



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

Deborah B. Goldberg
Treasurer and Receiver General

Kim S. Gainsboro, Esq.
Chairman

NOTICE OF SUSPENSION

June 23, 2016

THE CLUB AT IL PANINO INC. D/B/A UMBRIA
295 FRANKLIN STREET
BOSTON, MA 02118
LICENSE#: 011600382
VIOLATION DATE: 5/15/2000
HEARD: 4/12/2016

After a hearing on April 12, 2016, the Commission finds The Club at Il Panino, Inc. d/b/a Umbria violated, a lesser included charge of M.G.L. c. 138, § 23: M.G.L. c. 138, §15A- Failure to disclose all individuals who have a direct or indirect beneficial interest in the license.

The above-captioned Licensee's license is **SUSPENDED INDEFINITELY EFFECTIVE FORTHWITH** until further written order of the 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.

ALCOHOLIC BEVERAGES CONTROL COMMISSION

Kim S. Gainsboro
Chairman

This document is important and should be translated immediately.
Este documento es importante y debe ser traducido inmediatamente.
Este documento é importante e deve ser traduzido imediatamente.
Ce document est important et devrait être traduit immédiatement.
Questo documento è importante e dovrebbe essere tradotto immediatamente.
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
Christopher Temple, Investigator
William G. Ferullo Esq. via fax: 617-946-4624
Thomas Orlandi Esq. via fax: 617-376-0254
Administration, File



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

THE CLUB AT IL PANINO INC. D/B/A UMBRIA
295 FRANKLIN STREET
BOSTON, MA 02118
LICENSE#: 011600382
VIOLATION DATE: 5/15/2000
HEARD: 4/12/2016

The Club at Il Panino, Inc. d/b/a Umbria (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, April 12, 2016, regarding an alleged violation of M.G.L. c. 138, §23- Transfer of the privilege of a license without proper approval, which occurred on Monday May 15, 2000.

The following documents are in evidence as exhibits:

1. Investigator Temple's Report dated December 15, 2015;
2. Application for Transfer of Stock for L.B.E. Inc.¹ dated April 29, 1999;
3. Articles of Amendment for L.B.E. Inc. dated March 14, 2000;
4. Certificate of Change of Fiscal Year End for L.B.E. Inc. dated January 4, 2002;
5. Annual Report for L.B.E. Inc. dated April 14, 2001;
6. Annual Report for L.B.E. Inc. dated April 14, 2001;
7. Annual Report for L.B.E. Inc. dated February 1, 2002;
8. Annual Report for L.B.E. Inc. dated March 15, 2003;
9. Articles of Amendment for L.B.E. Inc. dated June 18, 2004;
10. Annual Report for L.B.E. Inc. dated March 9, 2004;
11. Articles of Amendment for Umbria Inc. dated September 21, 2004;
12. Annual Report for Umbria Inc. dated March, 15, 2005;
13. Annual Reports for Club at Il Panino Inc. dated 2005 through 2008;
14. Articles of Amendment for Club at Il Panino Inc. dated December 17, 2009;
15. Annual Reports and Statement of Change of Supplemental Information for Umbria Prime Inc. dated 2009 through 2013;
16. Articles of Amendment for Umbria Prime dates November 4, 2014;

¹ L.B.E. Inc. is the former corporate name of The Club at Il Panino, Inc. d/b/a Umbria. The name change was approved by the Commission in March of 2005. See Commission file.

17. Annual Report for L.B.E. Inc. dated December 31, 2014;
18. Department of Revenue Certificate of Good Standing dated September 17, 2015;
19. Resignation of Robert Carreiro dated December 5, 2015;
20. Summary of Transactions for L.B.E. Inc.

- A. ABCC Notice of Hearing dated February 9, 2016;
- B. Articles of Amendment for L.B.E. Inc. dated March 14, 2000; and
- C. Response to Investigator Temple's Report.

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

The Commission took Administrative Notice of the Commission files at the licensed address.

FACTS

1. On May 19, 2015, Investigator Temple received an application for new officers and directors, transfer of stock, and new stockholder.
2. An investigation of the application revealed discrepancies in current ownership.
3. On May 15, 2000, L.B.E. Inc. filed Articles of Amendment with the Secretary of Commonwealth listing Frank DePasquale as President and Robert Correiro as Clerk and signed under the pains and penalties of perjury by both Frank DePasquale and Robert Correiro.
4. The Licensee did not apply to the ABCC for a change of Officers and Directors regarding the May 15, 2000 Articles of Amendment filing therefore the Commission did not approve that change of corporate structure.
5. On February 9, 2016 the Commission mailed to the Licensee a Notice of Hearing for a violation of M.G.L. c. 138, §23- Transfer of the privilege of a license without proper approval with the date of alleged violation being Monday, May 15, 2000.

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 to sell alcoholic beverages is set out in M.G.L. c. 138. Licenses must be approved by both local licensing authorities and the ABCC. M.G.L. c. 138, §§12, 67; Beacon Hill Civic Assn. v. Ristorante Toscano, Inc., 422 Mass. 318, 321 (1996). Section 23 of c. 138 provides, in pertinent part: "Any license under this chapter held by an individual, partnership, or corporation may be transferred to any individual, partnership or corporation qualified to receive such a license in the first instance, if, in the opinion of the licensing authorities, such transfer is in the public interest." Section 2 of c. 138 provides, in pertinent part: "No person shall . . . sell . . . alcoholic beverages or alcohol, except as authorized by this chapter [.] Violation of any provision of this section shall be punished except as provided in section twenty-two [for unlawful transportation of alcoholic beverages] by a fine of not less than one hundred nor more than one thousand dollars or by imprisonment for not more than one year, or both."

In reviewing the authority of the Commission, the Supreme Judicial Court has held that, “[t]he powers of the States in dealing with the regulation of the sale of intoxicating liquors are very broad. What they may wholly prohibit, they may permit only on terms and conditions prescribed by the Legislature.” Connolly v. Alcoholic Beverages Control Comm’n, 334 Mass. 613, 619 (1956), citing Supreme Malt Products Co., Inc. v. Alcoholic Beverages Control Comm’n, 334 Mass. 59, 61 (1956); Ziffirin, Inc. v. Reeves, 308 U.S. 132, 138-139; and Carter v. Virginia, 321 U.S. 131, 137-143.

In dealing with a trade, which, because of its great potential evils, can be wholly prohibited, a wide power is given to the Legislature with respect to the delegation of discretionary powers. Particularly in view of the extent to which the policy of c. 138, and the basis for action under it, have been specified, as already indicated, there is no invalid delegation of authority to the commission in leaving to it, as was done in § [12], the power to approve or disapprove applicants for licenses.

Connolly, 334 Mass. at 619, citing Butler v. East Bridgewater, 330 Mass. 33, 36-37 (1953).

As the SJC has made clear, “the powers of the commission were not intended to be perfunctory or limited. . . . [T]he Commission [is] charged with important responsibilities and [it is] not to be narrowly restricted in performing them.” Connolly, 334 Mass. at 617.

M.G.L. c. 138, § 23 – Transfer of the privilege of a license without proper approval:

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 Comm’n, 12 Mass. App. Ct. 768, 771 (1981). The Commission is instructed by the cases of Cleary v. Cardullo’s, Inc., 347 Mass. 337, 346-350 (1964) and Number Three Lounge, Inc. v. Alcoholic Beverages Control Comm’n, 7 Mass. App. Ct. 301, 304-308 (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 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 .

On May 15, 2000, L.B.E. Inc., filed Articles of Amendment with the Secretary of Commonwealth listing Frank DePasquale as President and Robert Correiro as Clerk and signed under the pains and penalties of perjury by both Frank DePasquale and Robert Correiro. L.B.E. Inc. did not apply to the ABCC for a change of Officers and Directors regarding the May 15, 2000 Articles of Amendment filing, therefore the Commission did not approve that change of corporate structure.

The Commission is not persuaded that the Licensee violated M.G.L. c. 138 §23 because even though Mr. Corriero was an unauthorized officer of L.B.E. Inc., he only worked as the comptroller and performed the payroll duties for the business. The Commission is not convinced that Mr. Corriero controlled the business or “ran the business for his own account,” therefore the Commission finds no violation of M.G.L. c. 138 §23.

A lesser included violation of M.G.L. c. 138 §23 is a violation of M.G.L. c. 138, §15A- Failure to disclose all individuals who have a direct or indirect beneficial interest in the license. See M.C.R.C. Inc. d/b/a Champions, (ABCC Decision, June 18, 2014). M.G.L. c. 138, §15A requires that a licensee or applicant for an alcoholic beverages license disclose all individuals who have a direct or indirect beneficial interest in the license. Id. The concept of a “direct or indirect beneficial interest” in a license can range from an ownership interest to an absolute proprietary interest to a mere possessory right and includes the right of control. Number Three Lounge, 7 Mass. App. Ct. 301. “The approved officers and directors of a license corporation are the control group of a corporation.” M.C.R.C. Inc. d/b/a Champions, (ABCC Decision, June 18, 2014).

The May 15, 2000, unauthorized transaction listing Frank DePasquale as President and Robert Correiro as Clerk and signed under the pains and penalties of perjury by both Frank DePasquale and Robert Correiro is a violation of M.G.L. c. 138 §15A (Failure to disclose all individuals who have a direct or indirect beneficial interest in the license) because the positions of president and clerk are part of the control group of a corporation and therefore have a beneficial interest in the license. Even though Mr. Corriero only worked as the comptroller and performed the payroll duties for the business, he was made an unauthorized officer of the business. The Commission is convinced that the Licensee violated, a lesser included charge of M.G.L. c. 138, § 23: M.G.L. c. 138, §15A (Failure to disclose all individuals who have a direct or indirect beneficial interest in the license) regarding the May 15, 2000 transaction with the Secretary of Commonwealth.

CONCLUSION

Based on the evidence, the Commission **INDEFINITELY SUSPENDS** the license of The Club at Il Panino, Inc. d/b/a Umbria, Boston, MA **effective forthwith**, until further written order of the Commission.

The Commission refers the matters mentioned in Investigator Temple’s December 15, 2015 Report that were not the subject matter of the April 12, 2016 hearing before the Commission to the ABCC Investigative Unit for further action.²

² A hearing on these matters was held before the Commission on June 21, 2016. These matters are under Commission review.

ALCOHOLIC BEVERAGES CONTROL COMMISSION

Kathleen McNally, Commissioner

Kathleen McNally

Elizabeth Lashway, Commissioner

Elizabeth Lashway (KG)

Dated: June 23, 2016

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.

This document is important and should be translated immediately.
Este documento es importante y debe ser traducido inmediatamente.
Este documento é importante e deve ser traduzido imediatamente.
Ce document est important et devrait être traduit immédiatement.
Questo documento è importante e dovrebbe essere tradotto immediatamente.
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
Christopher Temple, Investigator
William G. Ferullo Esq. via fax: 617-946-4624
Thomas Orlandi Esq. via fax: 617-376-0254
Administration, File