

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

Steven Grossman
Treasurer and Receiver General

NOTICE OF REVOCATION

Kim S. Gainsboro, Esq
 March 12, 2013

C & R CORPORATION, INC. DBA JOEY MAC'S
23 WARREN STREET
CAMBRIDGE, MA 01845
LICENSE #:016600188
VIOLATION DATE: 03/22/ 2012
HEARD: 11/20/2012

After a hearing on November 20, 2012 the Commission finds C & R Corporation, Inc. dba Joey Mac's in violation of:

1. M.G.L. c. 138, §15A-Failure to disclose all persons who have a direct or indirect beneficial interest or financial interest in said license, to wit: failure to notify licensing authorities of a change of officers and directors;
2. M.G.L. c. 138, §23-Transfer of the privilege of a license without proper approval;
3. M.G.L. c. 138, §64-License issued under this chapter by the local licensing authorities in violation of §16A or any other provision of this chapter (1 count); and
4. 204 CMR 2.05 (2)-Permitting an illegality on the licensed premises, to wit: 26 USC §5301 (c)-refilling of liquor bottles (1) place in any liquor bottle any distilled spirits whatsoever other than those contained in such bottle at the time of tax determination under the provisions of this chapter (6 counts).

The above-captioned licensee's license is **REVOKED FORTHWITH** for violation of M.G.L. c. 138, §64-License issued under this chapter by the local licensing authorities in violation of §16A or any other provision of this chapter.

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
 Charles H. Cremens, Esq. via Facsimile 617-523-5226
 Administration
 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

C & R CORPORATION, INC. DBA JOEY MAC'S
23 WARREN STREET
CAMBRIDGE, MA 01845
LICENSE #:016600188
VIOLATION DATE: MARCH 22, 2012
HEARD: 11/20/2012

C & R Corporation, Inc. dba Joey Mac's (the "Licensee" or "Joey Mac's") holds an alcohol license issued pursuant to Massachusetts General Laws c.138, §12. The Alcoholic Beverages Control Commission (the "Commission") held a hearing on Tuesday, November 20, 2012 regarding an alleged violation of:

1. M.G.L. c. 138, §15A-Failure to disclose all persons who have a direct or indirect beneficial interest or financial interest in said license, to wit: failure to notify licensing authorities of a change of officers and directors;
2. M.G.L. c. 138, §23-Transfer of the privilege of a license without proper approval;
3. M.G.L. c. 138, §64-License issued under this chapter by the local licensing authorities in violation of §16A or any other provision of this chapter (1 count); and
4. 204 CMR 2.05 (2)-Permitting an illegality on the licensed premises, to wit: 26 USC §5301 (c)-refilling of liquor bottles (1) place in any liquor bottle any distilled spirits whatsoever other than those contained in such bottle at the time of tax determination under the provisions of this chapter (6 counts).

The alleged violations are detailed in Investigator Rosemary Egan Bailey's Report.

The following documents are in evidence as exhibits:

1. C & R Corporation, Inc. Commonwealth of Massachusetts Articles of Organization;
2. Application for Alcoholic Beverages License for Retail Sale dated September 11, 1970
3. Alcoholic Beverages Control Commission Approval dated October 6, 1970;
4. Filed Application for change of Manager dated October 18, 1999;
5. Alcoholic Beverages Control Commission Application Approval dated November 16, 1999;
6. Secretary of State Corporation Division Annual Report form 2002 through 2011;
7. License Renewal Application 2000;
8. License Renewal Application for Calendar Years 2002 and 2008;
9. License Renewal Application for 2009;

10. License Renewal Application for 2010 and 2011;
11. Physical Evidence;
12. Request for Documentation dated December 3, 2011;
13. C & R Corporation, Inc. dba Joey Mac's Citizen's Bank Statements and Canceled Checks Account ending 665-6 for the period of January 01, 2011 through October 31, 2011;
14. C & R Corporation, Inc. dba Joey Mac's Citizen's Bank Statements and Canceled Checks Account ending 208-3 for the period of April 01, 2011 through April 30, 2011 and June 01, 2011 through June 30, 2011; and
15. Letter dated December 20, 2011 from Charles H. Cremens, Esq.

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

FACTS

1. On October 4, 2011, an anonymous complaint was received by the Commission.
2. An investigation was conducted relative to the filed complaint.
3. An administrative review of the licensee revealed the following information:
4. C & R Corporation, Inc. a Massachusetts corporation organized and filed under M.G.L. c. 138, §156B on September 24, 1970, comprised of the following corporate officers:
 - Daniel Evans- President, Treasurer, Director
 - Francis Evans-Secretary, Clerk, Director
 - Norma Sullivan-Director (Ex. 1)
5. The above referenced corporation submitted an application for the Transfer of a §12 annual all alcoholic restaurant license September 11, 1970 listing:
 - Daniel Evans- President, Treasurer, Director, 98% Stockholder, license manager;
 - Francis Evans-Secretary, Clerk, Director, 1% Stockholder; and
 - Norma Sullivan-Director, 1% Stockholder. (Ex. 2)
6. The Commission approved the transfer application on October 6, 1970. (Ex. 3)
7. The License was renewed for calendar years 1971 through 1999 sign by a Daniel Evans as the authorized corporate officer.
8. On October 18, 1999, C & R Corporation, Inc. filed an application for a change of manager. (Ex. 4)
9. A review of the submitted documentation reveals the Form 997, Petition for License Transaction and corporate vote is signed by a Judith Romano, Secretary/Clerk of C & R Corporation, Inc.
10. In addition, the submitted Petition for License Transaction states the following, "Due to the retirement of Daniel F. Evans, we would like to appoint Ms. Renee L. Callahan to manage Joey Mac's, 23 Warren Street, Cambridge, MA, 02141."
11. The Commission approved the application on November 16, 1999. (Ex. 5)
12. An administrative review of the license file indicates the approved corporate officers of C & R Corporation, Inc. to be:
 - Daniel Evans- President, Treasurer, 98% Stockholder;
 - Francis Evans-Secretary, Clerk, 1% Stockholder; and
 - Norma Sullivan-Director, 1% Stockholder. (Ex. 4)
13. The application submitted in 1999 was signed by Judith Romano as the Secretary/ Clerk of C & R Corporation.
14. In addition, a review of the Secretary of the Commonwealth, Corporation Division reveals the annual reports filed by C & R Corporation, Inc. with the location of its

principal office as 23 Warren Street, Cambridge from 2002 through 2011 discloses the following corporate officers:

- Michael Ryan- President, Director; and
 - Judith Romano-Treasurer, Clerk. (Ex. 6)
15. Based upon the documentation referenced in Exhibit 4 the licensee failed to file an application for approval of new officers/directors, i.e., Michael Ryan and Judith Romano, with the local licensing authority or Commission.
 16. The license was renewed for calendar year 2000 signed by a Daniel Evans as an authorized corporate officer. (Ex. 7)
 17. The license was renewed for calendar year 2002 through 2008, signed by a Renee Callahan as an authorized corporate officer (Ex. 8)
 18. On November 1, 2008, C & R Corporation, Inc. submitted the required license renewal application for calendar year 2009.
 19. The submitted renewal is signed under the penalties of perjury by a Thomas R. Ryan as an authorized corporate officer (Ex. 9).
 20. Based upon the documentation referenced in Exhibit 1, Thomas R. Ryan is not an approved authorized corporate officer of C & R Corporation, Inc. or a corporate officer based upon Exhibit 6.
 21. Further investigation of the licensed premises reveals Thomas R. Ryan is listed as the property owner of 23 Warren Street, Cambridge, MA.
 22. The license was renewed for calendar years 2010 and 2011, signed by a Renee Callahan as an authorized corporate officer. (Ex. 10)
 23. On Saturday, December 3, 2011, at approximately 8:30 pm Chief Investigator Mahony along with Investigators Kenny, Kujawski and Egan Bailey entered the license premises to ascertain the manner in which business at the licensed premises was being conducted.
 24. Upon entry, Investigator Egan Bailey identified herself and other investigators to the female bartender on duty, later identified as Gail Ruscito.
 25. Investigator Egan Bailey asked to speak with the manager or owner.
 26. Ms. Ruscito stated they had just left about twenty (20) minutes ago.
 27. Investigator Egan Bailey then asked to whom she was referring.
 28. Ms. Ruscito stated "Renee Callahan the manager and Thomas Ryan the owner."
 29. Ms. Ruscito stated she could contact Renee, the manager by cell phone, which she did.
 30. She stated the manager would be at the premises in about twenty (20) minutes.
 31. While awaiting the arrival of Ms. Callahan, Investigator Egan Bailey conducted an interview with Ms. Ruscito.
 32. She asked her how long she had been an employee.
 33. Ms. Ruscito stated she only fills in once in a while, when the owner's son has plans.
 34. Investigator Egan Bailey again asked who the owner was.
 35. Ms. Ruscito stated Thomas Ryan. She further stated, she is friends with Renee and just helps out sometimes. The owner, Tom and Renee live together. Tom is Renee's boyfriend.
 36. Investigator Egan Bailey asked who paid her when she fills in. She stated she takes the tips for the night.
 37. She again stated she just fills in as a favor to Renee.
 38. Investigator Egan Bailey asked if she knew who owned the building. She stated, "Tom does." She also stated he has owned it for years.
 39. Investigator Egan Bailey asked if she was referring to Thomas Ryan, Sr. and she stated yes.
 40. Investigator Egan Bailey asked if she was aware of any other owners of the business. Ms. Ruscito said was not sure of any other owners.

41. Investigator Egan Bailey then asked to see the posted liquor license, which indicated the description of the licensed premises to be: Dining room and bar on street floor, kitchen on second floor, cellar for storage.
42. Investigator Egan Bailey then asked Ms. Ruscito if food was served on the premises.
43. She stated there is a kitchen on the second floor but it hasn't been used for years. She stated the second floor is Tom's office. It's usually locked unless Tom is here.
44. Upon the arrival of Ms. Callahan, Investigators identified themselves and informed her of the complaint filed with the Commission.
45. Investigator Egan Bailey informed Ms. Callahan that the Commission Investigators would be conducting an inspection of the licensed premises.
46. Investigators, accompanied by Ms. Callahan, asked for and received permission to inspect the alcoholic beverages storage area located in a small room behind the bar.
47. Investigator Egan Bailey asked Ms. Callahan who orders the alcoholic beverages.
48. She stated she did.
49. Ms. Callahan provided Investigator Egan Bailey with the names of the wholesalers from which the alcoholic beverages were ordered.
50. Investigator Egan Bailey asked her who paid the wholesalers. She stated, "The bar."
51. Investigator Egan Bailey then asked who specifically. She stated, "C&R Corporation, Inc."
52. Upon entry, the Investigators observed a white funnel and multiple bottles of open alcoholic beverages containing various amounts of alcohol within the bottles.
53. Investigator Egan Bailey observed the open bottles of various brands to be 1.75 Liters. Upon questioning Ms. Callahan, she stated she orders 1.75 Liter bottles and refills the One (1) Liter bottles to be placed on the bar.
54. Investigator Egan Bailey informed Ms. Callahan of the violation. Ms. Callahan stated she was unaware it was a problem.
55. The following six (6) bottles and white funnel were taken as evidence (Ex. 11):
 - 1.75 Liter Captain Morgan Rum
 - 1.75 Liter Jameson Irish Whiskey
 - 1.75 Liter Stolichnaya Stoli Razberi Vodka
 - 1.75 Liter Seagram's VO Whiskey Blend
 - 1.75 Liter Bacardi Rum
 - 1.75 Liter Captain Morgan Parrot Bay Rum
56. Investigators, accompanied by Ms. Callahan, asked for and received permission to inspect the cellar.
57. While conducting the inspection of the cellar Investigator Egan Bailey continued to interview Ms. Callahan relative to the business operation.
58. Investigator Egan Bailey asked Ms. Callahan the following questions:
 - Investigator Egan Bailey: "Are you the license manager?"
 - Ms. Callahan: "Yes."
 - Investigator Egan Bailey: "How long have you been the license manager?"
 - Ms. Callahan: "About ten (10) years."
 - Investigator Egan Bailey: "Who hired you?"
 - Ms. Callahan: "The owners"
 - Investigator Egan Bailey: "Who specifically?"
 - Ms. Callahan: "C & R Corp"
 - Investigator Egan Bailey: "Who owns the building?"
 - Ms. Callahan: "Thomas Ryan"
 - Investigator Egan Bailey: "Is Thomas Ryan related to the full time bartender?"
 - Ms. Callahan: "Yes, his son and my step son."

- Investigator Egan Bailey: "You are married to Thomas Ryan Sr.?"
 - Ms. Callahan: "Yes."
 - Investigator Egan Bailey: "I understand you are close friends with Gail, the bartender on duty tonight?"
 - Ms. Callahan: "Yes."
 - Investigator Egan Bailey: "She stated Tom was your boyfriend."
 - Ms. Callahan: "We have been together for many years, over seven (7), so it's considered a common law marriage."
 - Investigator Egan Bailey: "Who pays the rent and other business expenses?"
 - Ms. Callahan: "I don't know I make weekly cash deposit of \$1,200 into the C & R, Joey Mac's bank account."
 - Investigator Egan Bailey: "How are you paid?"
 - Ms. Callahan: "Cash."
 - Investigator Egan Bailey: "Who are the owners of C & R Corp?"
59. At this point Ms. Callahan stated that she didn't feel comfortably answering questions.
 60. Investigator Egan Bailey then suggested she contact the owners of C & R Corp.
 61. Investigator Egan Bailey then found Ms. Callahan to be uncooperative, and explained as a licensee the Investigators of the Commission may enter, at any time, a licensed premise to ascertain the manner in which the business is being conducted.
 62. She was further advised that hindering or delaying an investigator is a violation of M.G.L. Ch.138, §63A, which may result in the suspension, cancellation or revocation of the alcoholic beverage license.
 63. Investigator Egan Bailey provided Ms. Callahan, in hand, a request for documentation and requested her signature on the Investigators Return of Delivery. (Ex. 12)
 64. Investigator Egan Bailey informed Ms. Callahan that the requested documentation was required on or before December 12, 2011.
 65. Investigator Egan Bailey then asked Ms. Callahan if she had any questions.
 66. Ms. Callahan stated she didn't have any questions at this time.
 67. Investigator Egan Bailey continued with the interview and the following was stated:
 - Investigator Egan Bailey asked Ms. Callahan if she knew Daniel Evans, Michael Ryan or Judith Romano.
 - Ms. Callahan stated they were owners of C & R Corporation, Inc.
 - Investigator Egan Bailey asked if she had been in contact with them.
 - She stated she had not contacted them recently.
 - Investigator Egan Bailey asked if she had knowledge of where they lived.
 - Ms. Callahan believed Judith lived in Ipswich and Michael lived in Florida.
 - Investigator Egan Bailey informed Ms. Callahan that Judith Romano had lived in Ipswich some time ago, but relocated to Sanford, Maine and recently is located in Hamilton, MA.
 - Investigator Egan Bailey asked Ms. Callahan who the owners of the license premises were.
 - Ms. Callahan stated the business was transferred about twenty (20) years ago to her and Thomas Ryan.
 - Investigator Egan Bailey asked if there was a record of the purchase and sale.
 - Ms. Callahan stated, she was not aware of any but it was a willing transfer of the business.
 68. Investigators, accompanied by Ms. Callahan, conducted an inspection of the second floor. They observed a large open floor plan, with a small kitchen area located in the back of the building to the left of the entrance doorway, a queen size bed located at the front of

- the building on the left, and a large desk area located at the front of the building to the right.
69. Investigators observed the kitchen area not to be in use, other than minimal amounts of personal food items.
 70. The desk contained recent mail addressed to:
 - C & R Corporation, Inc. dba Joey Mac's, 23 Warren Street, Cambridge, MA;
 - Joey Mac's, 23 Warren Street, Cambridge, MA;
 - Thomas Ryan, 23 Warren Street, Cambridge, MA; and
 - Thomas Ryan, 56 Winthrop Shore Drive, Winthrop, MA.
 71. Investigators then exited the premises without incident.
 72. On December 7, 2011, Investigator Egan Bailey received a letter from Attorney Charles H. Cremens, as counsel for C & R Corporation, Inc. requesting additional time to assemble the requested documentation of December 3, 2011. The request was approved.
 73. On December 12, 2011 and December 20, 2011 documentation was received from Attorney Cremens on behalf of C & R Corporation, Inc.
 74. A review of the submitted documentation based upon the investigator's request revealed the following:
 - Bank Statements and canceled checks for the period January 1, 2011 through October 31, 2011 from Citizen Bank, account holder C & R Corp dba Joey Macs, 23 Warren Street, Cambridge, MA; Account number ending 665-6.
 - Numerous cancelled checks for the purchase of alcoholic beverages from wholesalers, specifically, Horizon, August Busch, Harpoon, Burke Distribution Corp (Ex. 13).
 - The signature on all checks appears to be Daniel F. Evans.
 - Bank Statements and canceled checks for the period January 1, 2011 through October 31, 2011 from Citizen Bank, account holder C & R Corporation, Inc. dba Joey Macs, 23 Warren Street, Cambridge, MA; Account number ending 208-3, listed on checks as lottery account checks signed by Judith Romano. (Ex. 14)
 75. Based upon annual reports filed with the Secretary of State Corporation Division, Daniel F. Evans has not been an officer of C & R Corporation, Inc. since August 20, 2002. (Ex. 6)
 76. The hand delivered request for documentation dated December 3, 2011, specifically asked for copies of all original signature cards from all checking and savings bank accounts associated with C & R Corporation, Inc. dba Joey Mac's, or the business (es) located at 23 Warren Street, Cambridge, MA. (Ex. 12)
 77. Attorney Cremens responded with a letter dated December 20, 2011, indicating the following: "The bank has no signature cards for C&R's accounts."
 78. In an explanation, the bank's several prior mergers resulted in their absence." (Ex. 15)

DISCUSSION

Alleged Violation of M.G.L. c. 138 §15A, to wit: Failure to notify licensing authorities of a change of officers and directors.

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. The Appeals Court held in Number Three Lounge, Inc. v. Alcoholic Beverages Control Commission, 7 Mass. App. Ct. 301 (1979), 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 possessing right and includes the right of control. The officers and directors of a corporation are the control group of that corporation.

In this case, the Licensee changed the officers and directors without the statutorily required prior approval from both the Local Board and the Commission. Daniel F. Evans abandoned his role in the corporation. The Licensee neither sought nor received the statutorily required approvals of this change. This is a violation of M.G.L. c. 138 §15A.

Alleged Violation of M.G.L. c. 138, §23-Transfer of the privilege of a license without proper approval

M. G. L. c. 138, §23 authorizes a license issued under the chapter to be transferred to someone who is qualified if, in the opinion of the licensing authorities, it is in the public interest. A licensee who wishes to transfer their interest in an alcoholic beverages license is required to obtain prior approval from the licensing authorities. This allows the licensing authorities to determine if the transfer is in the public interest and if the proposed transferee is someone who qualifies. 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 Commission, 12 Mass. App. Ct. 768 (1981).

The Commission is instructed by the cases of Cleary v. Cardullo's, Inc., 347 Mass. 337, 346-350, 198 N.E.2d 281 (1964) and Number Three Lounge, Inc. v. Alcoholic Beverages Control Comm., 7 Mass.App. 301, 304-308, 387 N.E.2d 181 (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, 429 N.E.2d at 65, 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, 429 N.E.2d at 66.

The Commission is convinced by satisfactory proof and finds that there was a transfer of license without first obtaining permission from both the local board and the ABCC as required by statute. M.G.L. c.138, §23. The license was illegally transferred when the individuals, Michael Ryan and Judith Romano, took over a direct or indirect beneficial interest in this license. No application was filed to transfer the ownership of the license to these individuals. This is a violation of M.G.L. c. 138 §23.

Alleged Violation of M.G.L. c. 138, §64-License issued under this chapter by the local licensing authorities in violation of §16A or any other provision of this chapter (1 count)

Under the pertinent provisions of M.G.L. c.138, §16A, a license "shall be automatically renewed for the next annual license period upon application by the holder thereof during the month of November and shall be automatically renewed...provided that said license is of the same type as the expiring license and covers the same licensed premises. If the application does not meet the conditions hereunder it shall be treated as an application for a new license and all the procedures set forth under section 15A shall be applicable thereto."

The Commission has previously adjudicated that “the Commission's longstanding past administrative practice is not only to acknowledge the last-approved licensee's standing to sign the renewal application, but also under M.G.L. Ch.138 §15A to allow ‘all persons who have

direct or indirect beneficial interest in said license' to sign the application for renewal." *In Re: Jazzy Joe's, Inc. and Irv's Place, Inc.*, Gloucester (ABCC Decision dated July 8, 2009);

In Re: Mambo Nightclub, Inc., Lawrence (ABCC Decision dated August 10, 2010)

("[a] corporate officer, a director, a shareholder, a license manager or an individual owner must sign the renewal form. The Commission also has a longstanding administrative practice under M.G.L. c. 138, §15A to allow "all persons who have a direct or indirect beneficial interest in said license" to sign the application for renewal."); *In Re: Jin Restaurant Group, LLC*, Saugus (ABCC decision dated November 24, 2009)("the Commission allows the holder of the license standing to sign the renewal application as well as "all persons who have a direct or indirect beneficial interest in said license." M.G.L. c.138, §15A *In re: Pop's Cafe, Inc. and ATP, Inc.*, Holyoke (ABCC Decision dated March 12, 2008).")

Thomas R. Ryan signed Joey Mac's 2009 license renewal form. By the Commission's file, he was not the license holder or a person(s) with a direct or indirect beneficial interest in the license at the time of the 2009 renewals. The Local Licensing Authority ("LLA") approved Joey Mac's 2009 renewal applications although it did not comply with the renewal requirements expressly set forth in M.G.L. c. 138, §16A. Consequently, Joey Mac's license was renewed by the local board contrary to the requirements of, and in violation of, M.G.L. c. 138, §16A.

The application should have been treated as an application for an original license. M.G.L. c. 138, §16A. It was not. Notwithstanding the fact that the LLA approved Joey Mac's 2009 annual renewal with Mr. Thomas Ryan's signature, the Commission cannot let stand an action of the Local Licensing Authority that it could not lawfully authorize in the first place. See *Hastings Associates, Inc. v. Local 369 Building Fund, Inc.*, 42 Mass.App.Ct. 162, 178 (1997)(there is a "strong public policy favoring enforcement of our licensing laws regarding the selling of alcoholic beverages. See *Beacon Hill Civic Assn. v. Ristorante Toscano, Inc.*, 422 Mass. 318, *supra* at 320-324, (private contract purporting to transfer control of license held to be illegal and unenforceable under public policy expressed in the Liquor Control Act, chapter 138). See *Zelman v. ABCC*, 335 Mass 515(1957). This is a violation of M.G.L. c. 138, §64 – License issued by local licensing authorities in violation of §16A or any other provision of chapter 138.

Alleged Violation of 204 CMR 2.05 (2)-Permitting an illegality on the licensed premises, to wit: 26 USC §5301 (c)-refilling of liquor bottles (1) place in any liquor bottle any distilled spirits whatsoever other than those contained in such bottle at the time of tax determination under the provisions of this chapter (6 counts).

M.G.L. c. 138 gives the Commission the authority to grant, revoke and suspend licenses. c. 138 was "enacted to serve the public need and... to protect the common good." M.G.L. c.138, §23, as amended through St. 1977, c. 929, §7. "[T]he purpose of discipline is not retribution but the protection of the public." *Arthurs v. Board of Registration in Medicine*, 383 Mass. 299, 317 (1981). The Commission is given 'comprehensive powers of supervision over licensees,' *Connolly v. Alcoholic Beverages Control Comm.*, 334 Mass. 613, 617 (1956), as well as broad authority to issue regulations. The Local Board has authority to enforce Commission regulations. *New Palm Gardens, Inc. v. Alcoholic Beverages Control Commission*, 11 Mass. App. Ct. 785, 788 (1981).

The law is well-settled that 'under the regulation, [204 C.M.R 2.05(2)] the responsibility of the licensee is to exercise sufficiently close supervision so that there is compliance with the law on

the premises. A vendor who sells alcohol is "bound at his own peril to keep within the condition of his license." Commonwealth v. Gould, 158 Mass. 499, 507 (1893). Burlington Package Liquors, Inc. v. Alcoholic Beverages Control Commission, 7 Mass. App. Ct. 186, 190 (1979). It is, thus, quite possible for a licensee to offend the regulatory scheme without scienter. Rico's of the Berkshires, Inc., v. ABCC, 19 Mass. App. Ct. 1026, 1027 (1985) (rescript). The licensee is responsible for illegalities that occur on the licensed premises.

Under applicable federal law, 26 USC §5301 (c), the refilling of liquor bottles results in placing in a liquor bottle distilled spirits other than those contained in such bottle at the time of tax determination under the provisions of that pertinent federal law. This violates federal law and is illegal.

Here, the Licensee was clearly refilling smaller bottles from 1.75 liter bottles. The funnel to assist in this activity was right at hand by the 1.75 bottles. This is a violation of 204 CMR 2.05 (2)-Permitting an illegality on the licensed premises, to wit: 26 USC §5301 (c)-refilling of liquor bottles (1) place in any liquor bottle any distilled spirits whatsoever other than those contained in such bottle at the time of tax determination under the provisions of this chapter.

CONCLUSION

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

1. M.G.L. c. 138, §15A-Failure to disclose all persons who have a direct or indirect beneficial interest or financial interest in said license, to wit: failure to notify licensing authorities of a change of officers and directors;
2. M.G.L. c. 138, §23-Transfer of the privilege of a license without proper approval;
3. M.G.L. c. 138, §64-License issued under this chapter by the local licensing authorities in violation of §16A or any other provision of this chapter (1 count); and
4. 204 CMR 2.05 (2)-Permitting an illegality on the licensed premises, to wit: 26 USC §5301 (c)-refilling of liquor bottles (1) place in any liquor bottle any distilled spirits whatsoever other than those contained in such bottle at the time of tax determination under the provisions of this chapter (6 counts).

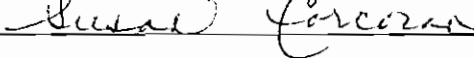
The Commission finds that the renewal of Joey Mac's license for calendar year 2009 violated M.G.L. c. 138 §64- license issued under this chapter by the LLA in violation of §16A or any other provision of this chapter.

The specific language of this chapter mandates that the Commission revoke C & R Corporation, Inc. dba Joey Mac's license. Rigali v. Cahill, Hampden Superior Court C.A. No. 2008-00362, Memorandum And Order Dated July 22, 2009 (Veils, J.)(where renewal of license was "in clear violation of the plain language of M.G.L. c. 138, §16A, the ABCC was obligated to revoke the license pursuant to M.G.L. c. 138, §64."); See In Re: Margaret's Restaurant, Inc., dba Hokeys, Oxford MA (ABCC Decision dated July 12, 2005); In re: Pop's Cafe, Inc., Holyoke, MA (ABCC Decision dated, 2008).

As the Commission acknowledged in Margaret's Restaurant, no other sanction is available for the Commission to consider given the express language of the statute. Without the mandatory language, the Commission could have considered suspension, modification or cancellation of the

license. But the Commission has no discretion here and must revoke the license forthwith. The Commission therefore **REVOKES** C & R Corporation, Inc. dba Joey Mac's license forthwith.¹

ALCOHOLIC BEVERAGES CONTROL COMMISSION

Susan Corcoran, Commissioner 

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

Kathleen McNally, Commissioner 

Dated: March 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
Rosemary Egan Bailey, Investigator
Charles H. Cremens, Esq. via Facsimile 617-523-5226
Administration
File

¹ As a result of this revocation, the Commission need not decide the penalties it would impose for the other adjudicated violations.