

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

*Steven Grossman*  
*Treasurer and Receiver General*

*Kim S. Gainsboro, Esq.*  
*Chairman*

NOTICE OF SUSPENSION

September 6, 2012

**CDM INTERNATIONAL ENTERPRISES LLC DBA KITCHEN SUSHI & LOUNGE**  
**104 MOUNT AUBURN STREET**  
**CAMBRIDGE, MA 02139**  
**LICENSE#: 016600027**  
**HEARD: 08/07/2012**

After a hearing on August 7, 2012, the Commission finds CDM International Enterprises LLC dba Kitchen Sushi & Lounge in violation of 204 CMR 2.01 (8): "All applications shall be made under the pains and penalties of perjury and any false statement contained in any application shall be a cause or ground for refusing to grant you the license or for suspending, canceling or revoking a license already granted."

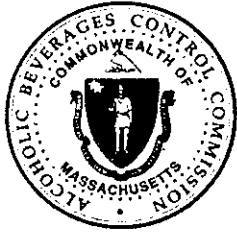
The above-captioned licensee's license is **SUSPENDED INDEFINITELY FORTHWITH** until further written order from this Commission.

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

cc: Sean D. Hope, Esq. 617-492-3131  
Local Licensing Board  
Frederick G. Mahony, Chief Investigator  
✓ Jack Carey, Investigator  
✓ Administration  
File



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**DECISION**

**CDM INTERNATIONAL ENTERPRISES LLC DBA KITCHEN SUSHI & LOUNGE**  
**104 MOUNT AUBURN STREET**  
**CAMBRIDGE, MA 02139**  
**LICENSE#: 016600027**  
**HEARD: 08/07/2012**

CDM International Enterprises LLC dba Kitchen Sushi & Lounge (the "Licensee") holds an all alcoholic beverages license issued pursuant to M.G.L. c. 138, §12. The Alcoholic Beverages Control Commission (the "Commission") held a hearing on Tuesday, August 7, 2012, regarding alleged violation of 204 CMR 2.01 (8): "All applications shall be made under the pains and penalties of perjury and any false statement contained in any application shall be a cause or ground for refusing to grant you the license or for suspending, canceling or revoking a license already granted," according to Investigator Carey's Report.

The following documents are in evidence as exhibits:

1. Investigator Carey's Investigative Report dated April 11, 2012;
  2. Commission Decision Rendered on DCI Boston Corp. dba Score dated March 14, 2012;
  3. Form 43 Application Approval dated December 18, 2011;
  4. Licensee's Application for Transfer and Pledge of License dated May 2, 2011;
  5. Disciplinary Decisions Rendered on Metro Dining, Inc.; and
  6. CORI for Mr. Derek Brady.
- A. SentryLink National Criminal Records Reporting for Mr. Derek Brady dated June 6, 2006; and  
B. Statement of Mr. Derek Brady.

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

**FACTS**

1. On Tuesday, January 10, 2012, an informational hearing was held before the Commission regarding whether the transfer of a §12 license to DCI Boston Corp. dba Score (the "Applicant") should be approved.
2. The Commission rendered a decision dated March 14, 2012, disapproving the transfer of the §12 license to the Applicant based upon the evidence and testimony at the hearing. (Exhibit A)
3. The Commission also warned Mr. Brady that given his conduct in this application, any current or future applications to the Commission would be reviewed and investigated. (Exhibit A)
4. Based upon that Commission directive, Investigator Carey conducted a review and investigation into CDM International Enterprises LLC dba Kitchen Sushi & Lounge which currently holds a §12 license approved by the Commission on December 18, 2011.

5. On May 2, 2011, the licensee filed an application requesting approval of a transfer and pledge of license.
6. A review of the filed application, signed under the pains and penalties of perjury, indicates the sole corporate officer and stockholder, and the proposed manager of record as Mr. Derek Brady, and §10 of the application lists the following individuals of the LLC who hold an interest in this license:
  - Emmanuel Linoxilakis, co-owner, 45% interest;
  - Derek Brady, manager/owner, 35% interest; and
  - Christopher Muller, operations manager, 20% interest.
7. The applicant entity answered §13 of the application, "Have any of the disclosed licensees to sell alcoholic beverages listed in §11 and/or §12 ever been suspended, revoked, or cancelled?"
8. The applicant listed Boston Ballroom Corporation and Felt Enterprises, Inc.
9. The applicant failed to disclose disciplinary actions taken against Metro Dining, Inc. by both the Commission and by the Local Board. Metro Dining, Inc. lists Mr. Derek Brady as its sole corporate officer, shareholder, and license manager.
10. The applicant entity answered "No" to §14, "Has any individual listed in §10 or who has a direct or indirect beneficial interest in this license ever been convicted of a municipal, state, federal, or military crime?"
11. Investigator Carey obtained the CORI record of Mr. Derek Brady for a previous application and informational hearing (for DCI Boston Corporation) heard before the Commission.
12. Mr. Brady also submitted a manager application, "signed under the penalties of perjury", for this licensee, in which he answered "No" to §2, "Have you ever been charged or convicted of a municipal, state, federal, or military crime?"
13. In addition to the previously obtained CORI form, Mr. Brady was charged on August 13, 2010 as follows: Assault and Battery – C265 §13A, which was subsequently dismissed on June 20, 2011.
14. Mr. Brady submitted a Personal Information Form, "signed under the penalties of perjury", in which he answered "No" to §2, "Have you ever been convicted of a state, federal, or military crime?"
15. Mr. Christopher Muller, a corporate officer and stockholder of the LLC, also submitted a Personal Information Form, signed under the penalties of perjury, in which he answered "Yes", to §2, "Have you ever been convicted of a state, federal, or military crime?"
16. Mr. Muller submitted an affidavit [explaining his answer] as well as a CORI authorization form.

### DISCUSSION

Licenses to sell alcoholic beverages are a special privilege subject to public regulation and control, Connolly v. Alcoholic Beverages Control Commn., 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. See 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. Supreme Malt Products Co., Inc. v. Alcoholic Beverages Control Commission, 334 Mass. ----; Ziffrin, Inc. v. Reeves, 308 U.S. 132, 138-139; 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. See Butler v. East Bridgewater, 330 Mass. 33, 36-37. Connolly v. Alcoholic Beverages Control Commission, 334 Mass. 613, 619, (1956).

The SJC further held that “[t]he legislative history of [the Commission’s enabling act], and of M.G.L. (Ter.Ed.) Ch. 138, as amended, clearly shows that the powers of the commission were not intended to be perfunctory or limited. In the very respect here in issue, the approval or disapproval of the action of local licensing authorities, that history indicates that the Commission was charged with important responsibilities and that it was not to be narrowly restricted in performing them.” Connolly v. Alcoholic Beverages Control Commission, 334 Mass. 613, 617 (1956).

The Appeals Court has discussed the statutory standard to grant a license and the factors that a licensing authority may properly consider in its decision whether to grant or deny a license application. In Ballarin Inc., v. Licensing Board of Boston, 49 Mass. App. Ct. 506 (2000), the Appeals Court held that:

The statute authorizing the issuance of liquor licenses speaks in terms of serving "the public need and in such a manner as to protect the common good and, to that end, to provide, in the opinion of the licensing authorities, an adequate number of places at which the public may obtain, in the manner and for the kind of use indicated, the different sorts of beverages for the sale of which provision is made."

M.G.L. c. 138, § 23, as amended by St. 1965, c. 399.

In making its discretionary determination, a licensing authority may take into account a wide range of factors -- such as traffic, noise, size, the sort of operation that carries the license, and the reputation of the applicant. [Emphasis added]. See Connolly v. Alcoholic Bevs. Control Commn., 334 Mass. at 617-618; Great Atlantic & Pac. Tea Co. v. Board of License Commrs. of Springfield, 387 Mass. 833, 837 (1983); Beacon Hill Civic Assn. v. Ristorante Toscano, Inc., 422 Mass. at 322 n. 4; Hub Nautical Supply Co. v. Alcoholic Bevs. Control Commn., 11 Mass. App. Ct. 770, 772-774 (1981). Ballarin Inc., v. Licensing Board of Boston, 49 Mass. App. Ct. 506, 510-512 (2000).

The Commission is incredulous that an individual who has seven entries on his criminal record, which all resulted in convictions, claims to have forgotten about these criminal activities. Mr. Brady was arrested on numerous occasions, placed on probation several times, received a suspended jail sentence, and was actually committed to the house of correction for one (1) of the offenses. The Commission does not find Mr. Brady’s testimony credible, and believes he intentionally attempted to deceive this Commission on three (3) separate applications since 2006. This is particularly true in light of the fact that as recently as April 6, 2011, a warrant issued out of Boston Municipal Court for Mr. Brady’s arrest.

Instead of disclosing that criminal offense for which he was undeniably charged, Mr. Brady submitted an affidavit signed “under the pains and penalties of perjury,” and purposefully did not disclose the crime or offense that lead to that warrant. In fact, he pointedly, and affirmatively declared that, “other than those

convictions (disclosed in the affidavit), I have never been charged or convicted of a state, federal, or military crime.”

CONCLUSION

Based on the evidence, the Commission finds the licensee violated of 204 CMR 2.01 (8): “All applications shall be made under the pains and penalties of perjury and any false statement contained in any application shall be a cause or ground for refusing to grant you the license or for suspending, canceling or revoking a license already granted.”

Therefore, the Commission **INDEFINITELY SUSPENDS** the license of CDM International Enterprises LLC dba Kitchen Sushi & Lounge **effective forthwith** until further written order of the Commission.

The Commission will not issue any further order without a written request from the licensee showing good cause to reconsider this indefinite suspension and a hearing before the Commission that the licensee attends.

**ALCOHOLIC BEVERAGES CONTROL COMMISSION**

Susan Corcoran, Commissioner *Susan Corcoran*

Kathleen McNally, Commissioner *Kathleen McNally*

Dated: September 6, 2012

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: Sean D. Hope, Esq. 617-492-3131  
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