



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 17, 2015

KHUSH ENTERPRISES, INC. D/B/A DESI DHABA
401 MASSACHUSETTS AVE.
CAMBRIDGE, MA 02139
LICENSE#: 016600073
VIOLATION DATE: 07/17/2013
HEARD: 12/15/2015

After a hearing on December 15, 2015, the Commission finds Khush Enterprises, Inc. d/b/a Desi Dhaba violated:

- 1) 204 CMR 2.05 (2) Permitting an illegality on the licensed premises, to wit: M.G.L. c. 138, §23 Sale of Alcoholic Beverages other than those purchased from a licensee under §18 or §19 or from a holder of a special license under §22A; and
- 2) M.G.L. c. 138 §23 Transfer of the privilege of a license without proper approval.

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

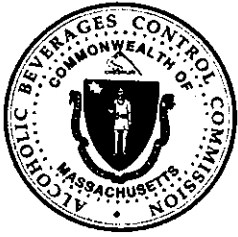
You are advised that you have the right to appeal this decision under M.G.L. c. 30A to Superior Court within thirty (30) days upon receipt of this notice.

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
Tara Kelleher, Investigator
Derege Demissie, Esq. via facsimile 617-868-2520
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

KHUSH ENTERPRISES, INC. D/B/A DESI DHABA
401 MASSACHUSETTS AVE.
CAMBRIDGE, MA 02139
LICENSE#: 016600073
VIOLATION DATE: 07/17/2013
HEARD: 12/15/2015

Khush Enterprises, Inc. d/b/a Desi Dhaba (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, December 15, 2015, regarding alleged violations of:

- 1) 204 CMR 2.05 (2) Permitting an illegality on the licensed premises, to wit: M.G.L. c. 138, §23 Sale of Alcoholic Beverages other than those purchased from a licensee under §18 or §19 or from a holder of a special license under §22A; and
- 2) M.G.L. c. 138 §23 Transfer of the privilege of a license without proper approval.

At the commencement of the hearing, Investigator Temple withdrew the charge of M.G.L. c. 138 §64. The Licensee stipulated to the remaining two violations alleged in Investigator Temple's Report.

The following documents are in evidence as exhibits:

1. Investigator Temple's Report dated January 14, 2014;
2. Licensee's Stipulation of Facts for Hearing held September 15, 2015;
3. Local Board's Letter July 15, 2015 and Licensee's Change of Manager Application;
4. Licensee's Invoices from Wholesalers from November 2012 to August 2015;
5. Licensee's Stipulation of Facts, for Hearing held December 15, 2015, to charges of: Sale of Alcoholic Beverages other than those purchased from a licensee under §18 or §19 or from a holder of a special license under §22A; and Transfer of the privilege of a license without proper approval.
6. Licensee's Medical Report and Doctor's Letter.

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

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

FACTS

1. Khush Enterprise Inc. dba Desi Dhaba, is a Massachusetts corporation organized and filed under M.G.L. c. 156D on December 16, 2004. The corporation lists Anil Kumar as President, Treasurer, Secretary, and Director.
2. Khush Enterprises Inc. submitted an application for transfer of an M.G.L. c. 138, §12 license, which the Commission approved on March 22, 2005. In the transfer application, Anil Kumar is listed at the sole officer, director, and manager.
3. The Licensee submitted an application to alter the licensed premises located at 401 Massachusetts Avenue, Cambridge, MA. The Commission approved this application on November 28, 2007.
4. Administrative review of the Commission files show that renewals for 2007, 2008, 2009, 2010, 2012, and 2013 were all signed by Anil Kumar.
5. Administrative review of the 2011 renewal application shows that it was signed by an individual other than an authorized partner or corporate officer.
6. On Wednesday, July 17, 2013, at approximately 11:30 a.m., Investigators Kelleher and Temple ("Investigators") conducted an investigation of the business operation of Khush Enterprises, Inc. dba Desi Dhaba to determine the manner in which its business was being conducted.
7. Investigators entered the licensed premises, identified themselves, and asked to speak with the owner or manager.
8. Ranjid Badwal stated that he was the manager and owner.
9. Investigators proceeded to the liquor storage area where they observed two boxes of beer with retail price stickers on the exterior of the boxes.
10. Based on their training and experience, investigators determined that the beer had been purchased from a \$15 retail package store.
11. Upon questioning by Investigators, Mr. Badwal stated that he:
 - He has been the owner and manager at this location for 4 – 5 years;
 - He has only 2 days off per week;
 - He Did not know from where those two boxes of beer were obtained;
 - Sometimes his partner, Anil Kumar will bring in alcohol;
 - He tells Anil what he needs [for alcohol] but he doesn't know where Anil purchases it;
 - Anil is on the premises once a week, for either a half hour or a half day;
12. Investigators asked Mr. Badwal to identify which of the alcoholic beverages he had purchased through a licensed wholesaler, and which alcohol had been supplied by Anil.
13. Mr. Badwal stated again that he had no idea where the alcohol supplied by Anil came from.
14. In the bar area, Investigators observed a binder with checks in the Licensee name drawn on a Sovereign Bank checking account and payable to Ball Square Liquors.
15. Investigators noted that some checks were signed by Anil Kumar and others were signed by Ranjid Badwal.
16. Several checks indicating they were in payment of liquor license renewal were signed by Mr. Badwal.
17. Investigators asked Mr. Badwal if they could speak to his partner, Anil Kumar. Mr. Badwal contacted Mr. Kumar by telephone.
18. Investigators spoke to Mr. Kumar who stated:

- Ranjid Badwal and Lakhiber Singh were his partners and co-owners of the business;
 - Mr. Badwal is the manager;
 - The majority of the time Mr. Badwal orders the food and alcohol;
 - Mr. Badwal has authority to hire and fire employees but that current employees are long-term;
 - He admitted that he had not filed any change of manager application with the Commission;
 - He admitted that he purchased alcoholic beverages from Kappy's Liquors, Blanchard's Liquors and Ball Square Liquors.
19. Mr. Kumar stated that he did not want any problems and that "I'm going to cut down."
 20. Investigators took several items as evidence: one 24-pack of Harpoon IPA ale; one 6-pack of Beck's Dark beer; and one binder containing copied checks of Khush Enterprises.
 21. Investigators informed Mr. Badwal and Mr. Kumar of the violation and that a report would be filed with the Chief Investigator for review.
 22. Investigators informed Mr. Badwal that he cannot sell any of the remaining alcohol purchased from any \$15 retail package store. He must keep it securely stored until the Commission issues a decision.

DISCUSSION

Licenses to sell alcoholic beverages are a special privilege subject to public regulation and control, Connolly v. Alcoholic Beverages Control Commission, 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. ABCC, 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. ABCC, 334 Mass. 613, 617 (1956).

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 Commission, 12 Mass. App. Ct. 768, 771, 429 N.E.2d 62, 65 (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 Commission, 7 Mass. App. Ct. 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 Local Licensing Authority and the Commission approved Anil Kumar as the Licensee's President, Treasurer, Secretary, Director, and license manager. A licensee must receive prior approval from both the local licensing authority, and the Commission before transferring the privilege of its license, or transferring any type of interest in it. M.G.L. c. 138, § 23. The licensee did not receive the statutorily required prior approval for Ranjid Badwal and Lakhbir Singh to have any direct or indirect beneficial interest in this license. In contravention of the statute, no other individual except for Mr. Anil Kumar has been approved to have control of, and interest in, or benefit from, this licensed business. See Griffin's Brant Rock Package Store, Inc. v. Alcoholic Beverages Control Commission, 12 Mass. App. Ct. 768, 771 (1981).

The Appeals Court held in Number Three Lounge, Inc. v. Alcoholic Beverages Control Commission, 7 Mass. App. Ct. 301 (1979), the concept of an ownership interest can vary from an absolute proprietary interest to a mere possessory right. By Mr. Kumar's own admission, these two individuals were given an ownership interest in the license. Therefore, the Commission is convinced by satisfactory proof and finds that there was a transfer of a direct or indirect beneficial interest in the license without first obtaining prior written approval from both the Local Board and the Commission, as required by statute.

CONCLUSION

Based on the evidence, including the Licensee's stipulation to the facts and violation, the Commission finds Khush Enterprises, Inc. d/b/a Desi Dhaba violated:

- 1) 204 CMR 2.05 (2) Permitting an illegality on the licensed premises, to wit: M.G.L. c. 138, §23 Sale of Alcoholic Beverages other than those purchased from a licensee under §18 or §19 or from a holder of a special license under §22A; and
- 2) M.G.L. c. 138 §23 Transfer of the privilege of a license without proper approval.

Therefore, the Commission **INDEFINITELY SUSPENDS** the license of Khush Enterprises, Inc. d/b/a Desi Dhaba **EFFECTIVE FORTHWITH** until further written order of the Commission.

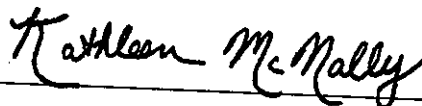
The Commission will not issue any further order without a written request from the Licensee showing good cause to reconsider this indefinite suspension and a hearing before the Commission that the Licensee attends.

ALCOHOLIC BEVERAGES CONTROL COMMISSION

Kim S. Gainsboro, Chairman



Kathleen McNally, Commissioner



Dated: December 17, 2015

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
Tara Kelleher, Investigator
Derege Demissie, Esq. via facsimile 617-868-2520
Administration, File