



*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*

**NOTICE OF SUSPENSION**

December 29, 2016

**REBEL RESTAURANTS, INC. D/B/A JERRY REMY'S**  
**240 SEAPORT BOULEVARD**  
**BOSTON, MA 02210**  
**LICENSE #: 011600863**  
**VIOLATION DATES: 2013, 2014**  
**HEARD: 06/14/16**

After a hearing on June 14, 2016, the Commission finds Rebel Restaurants, Inc. d/b/a Remy's violated 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.

Therefore the Commission suspends the license for eighteen (18) days, of which three (3) days will be served and fifteen (15) days will be held in abeyance for two (2) years provided no further violations of Chapter 138 or Commission regulations occur.

By decision dated October 29, 2013, the Commission had previously ordered a three (3) day license suspension to be held in abeyance for a period of two (2) years provided no further violations of Chapter 138 or Commission Regulations occur. Based on the violations found above, the Licensee violated the conditions of that three (3) day suspension being held in abeyance. The Commission hereby orders that suspension to be served on and after the three (3) day suspension above. The Licensee will serve a total of six (6) days.

The suspension shall commence on Wednesday, February 22, 2017 and terminate on Monday, February 27, 2017. The license will be delivered to the Local Licensing Board or its designee on Wednesday, February 22, 2017 at 9:00 A.M. It will be returned to the licensee on Tuesday, February 28, 2017.

You are advised that pursuant to the provisions of M.G.L. c.138 §23, you may petition the Commission to accept an offer in compromise in lieu of suspension within twenty (20) calendar days following such notice of such suspension. If accepted, you may pay a fine using the enclosed form which must be signed by the Licensee and a Massachusetts Licensed Accountant.

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

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Este documento es importante y debe ser traducido inmediatamente.  
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Το έγγραφο αυτό είναι σημαντικό και θα πρέπει να μεταφραστούν αμέσως.  
这份文件是重要的，应立即进行翻译。

cc: Local Licensing Board  
Frederick G. Mahony, Chief Investigator  
Nicholas Velez, Investigator  
Thomas R. Kiley, Esq. via facsimile 617-330-8774  
Administration, File



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*Deborah B. Goldberg*  
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**DECISION**

**REBEL RESTAURANTS, INC. D/B/A JERRY REMY'S**  
**240 SEAPORT BOULEVARD**  
**BOSTON, MA 02210**  
**LICENSE #: 011600863**  
**VIOLATION DATES: 2013, 2014**  
**HEARD: 06/14/16**

Rebel Restaurants, Inc. d/b/a Remy's (the "Licensee" or "Rebel") holds an all alcohol license pursuant to M.G.L. c. 138, § 12. The Alcoholic Beverages Control Commission (the "Commission") held a hearing on Tuesday, June 14, 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 following documents are in evidence:

1. Investigator Velez's Investigative Report;
2. Rebel Restaurant Group, Inc. invoice dated 7/8/13 for \$2,680, check request form for \$2,680, spreadsheet totaling \$2,680, check dated 7/18/13 for \$2,680;
3. Rebel Restaurant Group, Inc. invoice of 12/17/13 for \$2,660, check request form for \$2,660, spreadsheet totaling \$2,660, check dated 12/30/13 for \$2,660;
4. Rebel Restaurant Group, Inc. invoice of 7/2/14 for \$3,080, check request form for \$3,080, check dated 7/17/14 for \$3,080;
- A. Craft Brewers Guild invoices for sales to Rebel Restaurants, Inc. d/b/a Jerry Remy's for period of 6/19/12-10/16/12;
- B. Craft Brewers Guild invoices for sales to Rebel Restaurants, Inc. d/b/a Jerry Remy's for period of 7/28/15-2/12/16; and
- C. Public records request from Rebel Restaurants, Inc. to the Alcoholic Beverages Control Commission dated 3/25/16, responses from Commission, legislative history.

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

The Commission took Administrative Notice of the Licensee's file.

## FINDINGS OF FACT

1. Rebel Restaurants, Inc., d/b/a Remy's ("Rebel" or "Licensee") is a § 12 all alcohol licensee with a place of business at 240 Seaport Boulevard, Boston, Massachusetts. (Exhibit 1, Commission File)
2. Secretary of the Commonwealth records indicate that Jon P. Cronin is the president, secretary, and a director; James O'Donovan is the treasurer and a director; and Denis Murphy is a director of Rebel. (Exhibit 1)
3. Commission Files reflect that John P. Cronin is the President; James O'Donovan is the Treasurer; and John P. Cronin is the Clerk of Rebel.<sup>1</sup> (Commission Files)
4. Rebel Restaurant Group, Inc. is Rebel's marketing group. It is not registered as a corporation with the Massachusetts Secretary of State's office. (Testimony; 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 ("Briar"), 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 officer 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 interchangeable because their purpose was to conceal "kickbacks" to Briar for carrying Craft brands in Briar's § 12 establishments. (Exhibit 1)
10. On January 22, 2015, Chief Investigator Mahony, Investigator Velez, and Investigator Wilichoski interviewed the chief financial officer of Rebel, Robert Ciampa. (Exhibit 1)
11. Ciampa explained that he worked with Pat McCoy of Craft. Rebel would receive from Craft a \$20 "rebate" per keg sold. Craft would provide a summary of how many kegs Rebel purchased for a six-month period, and then Rebel would invoice Craft accordingly. (Exhibit 1)
12. On three separate occasions Rebel received monetary payments from Craft for carrying Craft brands, totaling \$8,420.00. (Exhibits 1, 2, 3, 4)

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<sup>1</sup> The Commission refers the issue of a change of officers/directors without Commission approval to the Investigative Unit for further action forthwith.

### First Occurrence

13. On July 8, 2013, Rebel Restaurant Group, Inc. invoiced Craft for \$2,680.00 for "Jerry Remy's Seaport: Marketing/Menu Support January 2013 to June 2013." (Exhibits 1, 2)
14. Craft then issued a "Check Request Form," indicating that a check should be issued to Rebel Restaurant Group, Inc. for the full amount of \$2,680.00 for "1<sup>st</sup> half of 2013 programming." The Form further indicated "\$1,040.00 Wachusett, \$700.00 Cisco, \$660.00 Sierra, \$140.00 Brooklyn, and \$140.00 Smuttynose," along with a notation that McCoy was to hand deliver the check. (Exhibits 1, 2)
15. A spreadsheet accompanying this Check Request Form identified that Rebel ("Jerry Remy's Northern Ave.") had purchased a total of 120 kegs for the period of January 31 through June 30, 2013, with a rebate of \$20 for a total of \$2,400.00, specifically for 52 kegs of Wachusett, 35 kegs of Cisco, and 33 kegs of Sierra Nevada. (Exhibits 1, 2) The remaining \$280 was attributable to another § 12 licensee. (Exhibits 1, 2)
16. Craft then issued a check on July 18, 2013, to Rebel Restaurant Group for \$2,680.00. (Exhibits 1, 2) The check was delivered to Rebel and deposited in its account. (Testimony)

### Second Occurrence

17. On December 17, 2013, Rebel Restaurant Group, Inc. invoiced Craft for "Jerry Remy's Seaport: Marketing/Menu Support July 1, 2013 to December 16, 2013" for \$2,660.00.
18. Craft then issued a "Check Request Form," indicating that a check should be issued to Rebel Restaurant Group, Inc. for the full amount of \$2,660.00 for "Jul[y] – Dec. 16<sup>th</sup> 2013 programming." It contained notations of "\$1,060 Wachusett," "\$760 Cisco," "\$420 Sierra," "\$220 Brooklyn," and "200 Smuttynose." The form also indicated that McCoy was to hand deliver the check. (Exhibits 1, 3)
19. A spreadsheet accompanied the Check Request Form, and identified a rebate of \$20 per keg for a total of 142 kegs sold from July 1 to December 16, 2013, for a total of \$2,660.00. Specifically, it indicated Rebel had purchased 53 kegs of Wachusett, 38 kegs of Cisco, and 21 kegs of Sierra Nevada. (Exhibits 1, 3) The total purchased for Rebel ("Jerry Remy's Waterfront, 250 Northern Ave.") was 112 kegs at \$2,240.
20. Craft issued a check to Rebel Restaurant Group on December 30, 2013, for \$2,660.00. (Exhibits 1, 3) The check was delivered to Rebel and deposited in its account. (Testimony)

### Third Occurrence

21. On July 2, 2014, Rebel Restaurant Group, Inc. invoiced Craft for \$3,080.00 for "Jerry Remy's Seaport: Marketing/Menu Support January 1, 2014 to June 30, 2014."
22. Craft issued a Check Request Form for \$3,080.00 to be issued to Rebel Restaurant Group, Inc. for the following: "\$1,840 Wachusett contribution," "\$760 Cisco contribution," "\$280 Sierra contribution," and "200 Brooklyn contribution." The Form indicated that McCoy was to hand deliver the check. (Exhibits 1, 4)
23. On July 17, 2014, Craft issued a check to Rebel Restaurant Group for \$3,080.00. (Exhibits 1, 4) The check was delivered to Rebel and deposited in its account. (Testimony)

## 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 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.

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).

Rebel 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.

Rebel 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. Rebel has asked that the legal arguments made on June 14, 2016, and September 20, 2016, by similarly situated licensees<sup>2</sup>, in addition to its own legal arguments, be considered by the Commission in its determination of whether Rebel violated 204 CMR 2.08. The Commission granted this request at Rebel’s hearing, and now considers all the legal arguments, including those made by these other licensees, as having been made by Rebel in rendering the present decision. After a thorough review, the Commission finds that there is sufficient evidence that the Licensee violated 204 CMR 2.08.

1. 204 CMR 2.08 is a valid regulation and is not void for vagueness nor is it being selectively enforced.

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<sup>2</sup> These licensees are Poe’s Pub, Inc. d/b/a Estelle’s; One Hundred and Seventy Three Milk Street, Inc. (“173 Milk Street”) d/b/a Coogan’s Bluff; Game On Fenway LLC d/b/a Game On!; and Northern Avenue Hospitality Inc. d/b/a Gather.

The Licensee raises two interrelated arguments that the Commission already considered and rejected in Craft Brewers Guild, LLC, Everett (ABCC Decision February 11, 2016) (“Craft”). First, that 204 CMR 2.08 is not a valid regulation because the authority to promulgate the regulation, M.G.L. c. 138, § 25A(b), was repealed in 1970, and then that the regulation was never properly re-promulgated after the repeal of § 25A(b). And second, that 204 CMR 2.08 is void for vagueness and is being selectively enforced. For the same reasons set forth in the Commission’s Craft Decision, the Commission rejects these arguments.

To the extent the Licensee is arguing that 204 CMR 2.08 was never validly promulgated in 1978, rendering 204 CMR 2.08 an invalid and unenforceable regulation, that argument is unpersuasive. The Licensee has been unsuccessful in uncovering documents it states should be readily available to prove that promulgation followed the requirements of Chapter 30A: “At the minimum there would have to have been public notice, comment period, and hearings before the Regulation could become law. At that time it would also have required the signature of the Governor. . . . This was not done” (173 Milk Street Memo at p. 5). Failure to uncover these documents, the Licensee argues, proves that the regulation is invalid.

There is a statutory presumption that 204 CMR 2.08 is a valid and properly promulgated regulation. The Secretary of the Commonwealth has published the Commission’s regulations in a “Regulation Filing and Publication” (“Register”). The Register’s publication by the Secretary of the Commonwealth “creates a rebuttable presumption” “(1) that [the regulation] was duly issued, prescribed, or promulgated; (2) that all the requirements of this chapter [30A] and regulations prescribed under it relative to the document have been complied with; and (3) that the text of the regulations as published in the Massachusetts Register is a true copy of the attested regulation as filed by the agency.” M.G.L. c. 30A, § 6. The publication has such effect that judicial notice can be taken of the regulations it publishes. *Id.* Since 204 CMR 2.08 was published in the Secretary’s Register, it is presumed to have been validly promulgated.<sup>3</sup>

In support of its argument that 204 CMR 2.08 was not validly promulgated, the Licensee only points to a public records request to the Commission made by counsel for the Licensee earlier this year for documents related to the promulgation of the regulation, to which “[t]he commission responded with documents from 1992 and 2001. There were no documents which demonstrated that the requirements of Chapter 30A and section 24 were complied with in 1978.” (173 Milk Street memo). The Licensee’s argument fails to appreciate that the Commission had no legal obligation to keep such records dating back to 1978, and has few records on any of the regulations it has promulgated over the years. Under the records retention laws of the Secretary of the Commonwealth, the Commission only must retain certain records, and for certain periods of time.<sup>4</sup>

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<sup>3</sup> Indeed, the Register’s publication of the Commission’s regulations certifies that they were validly promulgated such that, “[u]nder the Provisions of Massachusetts General Laws, Chapter 30A, § 6, and Chapter 233, § 75, this document may be used as evidence of the original documents on file with the Secretary of the Commonwealth.” (Regulation Filing and Publication for 204 CMR, Jan. 5, 2001 Edition).

<sup>4</sup> Retail licensing case files are retained for seven years after the business closes; price filing compliance files are retained for one year; wholesale price filing compliance files are retained for one year; credit delinquency lists are retained for one year; producer wholesaler licensing files are retained for two years; corporate certification files are retained for two years; and indices may be destroyed after entering into a database or retained for two years from the last entry. Secretary of the Commonwealth, Massachusetts Statewide Records Retention Schedule 2-11 August 2014 Supplements, Section L Revenue and Taxation.

In any event, no records are required to be retained past seven years. Accordingly, any argument that a lack of records kept by the Commission indicates a failure to comply with the promulgation laws under Chapter 30A does not rebut the presumption that the 204 CMR 2.08 was validly promulgated. The Licensee has provided no further argument or evidence to rebut the presumption that this regulation was never promulgated properly. Where the Licensee has made an inadequate showing that the regulations were not validly promulgated, the presumption that 204 CMR 2.08 is a valid regulation endures and the Licensee's argument fails.

2. 204 CMR 2.08 applies to inducements received by retailers as well as those received by wholesalers

The Licensee contends that while 204 CMR 2.08 applies to the receipt of inducements by wholesalers, it does not apply to the receipt of discounts, rebates, or other such inducements by *retailers*. In support of this argument, it states that (1) the legislature never precluded retailers from accepting "price quotations" from wholesalers; (2) if the regulation was intended to apply to a retailer receiving inducements, "legislative models to accomplish it were readily at hand;" and (3) the plain language of the regulation indicates that retailers receiving inducements were not contemplated under the regulation.<sup>5</sup>

As far as it relates to the Licensee's first argument that because the legislature "never precluded retailers from accepting 'price quotations' from wholesalers," 204 CMR 2.08 necessarily excludes the receipt of inducements by retail licensees, this entire argument is premised on the Licensee's assumption that 204 CMR 2.08 was promulgated based on authority in § 25A(b). This assumption, as explained in Craft, is flawed and is devoid of any support in the legislative history. Accordingly, this argument can be summarily rejected.

The Licensee's second argument is also unconvincing. The regulation states that "[n]o licensee shall . . . permit to be given money or any other thing of substantial value . . . ." 204 CMR 2.08. The Licensee finds fault with this phraseology as indicating that retail licensees are prohibited from receiving inducements, pointing out that there are several other statutes addressing bribery, and that the failure to model the regulation after those statutes reflects that a retailer's receipt of money was not intended to be covered under the regulation. It specifically cites M.G.L. c. 268A, §§ 2 & 3 (conflict of interest law); M.G.L. c. 271, § 39 (commercial bribery law); and M.G.L. c. 271, § 39A (sports bribery law).

The regulation's language prohibiting a licensee to "permit to be given" an inducement applies to a retail licensee's receipt of an inducement and does not require an unnecessarily convoluted reading of the regulation as the Licensee argues, nor does the language reflect an intention to not include retail licenses. It instead reflects deliberation in the words chosen to encompass a broader sphere of prohibited activity. It prohibits not only active solicitation of an inducement by a licensee (for example, a retail licensee approaching or demanding an inducement from another licensee), but also passive acceptance of an inducement (for example, a retail licensee accepting an inducement being offered by a licensee).

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<sup>5</sup> The Licensee also argues that "the inducement regulation must be interpreted consistently with underlying legislative policy," but this argument is simply repetitive of the Licensee's argument that 204 CMR 2.08 is not a valid regulation because § 25A(b) was repealed, which the Commission has now rejected twice.



The purposefulness in this choice of words, as opposed to a supposed tortuousness in the Commission's interpretation of these words, is supported by three of the statutes cited by the Licensee in support of its argument. The conflict of interest laws, for example, use a similar phrase of, "*agrees to receive* anything of value . . ." (in addition to "asks, demands, exacts, solicits, seeks, accepts, receives"). M.G.L. c. 268A, §§ 2(b), 2(d), 3(b) & 3(d) (emphasis added). The business bribery statute uses the language, "solicits, accepts or *agrees to accept* any benefit or anything of value . . . ." M.G.L. c. 271, § 39 (emphasis added). These statutes, like 204 CMR 2.08, intentionally sought to prohibit a broad range of conduct, and did so by using this similar phrasing.

Finally, the Licensee argues that the plain language of the regulation demands a finding that 204 CMR 2.08 does not apply to those who receive inducements. As explained in Craft and supra, this regulation, by its plain language, applies not only to those who offer, but those who receive, inducements. The regulation, in relevant part, prohibits any licensee (including retail licensees) from "permit[ting] to be given money" in an effort to induce the licensee to purchase a particular brand of alcoholic beverage. This language, like with the conflict of interest laws and business bribery law, by its plain language, prohibits not only the provision of an inducement, but also the receipt. And here, the Licensee permitted Craft to give it \$20 per keg of Craft brands the Licensee sold in its licensed premises.

### CONCLUSION

Over the course of eighteen months Rebel accepted bribes on three separate occasions totaling \$8,420.00 from Craft to carry Craft brands of beer on draft in its licensed establishment. It actively participated in this unlawful scheme, by accepting and depositing the checks on three separate occasions, while knowing that the billing was a ruse for the payment of a \$20 per keg kickback from Craft.

The Commission finds that the Licensee violated 204 C.M.R. 2.08 by receiving illegal kickbacks from a licensed wholesaler for purchasing from the wholesaler particular brands of alcoholic beverages. Therefore the Commission **suspends the license for eighteen (18) days of which three (3) days will be served and fifteen (15) days will be held in abeyance for two (2) years provided no further violations of Chapter 138 or Commission regulations occur.**

**By decision dated October 29, 2013, the Commission had previously ordered a three (3) day license suspension to be held in abeyance for a period of two (2) years provided no further violations of Chapter 138 or Commission Regulations occur. Based on the violation found above, the Licensee violated the conditions of that three (3) day suspension being held in abeyance. The Commission hereby orders that suspension to be served on and after the three (3) day suspension above. The Licensee will serve a total of six (6) days.**

**ALCOHOLIC BEVERAGES CONTROL COMMISSION**

Elizabeth A. Lashway, Commissioner 

Kathleen McNally, Commissioner 

Dated: December 29, 2016

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