



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

Deborah B. Goldberg
Treasurer and Receiver General

Kim S. Gainsboro, Esq.
Chairman

AMENDED
NOTICE OF SUSPENSION

September 15, 2015

SEAFOOD SHANTY RESTAURANT MANAGEMENT, INC.
DBA THE SEAFOOD SHANTY
31 DOCK STREET
EDGARTOWN, MA 02539
LICENSE#: 037200017
VIOLATION DATE: 07/16/2015
HEARD: 09/15/2015

After a hearing on September 15, 2015, the Commission finds Seafood Shanty Restaurant Management, Inc. dba The Seafood Shanty violated 204 CMR 2.05 (2) - Permitting an illegality on the licensed premises, to wit: c. 138, §34C Possession of an alcoholic beverage by a person under twenty- one (21) years of age (3 Counts). The Commission **suspends the Licensee's license for a total of three (3) days to be served with the balance of (ten) 10 days suspended for 2 years.**

A request by the licensee to reschedule the suspension has been allowed by this Commission.

The suspension shall commence on Tuesday, October 13, 2015, and terminate on Thursday, October 15, 2015. The license will be delivered to the Local Licensing Board or its designee on Tuesday, October 13, 2015 at 9:00 A.M. It will be returned to the licensee Friday, October 16, 2015.

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

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这份文件是重要的，应立即进行翻译

cc: Local Licensing Board
Frederick G. Mahony, Chief Investigator
Dennis Keefe, Investigator
Mark Kenny, Investigator
Sean E. Murphy Esq., facsimile: 508-627-7848
Mail to: P.O. BOX 3450
Administration
File



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NOTICE OF SUSPENSION

September 15, 2015

SEAFOOD SHANTY RESTAURANT MANAGEMENT, INC.
DBA THE SEAFOOD SHANTY
31 DOCK STREET
EDGARTOWN, MA 02539
LICENSE#: 037200017
VIOLATION DATE: 07/16/2015
HEARD: 09/15/2015

After a hearing on September 15, 2015, the Commission finds Seafood Shanty Restaurant Management, Inc. dba The Seafood Shanty violated 204 CMR 2.05 (2) - Permitting an illegality on the licensed premises, to wit: c. 138, §34C Possession of an alcoholic beverage by a person under twenty- one (21) years of age (3 Counts).

The Commission **suspends the Licensee's license for a total of three (3) days to be served with the balance of (ten) 10 days suspended. The suspension shall commence on Wednesday, May 25, 2016, and terminate on Friday, May 27, 2016.** The license will be delivered to the Local Licensing Board or its designee on Wednesday, May 25, 2016 at 9:00 A.M. It will be returned to the licensee Saturday, May 28, 2016.

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 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

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Department of the State Treasurer
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Deborah B. Goldberg
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Chairman

DECISION

SEAFOOD SHANTY RESTAURANT MANAGEMENT, INC.
DBA THE SEAFOOD SHANTY
31 DOCK STREET
EDGARTOWN, MA 02539
LICENSE#: 037200017
VIOLATION DATE: 07/16/2015
HEARD: 09/15/2015

Seafood Shanty Restaurant Management, Inc. dba The Seafood Shanty (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, September 15, 2015, regarding an alleged violation of 204 CMR 2.05 (2) - Permitting an illegality on the licensed premises, to wit: c. 138, §34C Possession of an alcoholic beverage by a person under twenty- one (21) years of age (3 Counts). Prior to the commencement of the hearing, the Licensee stipulated to the violation alleged in Investigator Keefe's Report.

The following documents are in evidence:

1. Investigator Keefe's Investigative Report dated July 16, 2015;
2. Licensee's Stipulation of Facts; and
3. Photocopy of Three False Identifications.

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

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

FACTS

1. On Thursday, July 16, 2015, at approximately 11:50 p.m., Investigators Keefe and Kenny ("Investigators") conducted an investigation of the business operation of Seafood Shanty Restaurant Management, Inc. dba The Seafood Shanty.

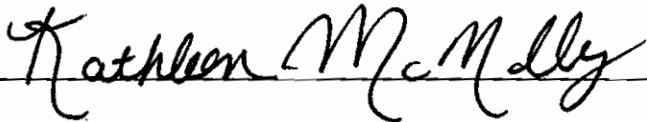
2. Investigators entered the licensed premises and observed youthful appearing female individuals in the possession of alcoholic beverages, later identified as vodka, cranberry, and amaretto.
3. Investigators asked the female subjects for identification and established that they were under the age of twenty-one years old.
4. The underage subjects were all in possession of false out of state driver's licenses.
5. Underage 1 had an actual date of birth 08/29/1995 (age 19).
6. Underage 2 had an actual date of birth 12/18/1995 (age 19).
7. Underage 3 had an actual date of birth 08/12/1996 (age 18).
8. Investigators spoke with the manager on duty, Matthew Byrna and notified him of the violations.
9. Investigators advised Mr. Byrna that a report would be submitted to the Chief Investigator for review.

CONCLUSION

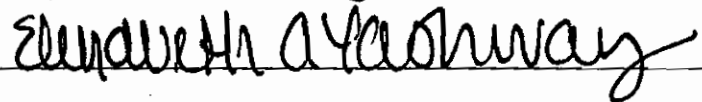
Based on the evidence, the Commission finds the Licensee violated 204 CMR 2.05 (2) - Permitting an illegality on the licensed premises, to wit: c. 138, §34C Possession of an alcoholic beverage by a person under twenty- one (21) years of age (3 Counts). Therefore, the Commission **suspends the license for thirteen (13) days of which three (3) days will be served and ten (10) days will be held in abeyance for a period of two (2) years provided no further violations of Chapter 138 or Commission Regulations occur.**

ALCOHOLIC BEVERAGES CONTROL COMMISSION

Kathleen McNally, Commissioner



Elizabeth A. Lashway, Commissioner



Dated: September 15, 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.

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Dennis Keefe, Investigator
Mark Kenny, Investigator
Sean E. Murphy Esq., via facsimile 508-627-7848
Administration
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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

FI-HI PIZZA INC. DBA HI-FI PIZZA
492-496 MASSACHUSETTS AVE.
CAMBRIDGE, MA 02139
LICENSE#: 016600146
HEARD: 08/04/2015

This is an appeal of the action of the City of Cambridge Licensing Board (the "Local Board" or "Cambridge") for revoking the M.G.L. c. 138, §12 wines and malt beverages license of Fi-Hi Pizza Inc. dba Hi-Fi Pizza (the "Licensee" or "Hi-Fi") located at 492-496 Massachusetts Avenue, Cambridge, MA. The Licensee timely appealed the Local Board's decision to the Alcoholic Beverages Control Commission (the "Commission") and a hearing was held on Tuesday, August 4, 2015.

The following documents have been entered in evidence as exhibits:

1. Local Board Decision 5/29/2015;
2. Local Board's Notice of Hearing 6/17/2014;
3. Local Board's Decision 7/10/2014;
4. Local Board's Notice of Hearing 1/15/2015;
5. Local Board's Notice of Rescheduled Hearing 2/5/2015;
6. Local Board's Decision 3/2/2015;
7. Transcript of Local Board's Hearing 7/8/2014;
8. Transcript of Local Board's Hearing 2/24/2015;
9. Transcript of Local Board's Hearing 5/19/2015;
10. Transcript of Local Board's Hearing 5/28/2015;
11. Wicked Local Cambridge Article on Restaurant Closing 7/16/2015;
12. Landlord Mark Simon's Letter 10/25/2014 to Local Board;
13. Draft Purchase & Sale Agreement;
14. Local Board's Policy on Inactive Licenses;
15. ABCC Decision 2/11/2009;
16. ABCC Decision 8/26/2009; and
17. Joint Pre-Hearing Memorandum.

There is one (1) audio recording of this hearing, and two (2) witnesses testified.

FACTS

The Commission makes the following findings, based on the evidence presented at the hearing:

1. Fi-Hi Pizza Inc. dba Hi-Fi Pizza is a Massachusetts corporation which holds a wines and malt beverages license issued pursuant to M.G.L. c. 138, §12. (Commission records)
2. Francis Holland has operated Hi-Fi Pizza from 1969 to 2014. (Exhibit 17)
3. In March 2014, Hi-Fi was forced to close when the landlord terminated its lease. (Exhibit 17)
4. In June 2014, Frank Holland applied to the Local Board to hold the wines and malt beverages license in inactive status. A hearing was held July 8, 2014 on the application, and the Board voted 3 – 0 to approve it. The Local Board allowed Mr. Holland six months to find a buyer for the license. This approval expired on January 8, 2015. (Exhibit 17)
5. Hi-Fi did not find a buyer for its license by January 8, 2015, and did not file a request to extend its inactive status. ((Exhibit 17)
6. The Local Board held a hearing February 24, 2015 to consider a revocation of the license. At the hearing the Local Board voted 3 – 0 to approve an extension of the license's inactive status until April 9, 2015. The Local Board stated if a transfer application were not received by that date, the matter of a revocation of the license would be heard. (Exhibit 17)
7. During this time, Hi-Fi received an offer to purchase the license, which subsequently fell through. (Exhibit 17)
8. At the May 19, 2015, hearing on the revocation, Hi-Fi asserted that it had received another offer to purchase its license. (Exhibit 17)
9. The Local Board voted 3 – 0 to continue the hearing to May 28, 2015, at which time the Hi-Fi would present either a signed purchase offer or a signed purchase and sale agreement. (Exhibit 17)
10. At the hearing on May 28, 2015, Hi-Fi did not produce any signed purchase offer or sale agreement. They were unable to meet the deadline as the potential buyer was going through a corporate restructuring. (Exhibit 17)
11. Although the Local Board recognized Hi-Fi was diligent in marketing its license, they voted 2 – 1 to revoke the license. The Local Board had never revoked a license for non-use before this vote. The Local Board's past practice has been to allow licensees who have gone out of business a considerable amount of time to transfer a license. (Exhibit 17)
12. The following licenses were inactive or remained inactive for periods of time well in excess of the 14 months at issue here:

- a) ManRay – went out of business in 2005; remained inactive for 10 years without revocation;
- b) Pizzeria Uno – went out of business in March 2010; remained inactive until September 2014 when it transferred its license;
- c) Hoffa's Swiss Alps – went out of business between 2006 and 2010; remained inactive without revocation until January 2013 when its license was transferred¹.
- d) Tommy Doyle's – closed in December 2013; currently inactive without revocation as license transfer is pursued;
- e) The Western Front – closed December 2013; currently inactive without revocation as a license transfer is pursued. (Commission records, Exhibit 17)

13. The Local Board adopted formal regulations on inactive or "pocket" licenses as of July 28, 1987. These regulations state that the Local Board may, for good cause shown, permit a licensee to hold an inactive license for up to 48 months. The regulations also address the need to balance the public need against any undue hardship resulting from a Licensee being forced to surrender the license when the licensed premises are a) taken by eminent domain; b) destroyed by fire; c) being extensively renovated; and d) lost due to termination of a lease. (Exhibit 17)

DISCUSSION

M.G.L. Chapter 138 section 77 states, in pertinent part: "The licensing authorities may, after hearing or reasonable opportunity therefore, cancel any license issued under this chapter if the licensee ceases to conduct the licensed business." A license must be exercised on an approved premises and cannot exist as a roving license. A license is not valid separate and apart from the premises to which it attaches. Opinion of the Justices, 349 Mass 794, 798 (1965). The Appeals Court has held that a renewal application may be denied where the applicant has not been operating and no longer has a right to occupy the premises. Board of Selectmen of Sudbury v. ABCC, 25 Mass. App. Ct. 470 (1988).

Pursuant to M.G.L. c. 138, §77, the only authorized sanction for the failure to conduct the licensed business is cancellation of the license. Compare M.G.L. c. 138, §64 ("[t]he licensing authorities after notice to the Licensee and reasonable opportunity for him to be heard by them, may modify, suspend, revoke or cancel his license upon satisfactory proof that he has violated or permitted a violation of any condition thereof, or any law of the commonwealth"). While the actions of cancellation and revocation both operate to terminate a license, the difference between a cancellation and revocation of license is the statutory disqualification from holding a license that is expressly set in M.G.L. c. 138, §64 for revocation. Empresas Guanacas, Inc., dba Mango Grill Fine Latin Cuisine (Watertown) (ABCC Decision March 19, 2009). No such statutory disqualification from holding a license is expressly set in M.G.L. c. 138, §77 for cancellation.

Moreover, the Commission has previously decided what the legal requirements are for a Local Board when it seeks to exercise its authority to cancel a license under section 77. "Once a local

¹ The new owner has yet to exercise its license as of August 4, 2015.

board has determined that a license holder risks cancellation of its license under M.G.L. c. 138, §77 as a result of non-use of the license, this Commission evaluates the amount of time the board has given the licensee to cure the non-use to ensure its reasonableness. In Re: Turnpike @ Winona, LLC, Peabody (ABCC decision dated May 14, 2010)

The Commission's practice of granting a reasonable time to transfer a license is in step with the Board of Selectmen of Saugus v. Alcoholic Beverages Control Commission, 32 Mass. App. Ct. 915 (1992). "Under the authority of M.G.L. c. 138, §77, this statute explicitly gives the Commission the authority to review the license cancellation by the Local Board." Id. In Saugus, this Commission gave the Licensee six (6) months to transfer the license once he received notice of the risk of cancellation. Id.

"It is this Commission's practice to allow the licensee six (6) months from the date of the notice of the risk cancellation to cure the non-use by either operating its premises or filing the appropriate application to transfer the license. Id. The Commission's sense of fairness is forward looking and the time within which the licensee must act does not begin to run until the licensee is first put on notice that there is a potential enforcement of Massachusetts General Laws chapter 138, §77. "In Re Turnpike @ Winona, LLC, Id., quoting In re: Empresas Guanacas, Inc. dba Mango Grill Fine Latin Cuisine, (Watertown) (ABCC Decision dated March 13, 2009).

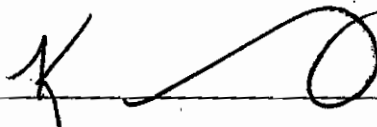
In this case, the Local Board first became aware of the non-use in June 2014. The Local Board first put the license at risk by issuing a notice of a revocation hearing on February 5, 2015. Then it revoked the license on May 28, 2015. The Local Board therefore failed to allow the licensee a six month period of time, from the date it first notified the licensee of the risk of cancellation for non-use in violation of M.G.L. 138, section 77.

CONCLUSION

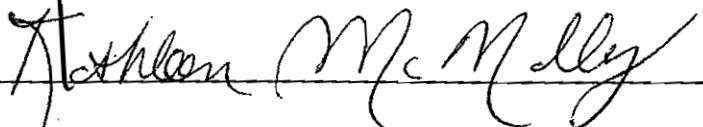
The Alcoholic Beverages Control Commission **DISAPPROVES** the action of the Licensing Board for the City of Cambridge in cancelling the license for non-use, and remands the matter to the Local Board with the recommendation that the Local Board give the Licensee a reasonable period (six (6) months) of time within which to comply, which time period begins to run at the time in which the Local Board specifically notifies the Licensee that it risks cancellation of its license for non-use pursuant to M.G.L. chapter 138, § 77.

ALCOHOLIC BEVERAGES CONTROL COMMISSION

Kim S. Gainsboro, Chairman



Kathleen McNally, Commissioner



Dated: September 10,, 2015

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cc: Kevin Crane, Esq. via facsimile 617-864-6357
Elizabeth Lint, Esq. via facsimile 617-349-6148
Local Licensing Board
Frederick G. Mahony, Chief Investigator
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

ANDY'S VARIETY, INC.
11 MILK STREET
WESTBOROUGH, MA 01581
LICENSE#: 143800021
VIOLATION DATE: 04/28/2015
HEARD: 09/15/2015

Andy's Variety, Inc. (the "Licensee") holds an alcohol license issued pursuant to M.G.L. c. 138, §15. The Alcoholic Beverages Control Commission (the "Commission") held a hearing on Tuesday, September 15, 2015, regarding an alleged violation of 204 CMR 2.05 (2) - Permitting an illegality on the licensed premises, to wit: M.G.L. c. 138, §34 Sale or delivery of an alcoholic beverage to a person under twenty-one (21) years of age. Prior to the commencement of the hearing, the Licensee stipulated to the violation alleged in Investigator Keefe's Report.

The following documents are in evidence:

1. Investigator Keefe's Compliance Check Field Report dated April 28, 2015;
2. Licensee's Stipulation of Facts;
3. Photograph of Underage Operative; and
4. Twelve Ounce (12 oz) Can of Budweiser Beer Purchased by Underage Operative.

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

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

FACTS

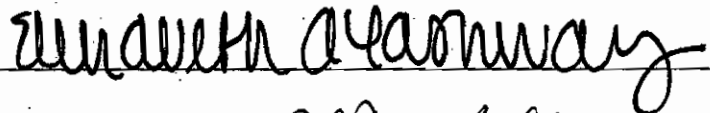
1. On Tuesday, April 28, 2015, at approximately 6:37 p.m., Investigators Keefe and Kujawski ("Investigators") conducted an investigation of the business operation of Andy's Variety, Inc.
2. While on the licensed premises an underage operative working with Investigators purchased from the Licensee an alcoholic beverage, a twelve ounce (12 oz.) can of Budweiser beer for one dollar and thirty- nine cents (\$1.39). The underage operative was not asked for identification.

CONCLUSION

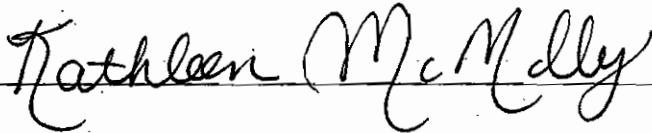
Based on the evidence, including the Licensee's stipulation to the facts and violation, the Commission finds the Licensee violated 204 CMR 2.05 (2) - Permitting an illegality on the licensed premises, to wit: M.G.L. c. 138, §34 - Sale or delivery of an alcoholic beverage to a person under twenty-one (21) years of age. Therefore, the Commission **suspends the License for three (3) days of which three (3) days will be held in abeyance for a period of two (2) years provided no further violations of Chapter 138 or Commission Regulations occur.**

ALCOHOLIC BEVERAGES CONTROL COMMISSION

Elizabeth A. Lashway, Commissioner



Kathleen McNally, Commissioner



Dated: September 15, 2015

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cc: Local Licensing Board
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Dennis Keefe, Investigator
Jan Kujawski, Investigator
Administration
File



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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

NAGOYA FUSION INC.
793 CRESCENT STREET
BROCKTON, MA 02301
LICENSE#: 014400248
VIOLATION DATE: 05/15/2015
HEARD: 09/15/2015

Nagoya Fusion Inc. (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, September 15, 2015, regarding an alleged violation of 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 (1 Count). Prior to the commencement of the hearing, the Licensee stipulated to the violation alleged in Investigator Teehan's Report.

The following documents are in evidence:

1. Investigator Teehan's Report dated June 9, 2015; and
2. Licensee's Stipulation of Facts.

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

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

FACTS

1. On Friday, May 15, 2015, at approximately 4:30 p.m., Investigators Teehan and Temple ("Investigators") conducted an investigation of the business operation of Nagoya Fusion Inc. to determine the manner in which their business was being conducted.
2. Investigators entered the licensed premises and identified themselves to the owner, Xuelin Zheng, and inspected the bar.
3. Investigators observed in the refrigerator, bottles of Budweiser and Budweiser Light beer that read "non- returnable bottle" on the label.

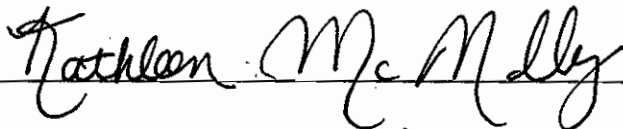
4. Investigators proceeded into the storage area and observed four 18-packs of Budweiser Light beer, two 18-packs of Budweiser beer, a case of Heineken beer, one 18-pack of Heineken beer, and six bottles of Heineken beer in an 18-pack box of Heineken beer.
5. Mr. Zheng had no knowledge of where the alcohol was ordered and could not provide invoices for the alcohol.
6. The alcohol was taken as evidence and Investigator Teehan informed Mr. Zheng of the violation and that a report would be filed with the Chief Investigator for further action.

CONCLUSION

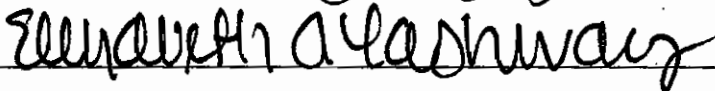
Based on the evidence, the Commission finds the Licensee violated M.G.L. c. 138, § 23 Sale of alcoholic beverages other than those purchased from a licensee under §18 or §19 or from a holder of a Special License under §22A (1 Count). Therefore, the Commission **suspends the license for three (3) days of which three (3) days will be held in abeyance for a period of two (2) years provided no further violations of Chapter 138 or Commission Regulations occur.**

ALCOHOLIC BEVERAGES CONTROL COMMISSION

Kathleen McNally, Commissioner



Elizabeth A. Lashway, Commissioner



Dated: September 15, 2015

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cc: Local Licensing Board
Frederick G. Mahony, Chief Investigator
Michael Teehan I Investigator
Chris Temple, Investigator
John P. Connell Esq., via facsimile 617-227-3222
Administration
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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

GULF RESOURCES INC. DBA MEDFIELD COMMONS
270 MAIN STREET
MEDFIELD, MA 02052
LICENSE#: 067800022
VIOLATION DATE: 06/22/2015
HEARD: 09/15/2015

Gulf Resources Inc. dba Medfield Commons (the "Licensee") holds an alcohol license issued pursuant to M.G.L. c. 138, §15. The Alcoholic Beverages Control Commission (the "Commission") held a hearing on Tuesday, September 15, 2015, regarding an alleged violation of 204 CMR 2.05 (2) - Permitting an illegality on the licensed premises, to wit: c. 138, §34 Sale or delivery of an alcoholic beverage to a person under twenty-one (21) years of age. Prior to the commencement of the hearing, the Licensee stipulated to the violation alleged in Investigator Teehan's Report.

The following documents are in evidence:

1. Investigator Teehan's Compliance Check Field Report dated June 22, 2015; and
2. Licensee's Stipulation of Facts.

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

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

FACTS

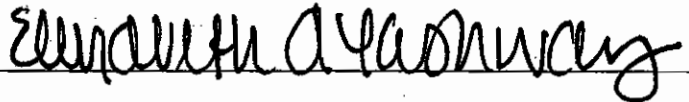
1. On Monday, June 22, 2015, at approximately 4:20 p.m., Investigators Teehan and Carey ("Investigators") conducted an investigation of the business operation of Gulf Resources Inc. dba Medfield Commons.
2. While on the licensed premises an underage operative working with Investigators purchased from the Licensee an alcoholic beverage, a six (6) pack of Budweiser Light beer for seven dollars and thirteen cents (\$7.13). The underage operative was not asked for identification.

CONCLUSION

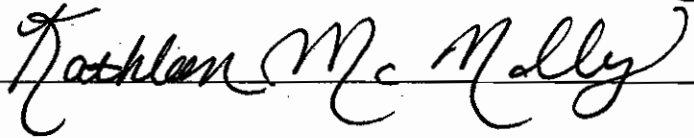
Based on the evidence, including the Licensee's stipulation to the facts and violation, the Commission finds the Licensee violated 204 CMR 2.05 (2) - Permitting an illegality on the licensed premises, to wit: c. 138, §34 - Sale or delivery of an alcoholic beverage to a person under twenty-one (21) years of age. Therefore, the Commission **suspends the License for three (3) days of which three (3) days will be held in abeyance for a period of two (2) years provided no further violations of Chapter 138 or Commission Regulations occur.**

ALCOHOLIC BEVERAGES CONTROL COMMISSION

Elizabeth A. Lashway, Commissioner



Kathleen McNally, Commissioner



Dated: September 15, 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.

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这份文件是重要的，应立即进行翻译。

cc: Local Licensing Board
Frederick G. Mahony, Chief Investigator
Michael Teehan, Investigator
Jack Carey, Investigator
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

CALIFORNIA NIGHT CLUB INC. DBA ATTIKA
1 MILL STREET
LAWRENCE, MA 01840
LICENSE#: 059400237
VIOLATION DATE: 05/02/2015
HEARD: 09/01/2015

California Night Club Inc. dba Attika (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, September 1, 2015, regarding alleged violation of 204 CMR 4.03 (1)(b) – Delivery of more than two (2) drinks to one (1) person at a time. Prior to the commencement of the hearing, the Licensee stipulated to the violations alleged in Investigator Doyle's Report.

The following documents are in evidence:

1. Investigator Doyle's Report dated May 2, 2015; and
2. Licensee's Stipulation of Facts,

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

FACTS

1. On Saturday, May 2, 2015, at approximately 11:15 p.m., Chief Investigator Mahony, along with Investigators Guarino, Teehan, and Doyle ("Investigators") conducted an investigation of the business operation of California Night Club Inc. dba Attika.
2. Investigators observed a 750 ml bottle of Buchanan's whiskey on a table. Two people were seated at this table. Each person was in possession of or had a drink on the table.
3. Investigators spoke with the owner, Edward Herrera, and asked him how many drinks could be served from a 750 ml bottle.
4. Mr. Herrera stated that a standard drink was 2 ounces, and each 750 ml bottle would contain approximately 12 drinks.

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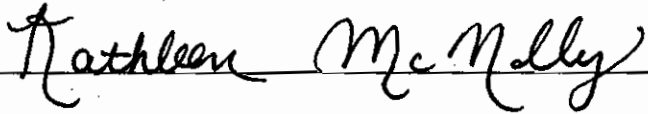
5. Investigators informed Mr. Herrera that a 750 ml bottle containing 12 drinks could be delivered only to six or more persons.
6. Investigators informed Mr. Herrera, of the violation and that a report would be submitted to the Chief Investigator for further action.

CONCLUSION

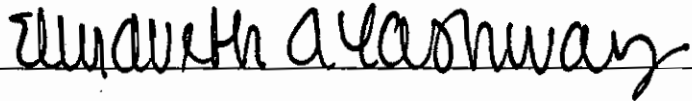
Based on the evidence, the Commission finds the Licensee violated 204 CMR 4.03 (1)(b) – Delivery of more than two (2) drinks to one (1) person at a time. Therefore, the Commission **suspends the license for three (3) days of which three (3) days will be held in abeyance for a period of two (2) years provided no further violations of Chapter 138 or Commission Regulations occur.**

ALCOHOLIC BEVERAGES CONTROL COMMISSION

Kathleen McNally, Commissioner



Elizabeth A. Lashway, Commissioner



Dated: September 1, 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.

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这份文件是重要的，应立即进行翻译。

cc: Local Licensing Board
Frederick G. Mahony, Chief Investigator
Brad Doyle, Investigator
Michael Teehan, Investigator
Salim R. Tabit, Esq. via facsimile 978-327-5144
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 S. Gainsboro, Esq.
Chairman

NOTICE OF SUSPENSION

July 28, 2015

WESTFORD V.F.W. MATTAWANAKEE POST #6539 INC.
67 WEST PRESCOTT ST.
WESTFORD, MA 01886
LICENSE#: 144200019
VIOLATION DATE: 12/18/2014
HEARD: 07/28/2015

After a hearing on July 28, 2015, the Commission finds the Westford V.F.W. Mattawanakee Post #6539 Inc. in violation of M.G.L. c.138, §15A Change of Officers And Directors in the Corporation without Authorization.

The above-captioned licensee's license is **SUSPENDED INDEFINITELY EFFECTIVE 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: Local Licensing Board
Frederick G. Mahony, Chief Investigator
Dennis Keefe, Investigator
Jan Kujawski, Investigator
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

DECISION

Kim J. Gainsboro, Esq.
Chairman

WESTFORD V.F.W. MATTAWANAKEE POST #6539 INC.
67 WEST PRESCOTT ST.
WESTFORD, MA 01886
LICENSE#: 144200019
VIOLATION DATE: 12/18/2014
HEARD: 07/28/2015

Westford V.F.W. Mattawanakee Post #6539 Inc. (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, July 28, 2015, regarding an alleged violation of M.G.L. c.138, §15A Change of Officers and Directors in the Corporation without Authorization. Prior to the commencement of the hearing, the Licensee stipulated to the violation alleged in Investigator Keefe's Report.

The following documents are in evidence:

1. Investigator Keefe's Investigative Report dated December 18, 2014; and
2. Licensee's Stipulation of Facts.

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

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

FACTS

1. On Thursday, December 18, 2014, at approximately 2:20 p. m., Investigators Kujawski and Keefe ("Investigators") investigated the business operation Westford V.F.W. Mattawanakee Post #6539 Inc. to determine the manner in which its business was being conducted.
2. Investigators entered the licensed premises and identified themselves to a female bartender on duty, Martha Quinn. Investigators explained that they were conducting an inspection of the licensed premises.
3. Prior to the on-site inspection, Investigator Keefe reviewed the Secretary of State website, along with the Commission file, and found discrepancies.
4. The Secretary of the Commonwealth Corporation Division website indicates the Licensee's officers to be:
 - a. President: John T. Wilson
 - b. Treasurer: Kenneth J. Wiater
 - c. Secretary/Clerk: Kenneth J. Wiater
 - d. Director: Alex Lecourt

5. The Commission file for the Licensee indicates that the Licensee has not submitted an application to change officers and directors since 1967 when the officers and directors were identified to be:
 - a. Commander: Thomas Hughes
 - b. Quartermaster: Richard Wood
 - c. Adjutant: Paul Shields
 - d. Manager: Andrew Kostecho
6. According to Commission files, the Licensee has not changed officers/directors since 1967. The current officers and directors have not been approved by the Commission.
7. During the hearing the Commission noted the Licensee has also failed to file its annual reports as required pursuant to M.G.L. c. 138, §1.

DISCUSSION

Licenses to sell alcoholic beverages are a special privilege subject to public regulation and control, Connolly v. Alcoholic Beverages Control Comm'n, 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).

In reviewing the authority of the Commission, the Supreme Judicial Court ("SJC") 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." See Connolly, 334 Mass. at 619. 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. See id.

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." See id. at 617. A licensee who wishes to transfer its license, or an interest in its alcoholic beverages license, is required to obtain prior written 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 to hold a license. Implicit in the transfer of a license is the surrender of control.

An Administrative review of the Commission's files for the Licensee indicates that the Licensee has not submitted any change of officers/directors for this license since 1967.

The Licensee did not receive the statutorily required prior approval for the current officers to have any direct or indirect beneficial interest in this license. The Appeals Court held in Number Three Lounge, Inc. v. Alcoholic Beverages Control Comm'n, 7 Mass. App. Ct. 301 (1979), the concept of an ownership interest can vary from an absolute proprietary interest to a mere possessory right. The approved officers and directors of a license corporation are the control group of a corporation. 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 its license. In contravention of the statute, no other individual has been investigated or 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 Comm'n, 12 Mass. App. Ct. 768, 771 (1981). The failure to disclose all individuals who have a direct or indirect beneficial interest in this license is a violation of M.G.L. Ch. 138 §15A.

CONCLUSION

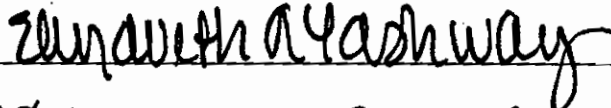
Based on the evidence, the Commission finds the Licensee violated M.G.L. c.138, §15A Change of Officers and Directors in the Corporation without Authorization. Therefore the Commission **INDEFINITELY SUSPENDS** the Licensee's license **effective forthwith**, until further written order of the Commission.

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. Good cause for the Commission to consider issuing a further written order revising the order of indefinite suspensions will include, but not be limited to, the approval by both the Commission and the local licensing authorities of the appropriate application for approval of the current officers and directors of the Licensee.

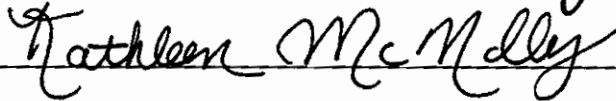
In addition, the Licensee must file the appropriate annual reports pursuant to M.G.L. c. 138, §1 for the last ten (10) years from calendar year 2005 through calendar year 2015.

ALCOHOLIC BEVERAGES CONTROL COMMISSION

Elizabeth A. Lashway, Commissioner



Kathleen McNally, Commissioner



Dated: July 28, 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.

cc: Local Licensing Board
Frederick G. Mahony, Chief Investigator
Dennis Keefe, Investigator
Jan Kujawski, Investigator
Administration
File