

Re: **Championes, Inc.**
DBA: **Second Street Cafe**
Premise: **557 Second Street**
City/Town: **Everett, MA 02149**
License #: **038200034**
Heard: **January 25, 2011**

DECISION

Championes, Inc. dba Second Street Cafe (the “Licensee”) holds an all alcohol license issued pursuant to M.G.L. c. 138, §12. The Alcoholic Beverages Control Commission (the “Commission”) held a hearing on Tuesday, January 25, 2011, regarding an alleged violation of M.G.L. c.138, §23 detailed in Investigator Paul Capurso’s report.

The following documents are in evidence:

1. Investigator Paul Capurso’s Report;
2. August 3, 2010 Letter;
3. Plaintiff’s Request for a Restraining Order;
4. Gabriel Rivera’s Affidavit;
5. Defendant’s Objection to a Temporary Restraining Order;
6. Preliminary Injunction;
7. Sales Agreement;
8. Purchase and Sales Agreement dated August 31, 2009;
9. Checks and Invoices for Championes; and
10. Commission Renewal Forms.

There is one (1) tape of this hearing.

FACTS

1. Commission records for the licensee indicate Luis Ortiz as the Sole Officer and Shareholder of the Championes, Inc.
2. On August 3, 2010, the Commission received a letter from Attorney John P. Connell regarding this licensee. (Ex. 2)

3. The letter details a legal dispute regarding the ownership and transfer of this license to Gabriel Rivera. Attorney Connell provided documentation regarding the Middlesex Superior Court Civil Case #09-0186.
4. In the Plaintiff's Request for a Temporary Restraining Order, it states that the Mr. Luis Ortiz and Mr. Gabriel Rivera entered into an agreement for the sale of the restaurant and bar on November 27, 2006 for the amount of \$80,000 including its liquor license. (Ex. 3)
5. In the Affidavit of Gabriel Rivera, dated January 20, 2009, it states that on or about November 7, 2006 Gabriel Rivera entered into a Purchase and Sales Agreement with Mr. Luis Ortiz to purchase from him the remaining interest in the stocks and inventory of the business corporation in which Gabriel Rivera had already invested in excess of \$80,000 by purchasing half of the outstanding shares of the corporation that the Mr. Ortiz and another individual, John Zapata also known as Clemente Catano. (Ex. 4)
6. As a condition of the Purchase and Sales Agreement Mr. Ortiz agreed to transfer all his interest in the outstanding stocks, including the liquor license, of the corporation. (Ex. 7)
7. In the Defendant's Objection to a Temporary Restraining Order, Undated it states that Mr. Rivera purchased a "sports bar" called "Championess" with a liquor license from Mr. Ortiz on or about November 7, 2009. It also states that pursuant to the terms of the agreement, Mr. Rivera is allowed to use the liquor license until the transfer application is approved. (Ex. 5)
8. The Restraining Order also states that Mr. Ortiz has failed to take any steps to effectuate the transfer. In addition, it states that Mr. Rivera has operated the bar in a professional manner and at all times since the operation of the bar has been paying the rent to the landlord.(Ex. 5)
9. Attorney Connell supplied the Purchase and Sales Agreement dated November 2006 between Mr. Ortiz and Mr. Rivera which states the purchase price was for \$80,000.(Ex. 7)
10. On January 21, 2009, Judge Billings issued a preliminary injunction stating that Mr. Rivera and Championess, Inc. are enjoined from selling alcohol at 557 Second Street, Everett until a further order from the court. (Ex. 6)
11. On October 9, 2009, the Commission received a license application from the Licensing Board of Everett seeking to transfer the license of Championess, Inc. to G.R. Entertainment, Inc.
12. G.R. Entertainment, Inc.'s application for transfer shows Mr. Rivera as the Sole Officer and Shareholder. The application was signed by Mr. Rivera and dated September 9, 2009.
13. A Purchase and Sales Document between Mr. Ortiz and Mr. Rivera dated August 31, 2009 was included in the application. The listed purchase price was for \$61,400, which is less than the \$80,000 price listed in the court documents.
14. The Commission subsequently disapproved this application for failing to comply with the Massachusetts state tax laws.
15. Administrative review of the canceled checks from United Liquors indicates that a check in the amount of \$2230.88 was written from a checking account bearing the name of GGRC, Inc. dba Café Tropicana. It was signed by Mr. Rivera. (Ex. 9)

16. Mr. Rivera also signed check number 968, on January 14, 2009, in the amount of \$2758.89, and check number 969, on January 14, 2009, in the amount of \$173.96 from a Championes, Inc. account. (Ex. 9)
17. A review of the renewal forms for 2007 and 2009 for the licensee shows that each of the renewals was signed by Mr. Rivera, who at the time was not the licensee. (Ex. 10)
18. The 2008 renewal form could not be located.
19. The 2010 renewal form shows both Mr. Ortiz and Mr. Rivera as signatories. (Ex. 10)
20. The business has been closed since 2009.
21. The attorney for the licensee, Attorney Connell, told the Commission he notified the Alcoholic Beverages Control Commission of the problem.
22. Investigator Capurso testified the licensee notified him of the issue and has cooperated in resolving it.

CONCLUSION

Based on the evidence, **the Commission finds the licensee violated M. G. L. c. 138, §23 and issues a penalty of time served.**

ALCOHOLIC BEVERAGES CONTROL COMMISSION

Robert H. Cronin, Commissioner_____

Susan Corcoran, Commissioner_____

Dated: March 2, 2011

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
Paul Capurso, Investigator
File