



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

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

*Kim J. Gainsboro, Esq.*  
*Chairman*

**DECISION**

**NORTHERN AVENUE HOSPITALITY INC. D/B/A GATHER**  
**75 NORTHERN AVENUE**  
**BOSTON, MA 02210**  
**LICENSE#: 011600507**  
**VIOLATION DATE: Various in 2013 and 2014**  
**HEARD: 09/20/2016**

Northern Avenue Hospitality Inc. d/b/a Gather (the "Licensee" or "Gather") holds an alcohol license issued pursuant to M.G.L. c. 138, § 12. The Alcoholic Beverages Control Commission (the "Commission" or "ABCC") held a hearing on Tuesday, September 20, 2016, regarding an alleged violation of 204 CMR 2.08 No licensee shall give or permit to be given money or any other thing of substantial value in any effort to induce any person to persuade or influence any other person to purchase, or contract for the purchase of any particular brand or kind of alcoholic beverages, or to persuade or influence any person to refrain from purchasing, or contracting for the purchase of any particular brand or kind of alcoholic beverages. The alleged violation occurred on various dates during 2013 and 2014, according to Investigator Velez's report.

The following documents are in evidence:

1. Investigator Velez's Violation Report;
  2. The Briar Group Invoice 7/02/2014 with Check Request Form, Spreadsheets, and Check 7/24/2014;
  3. The Briar Group Invoice 12/15/2013 with Check Request Form, Spreadsheet, and Check 12/30/2013; and
  4. The Briar Group Invoice 3/24/2014 with Check 4/15/2014.
- A. Affidavit of Desmond Kerins;
  - B. ABCC Rules and Regulations effective 1975; and
  - C. Commonwealth of Massachusetts, The Regulations Manual, May 2016.

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

The Commission took administrative notice of the Licensee's file.

## FINDINGS OF FACT

1. Northern Ave. Hospitality, Inc. d/b/a Gather a/k/a District Hall<sup>1</sup> ("Gather") is a § 12 all alcohol licensee with a place of business at 75 Northern Avenue, Boston, Massachusetts. (Commission File, Exhibit 1)
2. Austin M. O'Connor is the President, Treasurer, Secretary, and Director of Gather. (Exhibit 1; Commission Files)
3. The Briar Group, LLC ("Briar") is the management company responsible for the human resources, payroll, and ordering of alcoholic beverages for several § 12 licensees, including Gather.<sup>2</sup> (Exhibit 1)
4. Secretary of the Commonwealth records indicate that the managing member of Briar is Austin O'Connor. (Exhibit 1)
5. On October 16, 2014, Chief Investigator Ted Mahony and Investigator Nick Velez began an investigation based on information they had received relative to brewers and/or wholesalers possibly providing unlawful inducements to retailers. (Exhibit 1, Testimony)
6. They met with Dan Paquette and his wife, Martha Paquette, owners of Pretty Things Beer and Ale Project, Inc., who provided documentation to the investigators that indicated that the Briar Group, LLC, another management company, was receiving payments from Craft Beer Guild, LLC ("Craft") in exchange for the placement of Craft products in Briar's § 12 establishments. (Exhibit 1, Testimony)
7. The following day, Investigator Velez along with Investigator Caroline Wilichoski spoke with Craft sales manager Craig Corthell and office manager Bethany DiCristofaro. (Exhibit 1, Testimony)
8. Investigator Wilichoski asked Corthell to explain the terms "brand allocation," "marketing support," and "menu programming," which were terms observed by investigators on an invoice for Briar supplied by the Paquettes. (Exhibit 1, Testimony)
9. Corthell explained that these terms were used to conceal "kickbacks" to Briar for carrying Craft brands in Briar's § 12 establishments. (Exhibit 1)
10. On November 18, 2014, Chief Mahony, Investigator Wilichoski, and Investigator Velez interviewed Craft sales representative Pat McCoy. (Exhibit 1)
11. McCoy's contact at Briar was Desie Kerins. (Exhibit 1)
12. On October 20, 2014 Investigators Wilichoski and Velez interviewed Kerins. (Exhibit 1)

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<sup>1</sup> The Commission files reflect that the approved d/b/a of the Licensee is "Gather." (Commission Files) There is nothing in the files approving the use of the name "District Hall," yet documents generated by Craft Beer Guild, LLC marked as exhibits in this matter refer to the Licensee as "Gather/District Hall." (Exhibits 2, 3, A) The Commission advises the Licensee that if it is using a d/b/a other than "Gather," it needs to first obtain approval.

<sup>2</sup> There is nothing in the Commission files approving this relationship. (Commission Files) The Commission refers the matter regarding the Licensee's failure to obtain Commission approval of the management relationship, to the Investigative Unit for further action forthwith.

13. On January 7, 2015, Investigators Wilichoski and Velez as well as Chief Investigator Mahony interviewed Kerins and Tom Shea, the Chief Operating Officer of Briar. (Exhibit 1)
14. Every six months for at least three years, Craft paid Briar a \$20 per keg kickback for Briar's § 12 establishments carrying Craft brands of beer. (Exhibit 1; Testimony)
15. Craft would send a spreadsheet with the number of kegs sold to Briar every six months, and Briar would create an invoice to Craft based on that spreadsheet. (Exhibit 1; Testimony)
16. The \$20 per keg kickback was in exchange for Craft's brewers having committed tap lines at the respective § 12 establishments managed by Briar.
17. Craft also entered into a separate agreement with Briar for Yuengling products. Craft gave Briar a rebate of \$1,500 per draft line for Briar's § 12 establishments selling Yuengling (Exhibit 1, Testimony)
18. On at least three separate occasions Briar received payments from Craft for carrying Craft brands. McCoy hand delivered the checks to Kerins at Briar. (Exhibit 1, Testimony)

*First Occurrence*

19. On December 15, 2013, Briar invoiced Craft in the amount of \$2,860. (Exhibits 1, 3; Testimony)
20. A Craft Check Request Form indicated that a check should be issued to Briar in the amount of \$2,860 for programming for the period of July 1<sup>st</sup> through December 13<sup>th</sup>. The form listed the following brands: Ipswich (\$300), Sierra (\$1,220) Magic (\$100), Lagunitas (\$280), Allagash (\$120), L. Hand (\$80), Pretty Things (\$120), and Cisco (\$640). A notation at the bottom indicated, "Pat McCoy to hand deliver." (Exhibits 1, 3; Testimony)
21. A Craft spreadsheet for the period July 1<sup>st</sup> through December 13, 2013 lists § 12 establishments managed by Briar, along with addresses, brands, units sold, rebate, and sum. Under the rebate column, \$20 was listed. One of the § 12 establishments identified is "Gather/District Hall" with an address of 75 Northern Avenue, Boston, which is listed as having been sold the following: 8 units of Lagunitas draft (with a rebate of \$20 per unit for a total rebate of \$160); 6 units of Allagash draft (with a rebate of \$20 per unit for a total rebate of \$120); 5 units of Cisco draft (with a rebate of \$20 per unit for a total rebate of \$100); and 4 units of Left Hand draft (with a rebate of \$20 per unit for a total rebate of \$80), for a total rebate relative to Gather/District Hall of \$460. (Exhibits 1, 3)
22. Craft issued check #12105 in the amount of \$2,860 to The Briar Group on December 30, 2013. (Exhibits 1, 3)

*Second Occurrence*

23. Briar issued an invoice to Craft on March 24, 2014 in the amount of \$10,500 for "Marketing Support Yuengling." The invoice listed the following § 12 establishments: MJ (Park Plaza), MJ (Westin), Green Briar, Ned Devine, Harp, Lenox/Solas, and Anthem. There is no evidence that this transaction related to Gather. (Exhibits 1, 4; Testimony)
24. Craft issued check number 013458 on April 15, 2014 to Briar in the amount of \$10,500. (Exhibits 1, 4; Testimony)

### *Third Occurrence*

25. A third invoice from Briar to Craft was dated July 2, 2014, for \$4,700. The invoice has as its description, "Marketing Support." (Exhibits 1, 2; Testimony)
26. A Craft Check Request Form indicated that a check should be issued to Briar in the amount of \$4,700 for "Brand Allocation," and a handwritten note at the bottom states, "Lagunitas Trade Spend 459957 \$570." (Exhibits 1, 2; Testimony)
27. Craft spreadsheets list § 12 establishments managed by Briar, along with brands, number of units sold, and the amount of the rebate. Under the rebate column of one of the spreadsheets, \$20 was listed. One of the § 12 establishments identified on the spreadsheets is Gather, which is listed as having been sold the following during the period of January 1, 2014 through June 30, 2014: 31 units of Lagunitas; 24 units of Allagash; 13 units of Cisco draft; 12 units of Left Hand; and 8 units of Pretty Things. At \$20 per unit, and with 88 units at Gather, that equates to a rebate of \$1,760 relative to Gather. (Exhibits 1, 2; Testimony)
28. Craft issued check #014723 in the amount of \$4,700 to The Briar Group on July 24, 2014. (Exhibits 1, 2; Testimony)

### DISCUSSION

Gather does not dispute the facts introduced at the hearing and in the Investigator's Report (Exhibit 1), but argues that it did not violate 204 CMR 2.08. Gather has asked that the legal arguments made on June 14, 2016 and September 20, 2016, by similarly situated licensees<sup>3</sup>, in addition to its own legal arguments, be considered by the Commission in its determination of whether Gather violated 204 CMR 2.08. The Commission granted this request at Gather's hearing, and now considers all the legal arguments, including those made by these other licensees, as having been made by Gather in rendering the present decision. After a thorough review, the Commission finds that there is insufficient evidence that the Licensee violated 204 CMR 2.08.

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 and required conduct of licensees who sell alcoholic beverages is set out in Chapter 138.

Chapter 138 gives the Commission the authority to grant, revoke and suspend licenses. Chapter 138 was "enacted . . . to serve the public need and . . . to protect the common good." M.G.L. c. 138, § 23. "[T]he purpose of discipline is not retribution, but the protection of the public." Arthurs v. Bd. of Registration in Medicine, 383 Mass. 299, 317 (1981) (emphasis supplied). The Commission is given "comprehensive powers of supervision over licensees." Connolly, 334 Mass. at 617.

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<sup>3</sup> These licensees are Poe's Pub, Inc. d/b/a Estelle's; Rebel Restaurants, Inc. d/b/a Remy's; One Hundred and Seventy Three Milk Street d/b/a Coogan's; and Game On Fenway, LLC d/b/a Game On! Sports Cafe.

Every violation the Commission finds must be based on substantial evidence. See Embers of Salisbury, Inc. v. Alcoholic Beverages Control Comm'n, 401 Mass. 526, 528 (1988). “Substantial evidence” is “such evidence as a reasonable mind might accept as adequate to support a conclusion.” Id. Evidence from which a rational mind might draw the desired inference is not enough. See Blue Cross and Blue Shield of Mass. Inc., v. Comm’r of Ins., 420 Mass 707, 710 (1995). Disbelief of any particular evidence does not constitute substantial evidence to the contrary. New Boston Garden Corp. v. Bd. of Assessor of Boston, 383 Mass. 456, 467 (1981).

Gather is alleged to have violated 204 CMR 2.08, which states:

Inducements. No licensee shall give or permit to be given money or any other thing of substantial value in any effort to induce any person to persuade or influence any other person to purchase, or contract for the purchase of any particular brand or kind of alcoholic beverages, or to persuade or influence any person to refrain from purchasing, or contracting for the purchase of any particular brand or kind of alcoholic beverages.

204 CMR 2.08 prohibits a Licensee from giving or permitting to be given money or something of substantial value in an effort to induce any person to: (1) persuade or influence any other person to purchase or contract for the purchase of any particular brand or kind of alcohol, or (2) persuade or influence any person to refrain from purchasing or contracting for the purchase of any particular brand or kind of alcohol. Craft Brewers Guild, LLC, Everett (Commission Decision, February 11, 2016).

An essential element of 204 CMR 2.08 is that a licensee gives or “permit[s] to be given,” in this case, money, as part of the inducement. However, while it is clear and apparently undisputed that Briar received \$18,060 as kickbacks for dedicated tap lines in Briar-managed restaurants, there is nothing in the record that shows that Gather was “permit[ted] to be given” money.

Unlike the Decision in Poe’s Pub, Inc. d/b/a Estelle’s, Boston (Commission Decision July 29, 2016), where there was no evidence linking that licensee to a similar Craft scheme, in the present case, there is evidence that as part of Briar’s arrangement with Craft, that Briar committed certain tap lines at Gather to Craft products in exchange for Craft’s monetary payment to Briar. Likewise, there is also evidence that Briar and Gather have the same officers and directors. However, this is inadequate to show that Gather, as opposed to another one of Briar’s other § 12 establishments (if any of them), actually received any money from this agreement.

The record is devoid of any evidence that any of the \$18,060 paid by Craft to Briar made its way from Briar to Gather. For example, the record contains no management agreement between Gather and Briar that could shed light on any payment agreements, or evidence that the checks from Craft to Briar were dropped off at Gather. Without any evidence that Gather actually “permit[ted]” itself to be “given money,” or in other words received the bribe itself as part of the scheme, the Commission is constrained to find that there is only substantial evidence that Craft paid Briar – who is not a licensee and not subject to Commission supervision or 204 CMR 2.08 – kickbacks for dedicated tap lines in § 12 establishments (and which establishments may or may not have ever received payouts from this Briar-Craft agreement).

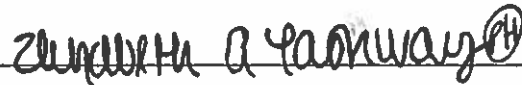
Because the Commission finds that there is insufficient evidence that the Licensee violated 204 CMR 2.08, the Commission need not reach the remaining legal arguments raised by the Licensee.

### CONCLUSION

The Commission, after a hearing, finds that there was not sufficient evidence presented at the hearing that the Licensee committed a violation of 204 CMR 2.08.

### **ALCOHOLIC BEVERAGES CONTROL COMMISSION**

Elizabeth A. Lashway, Commissioner



Kathleen McNally, Commissioner



Dated: December 29, 2016

You have the right to appeal this decision to the Superior Court under the provisions of Chapter 30A of the Massachusetts General Laws within thirty (30) days of receipt of this decision.

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cc: Local Licensing Board  
Frederick G. Mahony, Chief Investigator  
Nicholas Velez, Investigator  
Caroline Wilichoski, Investigator  
Stephen V. Miller, Esq. via facsimile 617-946-4624  
Administration, File