

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 REVOCATION

May 25, 2012

RTE 58 CONVENIENCE, INC. DBA QUICKEEZ
60 NORTH MAIN STREET
CARVER, MA 02330
LICENSE#: 017400026
HEARD 2/21/2012

After a hearing on February 21, 2012, the Commission finds Rte 58 Convenience, Inc. dba Quickeez in violation of:

- 1) M.G.L. Ch.138 §23- Transfer of the privilege of a license without proper approval;
- 2) M.G.L. Ch.138 §64- License issued under this chapter by the Local Licensing Authorities in violation of §16A or any other provision of this chapter (5 counts).

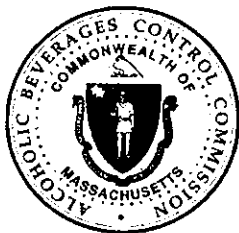
The above-captioned licensee's license is **REVOKED** forthwith.

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
Rose Egan-Bailey, Investigator
William Cintolo, Esq. via facsimile
Administration
File



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DECISION

RTE 58 CONVENIENCE, INC. DBA QUICKEEZ
60 NORTH MAIN STREET
CARVER, MA 02330
LICENSE#: 017400026
HEARD 2/21/2012

Rte 58 Convenience, Inc. dba QuickeeZ (the "Licensee") holds a wine and malt beverages license issued pursuant to M.G.L. c. 138, §15. The Alcoholic Beverages Control Commission (the "Commission") held a hearing on Tuesday, February 21, 2012, regarding the alleged violations of:

- 1) M.G.L. Ch.138 §23- Transfer of the privilege of a license without proper approval;
- 2) 204 CMR 2.01 (8)-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 the license or permit or for suspending, canceling or revoking a license or permit already granted (5 counts);
- 3) M.G.L. Ch.138 §64- License issued under this chapter by the Local Licensing Authorities in violation of §16A or any other provision of this chapter (5 counts).

The above-mentioned occurred on June 17, 2011, according to Investigator Rose Egan-Bailey's Investigative Report.

The following exhibits are in evidence:

1. Investigator Bailey's Violation Report Dated June 17, 2011;
2. Commonwealth of Massachusetts Articles of Organization;
3. Application for Alcoholic Beverage License for Retail Sale Dated April 20, 2005;
4. Form 43 - Application Approval dated July 6, 2005;
5. License Renewal Applications 2006, 2007; 2008;
6. License Renewal Application 2009;
7. License Renewal Application 2010;
8. Invoices from: United Liquors (dated July 2, 2010 and July 9, 2010) and Martignetti Companies (dated June 9, 2010);
9. Rte 58 Convenience, Inc. dba QuickeeZ cancelled checks: no. 2576 dated July 14, 2010 payable to United Liquors; and no. 2615 dated August 10, 2010 payable to Martignetti Companies;
10. United Liquors Credit Application dated September 25, 2005;
11. Investigator Request for Documentation dated March 25, 2011;
12. Investigator's Signed Return of Delivery dated March 25, 2011;

13. Sovereign Bank Authorized Signature Card;
14. Sovereign Bank Statement of Accounts [copies of cancelled checks];
15. NY State Driver's License and NY State Vehicle Registration for Suresh B. Patel.

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

FACTS

1. Rte 58 Convenience, Inc. a Massachusetts corporation organized and filed under M.G.L. c. 156D on April 6, 2005 comprised of the following corporate officer: Mr. Suresh B. Patel, President, Treasurer, Clerk, and Director; one hundred percent (100 %) Stockholder. (Exhibit 2)
2. On May 25, 2005 Rte 58 Convenience, Inc. dba QuickeeZ submitted an application for the transfer of a §15 annual wine and malt package store license (Exhibit 3) which was approved by the Commission on July 6, 2005. (Exhibit 4)
3. The license was renewed for calendar years 2006, 2007, and 2008.
4. A review of the required signature on the renewal application forms for these years revealed that the required signature is not that of Mr. Suresh B. Patel, the sole officer, director, stockholder and license manager of Rte 58 Convenience, Inc. dba QuickeeZ. (Exhibit 5)
5. On November 19, 2008, the licensee submitted the license renewal application for calendar year 2009.
6. A review of the required signature on the renewal application form revealed that the required signature is not that of Mr. Suresh B. Patel, the sole officer, director, stockholder and license manager of Rte 58 Convenience, Inc. dba QuickeeZ. (Exhibit 6)
7. The license was renewed for calendar year 2010.
8. A review of the required signature on the renewal application form revealed that the required signature is not that of Mr. Suresh B. Patel, the sole officer, director, stockholder and license manager of Rte 58 Convenience, Inc. dba QuickeeZ. (Exhibit 7)
9. Investigator Bailey obtained additional evidence relative to the alleged violation of M.G.L. c.138 §23, when she contacted United Liquors and Martignetti Companies.
10. United Liquors and Martignetti Companies provided the investigator with copies of invoices (Exhibit 8) for alcoholic beverages ordered and delivered to Rte 58 Convenience, Inc. dba QuickeeZ.
11. United Liquors and Martignetti Companies provided Investigator Bailey with copies of cancelled checks (Exhibit 9) associated with the payments of the referenced invoices.
12. A review of the signature on the checks revealed that they are signed by an entity other than that of Mr. Suresh B. Patel, the sole officer, director, stockholder and license manager of Rte 58 Convenience, Inc. dba QuickeeZ.
13. United Liquors provided a copy of the filed credit application, dated September 29, 2005, of Rte 58 Convenience, Inc. dba QuickeeZ (Exhibit 10).

14. The authorized signatures on the credit application are signed by an entity other than that of Mr. Suresh B. Patel, the sole officer, director, stockholder and license manager of Rte 58 Convenience, Inc. dba QuickeeZ.
15. On Friday, March 25, 2011, at approximately 12:30 p. m., Investigators Kujawski and Bailey, in conjunction with Carver Police Chief Miksch, conducted an inspection of Rte 58 Convenience, Inc. dba QuickeeZ to determine the manner in which their business was being conducted.
16. Investigators identified themselves and spoke with the clerk on duty, later identified as Mr. Kalpeshkamar Patel.
17. Mr. Kalpeshkamar Patel supplied investigators with a valid New York Driver's License.
18. Investigators requested to speak with the owner or manager.
19. Mr. Kalpeshkamar Patel stated the owners were not on the premises.
20. Investigators requested that Mr. Kalpeshkamar Patel contact the owners and stated that they would arrive shortly.
21. Investigators informed Mr. Kalpeshkamar Patel they would conduct an investigation of the licensed premises.
22. Mr. Kalpeshkamar Patel stated that Mr. Jay Patel, Jay's wife Vanitaben Patel, and Jay's cousin are the owners, and that they all live in Attleboro.
23. Mr. Kalpeshkamar Patel stated that he lives with his family in the basement of the licensed premises.
24. Mr. Kalpeshkamar Patel stated that Mr. Jay Patel hired him at approximately eight (8) months ago.
25. Mr. Kalpeshkamar Patel stated that he is paid weekly by check, in the amount of four hundred and sixteen dollars (\$416.00) by Mrs. Vanitaben Patel.
26. Mr. Kalpeshkamar Patel stated that he works eight (8) hours per day, seven (7) days per week.
27. Mr. Kalpeshkamar Patel stated that his wife works the remaining hours [that the store is open], and she is paid the same amount [four hundred sixteen dollars (\$416.00)] per week.
28. Mr. Kalpeshkamar Patel stated that Jay and Vanitaben Patel come by the licensed premises once a week, and sometimes more often.
29. Mr. Kalpeshkamar Patel stated that Mrs. Vanitaben Patel pays all of the bills and places all of the orders.
30. A male and a female arrived at the licensed premises and identified themselves as the owners.
31. Mrs. Vanitaben S. Patel of 93 Baystate Road, Rehoboth, date of birth February 24, 1980, and Mr. Shailesh Patel of 93 Baystate Road, Rehoboth, date of birth March 15, 1970.

32. Investigators identified themselves to the owners and informed them of the request for documentation delivered to the clerk on duty, which required a response by the licensee on or before April 11, 2011.
33. Mrs. Vanitaben Patel reviewed the documents and signed the Investigator's Return of Delivery Notice. (Exhibit 12)
34. Investigators asked if Mr. and Mrs. Patel understood English.
35. Mrs. Vanitaben Patel stated that they both understood English, but her husband did not speak English as well as she did.
36. Investigators questioned Mrs. Vanitaben Patel about the manner in which their business was being conducted.
37. Mrs. Vanitaben Patel stated that she and her husband took over managing the licensed premises from her husband's cousin, Mr. Suresh Patel, in September 2005.
38. Mrs. Vanitaben Patel stated that Mr. Suresh Patel resides in New York State.
39. Mrs. Vanitaben Patel stated that she and her husband owned the business with Mr. Suresh Patel.
40. Mrs. Vanitaben Patel stated that she and her husband formerly lived in the basement of the licensed premises.
41. Mrs. Vanitaben Patel stated that she and her husband then hired Mr. Kalpeshkamar Patel and his wife.
42. Mrs. Vanitaben Patel stated that she and her husband come by the licensed premises a few times per week.
43. Mrs. Vanitaben Patel stated that she pays all the bills, places the orders, and pays the employees.
44. Investigators showed a copy of the License Renewal Application for 2009 to Mrs. Vanitaben Patel, and asked if the signature on it was hers.
45. Mrs. Vanitaben Patel stated that was her signature on the 2009 License Renewal Application.
46. Investigators asked Mrs. Vanitaben Patel if she was a citizen of the United States.
47. Mrs. Patel stated she was not.
48. Investigators showed a copy of the License Renewal Applications for 2006, 2007, and 2008 to Mr. Shailesh Patel, and asked if the signature on each of them was his signature.
49. Mr. Shailesh Patel stated that was his signature on the 2006, 2007, and 2008 License Renewal Applications.
50. Investigators asked Mr. Shailesh Patel if he was a citizen of the United States.
51. Mr. Shailesh Patel stated he was not.

52. Investigators provided their contact information to Mr. Shailesh Patel and Mrs. Vanitaben Patel, and advised them to contact the licensee regarding the request for documentation.
53. Investigators informed Mr. Shailesh and Mrs. Vanitaben Patel that a report would be submitted to the Chief Investigator for review.
54. Upon further review of documentation, investigators discovered that the Sovereign Bank checking account for Rte 58 Convenience, Inc. dba QuickeeZ had the following authorized signatures:
 - Suresh Patel;
 - Shailesh P. Patel; and
 - Vanitaben S. Patel. (Exhibit 13)
55. Review of bank statements and cancelled checks in payment for alcoholic beverages, liquor license renewals, employees, and taxes were signed by an entity other than the approved sole corporate officer, stockholder, director, license manager, Mr. Suresh B. Patel. (Exhibit 14)
56. Current Driver's License and Vehicle Registration reveal that Mr. Suresh B. Patel resides in the State of New York. (Exhibit 15)
57. The requested documentation required the licensee to provide proof of residential address for the period from August 2005 through February 2011. The licensee failed to provide this documentation.

DISCUSSION

M.G.L. c. 138, §23 - Transferring Privilege of License Without Proper Approval (1 count)

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 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.

Mr. Suresh Patel testified at the hearing that he resides in New York, and that he owns five (5) businesses in New York. Mr. Suresh Patel also testified that when he bought this business, he moved to Massachusetts. However, his mother became sick shortly thereafter, and he then moved back to New York. Mr. Suresh B. Patel's driver's license and motor vehicle registration are from the State of New York. (See Exhibit # 15).

Multiple bank statements and cancelled checks indicate that the payments for alcoholic beverages and employees' wages were signed by an entity other than the approved sole corporate officer, shareholder, director, and license manager, Mr. Suresh B. Patel. (See Exhibit #14). The Sovereign Bank checking account associated with Rte 58 Convenience, Inc. dba QuickeeZ reveals that Shailesh Patel and

Vanitaben Patel are authorized signatories on the business account. (See Exhibit # 13). Mr. Suresh B. Patel further testified that he does not make any personnel decisions, and he does not purchase the alcoholic beverages for the business.

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 Commission, as required by statute. M.G.L. c.138, §23. The acts of handing over control of the licensed premises to Shailesh P. Patel and Vanitaben S. Patel, who were not approved by the Local Board and the Commission, and allowing them to run it for their own account by hiring and supervising the employees, paying all expenses, paying for alcoholic beverages, and collecting the cash receipts, is a violation of M.G.L. Ch. 138 §23.

M.G.L. Ch.138 §64- License issued under this chapter by the Local Licensing Authorities in violation of §16A or any other provision of this chapter (5 counts)

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 §15A shall be applicable thereto." 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.

Mr. Suresh B. Patel is the President, Treasurer, Clerk, and Director; one hundred percent (100 %) Stockholder of Rte 58 Convenience, Inc. dba QuickeeZ. Therefore, he is the only person authorized to sign the license renewal application form. The license was renewed for calendar years 2006, 2007, and 2008. A review of the required signature on the renewal application forms for these years revealed that the required signature is not that of Mr. Suresh B. Patel.

On November 19, 2008, the licensee submitted the license renewal application for calendar year 2009. A review of the required signature on the renewal application form revealed that the required signature is not that of Mr. Suresh B. Patel. Investigators showed a copy of the License Renewal Application for 2009 to Mrs. Vanitaben Patel, and asked if the signature on it was hers. Mrs. Vanitaben Patel stated that it was her signature on the 2009 License Renewal Application.

The license was renewed for calendar year 2010. A review of the required signature on the renewal application form revealed that the required signature is not that of Mr. Suresh B. Patel. Investigators showed a copy of the License Renewal Applications for 2006, 2007, and 2008 to Mr. Shailesh Patel, and asked if the signature on each of them was his signature. Mr. Shailesh Patel stated that it was his signature on the 2006, 2007, and 2008 License Renewal Applications.

The Local Licensing Authority ("LLA") approved this Licensee's 2006, 2007, 2008, 2009 and 2010 renewal applications although they did not comply with the renewal requirements expressly set forth in M.G.L. c. 138, §16A. Consequently, this Licensee's license was renewed by the LLA contrary to the requirements of, and in violation of, M.G.L. c. 138, §16A.¹

¹ In light of the finding that the 2006, 2007, 2008, 2009 and 2010 renewal applications do not comply with the requirements of M.G.L. c. 138, §16A, the Commission does not address and leaves for another day the question whether the licensee violated 204 CMR 2.01(8) All applications shall be made under the penalties of perjury and any false statement contained in any application

The application should have been treated as an application for an original license. It was not. The Commission cannot let stand an action of the LLA 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).

The Commission finds that the improper renewals violates M.G.L. c.138 §64. The specific language of this chapter mandates that the Commission revoke the license of Rte 58 Convenience, Inc. dba QuickeeZ. 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, 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** revoke the license of Rte 58 Convenience, Inc. dba QuickeeZ license forthwith.

CONCLUSION

Based on the evidence, the Commission finds Rte 58 Convenience, Inc. dba QuickeeZ violated:

- 1) M.G.L. Ch.138 §23- Transfer of the privilege of a license without proper approval; and
- 2) M.G.L. Ch.138 §64- License issued under this chapter by the Local Licensing Authorities in violation of §16A or any other provision of this chapter (5 counts).

Therefore, the Commission **REVOKES** the license of Rte 58 Convenience, Inc. dba QuickeeZ, effective **forthwith**.

shall be a cause or ground for refusing to grant the license or permit or for suspending, canceling or revoking a license or permit already granted (5 Counts).

ALCOHOLIC BEVERAGES CONTROL COMMISSION

Kathleen McNally, Commissioner

Handwritten signature of Kathleen McNally in cursive, written over a horizontal line.

Kim Gainsboro, Chairman

Handwritten signature of Kim Gainsboro in cursive, written over a horizontal line. There is a small circular stamp or mark to the right of the signature.

Dated: May 25, 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: Local Licensing Board
Frederick G. Mahony, Chief Investigator
Rose Egan-Bailey, Investigator
William Cintolo, Esq.
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