

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

NOTICE OF SUSPENSION

June 12, 2013

MALVIS ENTERPRISES, INC. DBA BURLINGTON WINE & SPIRITS
43 MIDDLESEX TURNPIKE, UNIT #40
BURLINGTON, MA 01803
LICENSE#: 016000023
VIOLATION DATE: 02/21/2013
HEARD: 05/28/2013

After a hearing on May 28, 2013, the Commission finds Malvis Enterprises, Inc. dba Burlington Wine & Spirits in violation of:

- 1) M.G.L. c. 138 §2-Storage of Alcoholic Beverages without Authorization Pursuant to this Chapter;
- 2) M.G.L. c. 138 §2-Transportation of Alcoholic Beverages without Authorization Pursuant to this Chapter.

The Commission **suspends the licensee's license for a total of thirty (30) days to be served. The suspension shall commence on Wednesday, July 31, 2013 and terminate on Thursday, August 29, 2013.** The license will be delivered to the Local Licensing Board or its designee on Wednesday, July 31, 2013 at 9:00 A.M. It will be returned to the licensee Friday, August 30, 2013.

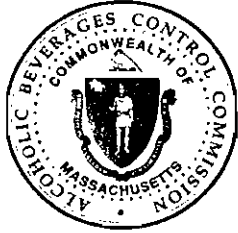
You are advised that pursuant to the provisions of M.G.L. c.138 §23, you may petition the Commission to accept an offer in compromise in lieu of suspension within twenty (20) calendar days following such notice of such suspension. If accepted, you may pay a fine using the enclosed form. All checks must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

cc: Local Licensing Board
Frederick G. Mahony, Chief Investigator
Jack Carey, Investigator
Ed Hintlian, Esq. via Facsimile 781-587-1713
File



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

MALVIS ENTERPRISES, INC. DBA BURLINGTON WINE & SPIRITS
43 MIDDLESEX TURNPIKE, UNIT #40
BURLINGTON, MA 01803
LICENSE#: 016000023
VIOLATION DATE: 02/21/2013
HEARD: 05/28/2013

Malvis Enterprises, Inc. dba Burlington Wine & Spirits (the "Licensee" or "Malvis Burlington") holds an all alcoholic beverages license issued pursuant to M.G.L. c. 138, §15. The Alcoholic Beverages Control Commission (the "Commission") held a hearing on Tuesday, May 28, 2013, regarding an alleged violation of:

- 1) M.G.L. c. 138 §2-Storage of Alcoholic Beverages without Authorization Pursuant to this Chapter;
- 2) M.G.L. c. 138 §2-Exposing for Sale Alcoholic Beverages without Authorization Pursuant to this Chapter;
- 3) M.G.L. c. 138 §2-Transportation of Alcoholic Beverages without Authorization Pursuant to this Chapter; and
- 4) M.G.L. c. 138 §23 Purchasing of Alcoholic Beverages from a Source other than that Authorized Pursuant to this Chapter; A Licensee under §18 or 19, or from a Holder of a Special Permit under §22A.

The above captioned occurred on February 21, 2013 according to Investigator Carey's Report.

Prior to the commencement of the hearing, the licensee stipulated to the two violations listed below:

- 1) M.G.L. c. 138 §2-Storage of Alcoholic Beverages without Authorization Pursuant to this Chapter; and
- 2) M.G.L. c. 138 §2-Transportation of Alcoholic Beverages without Authorization Pursuant to this Chapter.

The following documents are in evidence:

1. Investigator Carey's Report dated February 21, 2013;
2. Five Color Photographs of Alcoholic Beverages Inside the Proposed Westford Premises; and
3. Licensee's Stipulation to Two of the Four Charges.
 - A. Seven Black and White Photographs of the Westford Wine & Spirits Proposed Premises.

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

The Commission took administrative notice of the Licensee's records; the Credit Delinquency List for Liquid Luck, LLC; the Credit Delinquency List for Malvis Enterprises, Inc. in Burlington; the Commission records for Malvis Enterprises, Inc. in Westford; and the Commission records for Westford LC, LLC.

FACTS

1. Malvis Enterprises, Inc. dba Burlington Wine & Spirits owns and operates a M.G.L. c. 138, §15 license located at 43 Middlesex Turnpike, Burlington, MA. The corporate officers and stockholders are Visoth Nvon and his sister, Malavy King.
2. Malvis has an application for the transfer of a Section 15 license in Westford, MA pending before the Commission.
3. Liquid Luck LLC dba Crossroads Beer and Wine was located at 34 Cambridge St., Burlington, MA. The owner is Khemara Kang, son of Malavy Kang, and nephew of Visoth Nvon, who are the corporate officers of Malvis.
4. Liquid Luck LLC did not renew its license at the end of calendar year 2012.
5. On Thursday, February 21, 2013, at approximately 12:35 p.m., Investigators Teehan and Carey investigated the proposed licensed premises of Malvis Enterprises, Inc. dba Westford Wine & Spirits located at 9 Cornerstone Square in Westford, MA in response to a complaint filed with this Commission. The premises are unlicensed at this time.
6. Investigators observed that the store was not open for business but could see that the premises were stocked with wine and malt beverages products.
7. Investigators entered the non-licensed premises and identified themselves to a male individual, Visoth Nvon. Mr. Nvon stated that he and his sister, Malavy Kang, were the owners.
8. Investigators asked Mr. Nvon from where the alcoholic beverages on the premises came.
9. Mr. Nvon stated that the alcoholic beverages came from his nephew Khemara Kang's business, Crossroads Beer & Wine in Burlington.
10. Neither of the above mentioned business entities or individuals has been issued or has applied for a special permit from the Commission under Section 22A.
11. Mr. Nvon stated that he had rented a U-Haul trailer and transported all the alcohol from the unlicensed premises (Liquid Luck LLC) in Burlington to the proposed store in Westford.
12. Mr. Nvon stated that neither he nor his nephew had a transportation permit for the trailer.

DISCUSSION

G.L. c. 138, §2 provides, in pertinent part: "No person shall ... sell ... expose or keep for sale, store, [or] transport 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." Malvis in Burlington, who is the licensee that is the subject of these allegations, may not store any alcoholic beverages except on its premises in Burlington licensed pursuant to M.G.L. c. 138, § 15. In this case, the allegedly unlawful storage was at the premises in Westford that was unlicensed; yet, these Westford premises were the subject of an application that was pending. It is clear, and the Licensee admitted, that Malvis in Burlington through its principal engaged in the unlawful storage of alcoholic beverages at an unlicensed premises in Westford. The Commission is persuaded that Malvis in Burlington did violate M.G.L. c. 138 §2

Similarly, it is clear, and the Licensee admitted, that Malvis in Burlington through its principal engaged in the unlawful transportation of alcoholic beverages from the defunct Liquid Luck premises in Burlington,

to the Westford premises that was the subject of a pending application by Malvis. The Commission is persuaded that Malvis in Burlington did violate M.G.L. c. 138 §2-Transportation of Alcoholic Beverages without Authorization Pursuant to Chapter 138.

Malvis in Burlington may not expose for sale any alcoholic beverages except on its premises in Burlington licensed pursuant to M.G.L. c. 138, §15. In this case, however, the allegedly unlawful exposure for sale was at a premises in Westford that was unlicensed; yet, these Westford premises were the subject of an application that was pending. The Commission is not persuaded that Malvis in Burlington engaged in the illegal exposure for sale as alleged.

M.G.L. c. 138, §23, ¶3 (“[n]o license issued under section ... fifteen ... shall authorize the sale of any alcoholic beverages other than those purchased from a licensee under section eighteen, nineteen or 19F or nineteen C or from a holder of a special permit to sell issued under section twenty-two A.”) A defunct business that does not hold any license or permit issued pursuant to chapter 138 of the General Laws, be it one that is about to close or one that has already closed like Mr. Kang’s Liquid Luck, is not an authorized source of supply to a §15 licensee, like Malvis in Burlington. M.G.L. c. 138, §23. But there was no evidence that Malvis in Burlington paid anything for these alcoholic beverages. Furthermore, there was no evidence that the alcoholic beverages in question were ever in the licensed premises of Malvis in Burlington. While such activities may raise questions of compliance with other section of chapter 138¹, the Commission is not persuaded that Malvis in Burlington violated M.G.L. c. 138 §23 Purchasing of Alcoholic Beverages from a Source other than that Authorized Pursuant to Chapter 138, a Licensee under §18, 19, 19F, 19C or from a Holder of a Special Permit under §22A.

CONCLUSION

Based on the evidence the Commission finds no violation of:

- 1) M.G.L. c. 138 §2-Exposing for Sale Alcoholic Beverages without Authorization Pursuant to this Chapter; and
- 2) M.G.L. c. 138 §23 Purchasing of Alcoholic Beverages from a Source other than that Authorized Pursuant to this Chapter; A Licensee under §18 or 19, or from a Holder of a Special Permit under §22A.

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

- 3) M.G.L. c. 138 §2-Storage of Alcoholic Beverages without Authorization Pursuant to this Chapter; and
- 4) M.G.L. c. 138 §2-Transportation of Alcoholic Beverages without Authorization Pursuant to this Chapter.

Therefore, the Commission **suspends the license for sixty (60) days of which thirty (30) days will be served and thirty (30) days will be held in abeyance for a period of two (2) years provided no further violations of Chapter 138 or Commission Regulations occur.**

¹ See, e.g., M.G.L. c. 138, § 25 (“It shall be unlawful for any licensee under this chapter to receive or extend credit, directly or indirectly, for alcoholic beverages sold or delivered to any licensee engaged in the sale of alcoholic beverages except in the usual course of business and for a period of not more than sixty days.”)

ALCOHOLIC BEVERAGES CONTROL COMMISSION

Kim S. Gainsboro, Chairman



Kathleen McNally, Commissioner



DATE: June 12, 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: Local Licensing Board
Frederick G. Mahony, Chief Investigator
Jack Carey, Investigator
Ed Hintlian, Esq. via Facsimile 781-587-1713
✓ Administration
File