that Event Brite charged individuals a service fee for the tickets purchased from their website. However, Miss Vorias also told Investigators that she sold approximately 300 tickets at \$100.00 per ticket for admission per person, to the New Year's Eve event. Tickets showing the \$100.00 fee to enter this event are in evidence as Exhibit 2.

The Commission finds that the private function had a hostess, Miss Vorias, who also identified herself as the promoter of the event; that access to the private function was restricted to individuals who presented tickets; that Miss Vorias, the hostess was the individual responsible for payment to the licensee; and that there was a printed guest list.

However, the Commission also finds that the function was advertised publicly on the Event Brite website where tickets were sold, and that guests were charged \$100.00 per person to attend this event, in violation of 204 CMR §§ 4.00, *et seq.* Therefore, the Commission finds that that this New Year's Eve event was not a private event, and finds that the Licensee committed violations of 204 CMR 4.03 (1) (d) and 2.04 CMR 4.03 (2), as this event did not meet the aforementioned criteria for a private event.

CONCLUSION

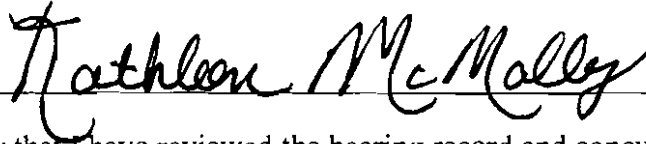
Based on the evidence, the Commission finds the licensee violated:

- 1) 204 CMR 4.03 (1) (d) No licensee or employee or agent of a license shall (d) Sell, offer to sell or deliver to any person an unlimited number of drinks during any set period of time for a fixed price, except at private functions not open to the public; and
- 2) 2.04 CMR 4.03 (2) - No licensee shall advertise or promote in any way, whether within or without the licensed premises, any of the practices prohibited under 2.04 CMR 4.03

Therefore, the Commission **suspends the license for three (3) days, of which three (3) days will be held in abeyance for a period of two (2) years provided no further violations of Chapter 138 or Commission Regulations occur.**

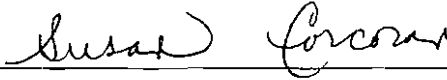
ALCOHOLIC BEVERAGES CONTROL COMMISSION

Kathleen McNally, Commissioner

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

Susan Corcoran, Commissioner

A handwritten signature in black ink, appearing to read "Susan Corcoran", written over a horizontal line.

DATE: June 24, 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: Michael W. Ford Esq. via facsimile 617-328-3400
Local Licensing Board
Frederick G. Mahony, Chief Investigator
Brad Doyle, Investigator
Jan Kujawski, Investigator
Administration
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