



Commonwealth of Massachusetts
Alcoholic Beverages Control Commission
239 Causeway Street
Boston, Massachusetts 02114
Telephone: (617) 727-3040
Fax: (617) 727-1510

Jean M. Lorizio, Esq.
Chairman

NOTICE OF REVOCATION

December 19, 2018

FRANCO RESTAURANT INC.
40-42 LYMAN STREET
HOLYOKE, MA 01040
LICENSE#: 0540-00032
VIOLATION DATES: 3/8/2013 – TO PRESENT
HEARD: 12/04/2018

After a hearing on December 4, 2018, the Commission finds Franco Restaurant Inc. violated:

- 1) M.G.L. Ch. 138 § 15A- Failure to disclose all persons who have a direct or indirect beneficial or financial interest in said license; 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.

On the charge, M.G.L. c. 138, § 15A, the Commission **INDEFINITELY SUSPENDS** the license of Franco Restaurant Inc. **EFFECTIVE FORTHWITH.**

On the charge, 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, the Commission **REVOKES** the license of Franco Restaurant Inc. **EFFECTIVE FORTHWITH.**

The above-captioned Licensee's license is **REVOKED EFFECTIVE 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

Jean M. Lorizio
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
Thomas Wilson, Esq. via facsimile 413-533-1468
Administration, File



***Commonwealth of Massachusetts
Alcoholic Beverages Control Commission
239 Causeway Street
Boston, Massachusetts 02114
Telephone: (617) 727-3040
Fax: (617) 727-1510***

Jean M. Lorizio, Esq.
Chairman

DECISION

**FRANCO RESTAURANT INC.
40-42 LYMAN STREET
HOLYOKE, MA 01040
LICENSE#: 0540-00032
VIOLATION DATES: 3/8/2013 – TO PRESENT
HEARD: 12/04/2018**

Franco Restaurant Inc. (the "Licensee" or "Franco") 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 4, 2018, regarding alleged violations of:

- 1) M.G.L. Ch. 138 § 15A-Failure to disclose all persons who have a direct or indirect beneficial or financial interest in said license;
- 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.

The above captioned occurred from March 8, 2013 to the present according to Investigator Temple's Report.

The following documents are in evidence as exhibits:

1. Investigator Temple's Investigative Report;
2. Licensee's Transfer Application, 6/22/1999;
3. Licensee's Sale of Stock Application, 12/7/1999;
4. Licensee's Form 43, Alteration of Premises, 5/24/2004;
5. Licensee's Corporate Vote, 3/11/2004;
6. Licensee's Renewal Applications for 2001; 2003 – 2012;
7. Licensee's Renewal Application for 2013;
8. Licensee's Renewal Application for 2014
9. Licensee's Renewal Application for 2015;
10. Licensee's Renewal Application for 2016;
11. Licensee's Renewal Application for 2017;
12. Licensee's Renewal Application for 2018;
13. Certificate of Death for Charles Calvin Rae III, 3/11/2013; and
14. Photocopy of ABCC Book of Visitors to Office on date of 12/4/18.

There is one (1) audio recording of this hearing, and three (3) witnesses testified.

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

FINDINGS OF FACT

1. On September 2, 1999, the Franco Restaurant Inc. ("Licensee" or "Franco") filed an application for New Officers and Directors; Transfer of Stock; Pledge of License; Pledge of Stock; and Change of Manager. This application listed Charles C. Rae III as the sole officer, director, shareholder, and manager. The Commission approved this application on December 7, 1999. (Testimony, Exhibits 1, 3, Commission records)
2. On March 11, 2004, the Licensee filed an application for alteration of premises. The contact person for this application was listed as Michael Rigali ("Rigali"). The Corporate Vote approving this alteration was signed by Charles Rae, III, and signed by Michael Rigali as a witness. The Commission approved this application on May 24, 2004. (Testimony, Exhibits 1, 4, 5, Commission records)
3. The license renewal applications for 2001, 2003, 2004, 2006, 2007, 2008, 2009, 2010, 2011, and 2012 for this Licensee were signed by Charles Rae, III. (Testimony, Exhibit 6, Commission records)
4. The Licensee's renewal applications for 2005, 2013, and 2016 were unsigned. (Testimony, Exhibits 6, 7, 10, Commission records)
5. The Licensee's renewal application for 2014 and 2018 were signed by Michael Rigali. (Testimony, Exhibits 8, 12, Commission records)
6. The Licensee's renewal application for 2015 contains the name and signature of Charles Rae, III. The renewal form is dated October 29, 2014. (Testimony, Exhibit 9, Commission records)
7. Charles Rae, III died on March 8, 2013. Investigator Temple obtained Charles Rae's death certificate from the Town of Hadley. (Testimony, Exhibit 13)
8. There was no paperwork regarding the death, nor the probate of the estate of Charles Rae, III filed in this matter. (Testimony, Commission records, Exhibits 1, 13)
9. The Licensee's renewal application for 2017 was signed by Douglas Rae. Mr. Douglas Rae was never approved by the Local Board nor this Commission as having any direct or indirect interest in this license as an officer, director, or principal of Franco. (Testimony, Commission records, Exhibit 11)
10. A review of the Massachusetts Secretary of State Corporations Division for Franco Restaurant Inc. indicates that on January 3, 2018, the Licensee filed annual reports with the Secretary of State for 2012, 2014, and 2015 which list Charles C. Rae, III as President, Treasurer, and Director; and Michael Rigali as Secretary and Director. (Testimony, Exhibit 1)

11. The 2016 Annual Report filed with the Secretary of State of the Commonwealth (“Secretary of State”) listed Charles Rae, III as the sole officer and director. (Testimony, Exhibit 1)
12. The Licensee’s 2017 Annual Report filed with the Secretary of State lists Michael Rigali as the sole officer and director, with Charles Rae, III as the registered agent. (Testimony, Exhibit 1)
13. Administrative review of the Licensee’s file indicates no application to change the ownership, officers, and directors of the corporation to Michael Rigali has been filed with this Commission. (Testimony, Commission records)
14. Upon his death, Charles Rae left his ownership interest in Franco to Mr. Douglas Rae. Douglas Rae was the uncle of decedent Charles Rae, and the executor¹ of Charles Rae’s estate. (Testimony)
15. Rigali purchased Charles Rae’s ownership in Franco from Douglas Rae. Rigali testified that he is the 100% owner of Franco’s Restaurant. (Testimony)
16. Rigali admitted he has been operating Franco’s Restaurant without authority since the death of Charles Rae III in March of 2013. (Testimony, Exhibit 13, Commission records)
17. Rigali admitted that he did not petition the Local Board, nor the Commission, for approval to transfer (to himself) the ownership interest in Franco’s Restaurant belonging to Mr. Charles Rae, III. (Testimony, Commission records)

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).

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.

¹ The Commission is not in receipt of any paperwork corroborating this information. This information was provided to the Commission via testimony of Michael Rigali.

M.G.L. Ch. 138 § 15A Failure to Disclose All Persons Who Have a Direct or Indirect Beneficial or Financial Interest in Said License

M.G.L. c. 138, § 15A requires that a licensee or applicant for an alcoholic beverages license disclose all individuals who have a direct or indirect beneficial interest in the license. The Appeals Court held in Number Three Lounge, Inc. v. Alcoholic Beverages Control Commission, 7 Mass. App. Ct. 301 (1979), the concept of a “direct or indirect beneficial interest” in a license can range from an ownership interest, to an absolute proprietary interest, to a mere possessory right, and includes the right of control. See Number Three Lounge, Inc., 7 Mass. App. Ct. at 310-311. The approved officers and directors of a licensed 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.

Mr. Michael Rigali admitted during his testimony before the Commission that upon the death of Mr. Charles Rae, III, he (Rigali) purchased the decedent’s ownership interest in Franco’s Restaurant. He admitted that he never obtained the statutorily required prior approval to become the 100% owner holding a direct beneficial interest in this license. In contravention of the statute, Rigali has not been approved by the Local Board, nor the Commission to have a 100% interest in this licensed business. See Griffin’s Brant Rock Package Store, Inc. v. Alcoholic Beverages Control Commission, 12 Mass. App. Ct. 768, 771 (1981). The failure to transfer ownership interest in a license without permission from the licensing authorities is a violation of M.G.L. Ch. 138 § 15A.

M.G.L. C. 138, §64, To Wit: M.G.L. C. 138, §16A – Annual Renewal Signed by a Person Other Than Those Authorized by the Commission

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 section 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.

Administrative review of the Licensee’s file shows that the Licensee’s renewal application for 2017 bears the signature of Douglas Rae. Mr. Douglas Rae was never an individual who possessed a direct or indirect interest in this license in 2016 or 2017. Mr. Douglas Rae was never approved by the Local Board or this Commission as an officer, director, or principal of licensee Franco. (Testimony, Commission records, Exhibit 11)

The Local Board approved Franco’s 2017 renewal application although Franco did not comply with the renewal requirements expressly set forth in M.G.L. c. 138, § 16A. Consequently, Franco Restaurant, Inc.’s license was renewed by the Local Board contrary to the requirements of, and in violation of, M.G.L. c. 138, § 16A.

Notwithstanding the fact that the Local Board approved the Licensee's 2017 annual renewal with an unauthorized person's signature, the Commission cannot let stand an action of the Local Board 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."); Beacon Hill Civic Assn. v. Ristorante Toscano, Inc., 422 Mass. 318, 320-324 (1996)(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); Zelman v. ABCC, 335 Mass 515 (1957).

The Commission finds that the 2017 annual renewal of the license of Franco Restaurant, Inc. violated M.G.L. c. 138 § 64 – License issued under this chapter by the Local Licensing Authority in violation of section 16A or any other provision of this chapter.

The specific language of this chapter mandates that the Commission revoke the license of Franco Restaurant, Inc. A Superior Court case directly on point is Rigali v. Cahill, Hampden Superior Court C.A. No. 2008-00362, Memorandum and Order dated July 22, 2009 (Veils, J.), where one Michael Rigali signed the renewal application of Pop's Café, Inc., 54-56 Adams Street, Holyoke despite the fact that he was not authorized to do so. The Superior Court determined that 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."² As the Commission acknowledged in In Re: Margaret's Restaurant, Inc., d.b.a. Hokeys, Oxford MA (ABCC Decision dated July 12, 2005), no other sanction is available for the Commission to consider given the express language of the statute. The Commission has no discretion here and must revoke the license forthwith.

The Commission finds that the renewal of the license of Franco Restaurant, Inc. for calendar year 2017 violated Ch.138 § 64 – License issued under this chapter by the LLA in violation of section 16A or any other provision of this chapter.

CONCLUSION

Based on the evidence, the Commission finds the Licensee violated:

- 1) M.G.L. Ch. 138 § 15A- Failure to disclose all persons who have a direct or indirect beneficial or financial interest in said license; 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.

On the charge, M.G.L. c. 138, § 15A, the Commission **INDEFINITELY SUSPENDS** the license of Franco Restaurant Inc. **EFFECTIVE FORTHWITH.**

On the charge, 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, the Commission **REVOKES** the license of Franco Restaurant Inc. **EFFECTIVE FORTHWITH.**

² Michael Rigali's Superior Court M.G.L. c. 30A appeal arose from the Commission decision In re: Pop's Cafe, Inc., Holyoke, MA (ABCC Decision dated March 12, 2008).

ALCOHOLIC BEVERAGES CONTROL COMMISSION

Kathleen McNally, Commissioner



Elizabeth Lashway, Commissioner



Dated: December 19, 2018

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
Thomas Wilson, Esq. via facsimile 413-533-1468
Administration, File