

*Commonwealth of Massachusetts  
Department of the State Treasurer  
Alcoholic Beverages Control Commission  
239 Causeway Street  
Boston, MA 02114  
Telephone: (617) 727-3040  
Fax: (617) 727-1258*

**Steven Grossman**  
*Treasurer and Receiver General*

**Kim S. Gainsboro, Esq.**  
*Chairman*

**AMEDNDED**  
**NOTICE OF CANCELLATION**

**Re: Marisco Del Caribe, Inc.**  
**Premise: 170 South Union Street**  
**City/Town: Lawrence, MA 01843**  
**License #: 059400138**  
**Heard: January 11, 2011**

After a hearing was held on January 11, 2011, the Commission finds that the Marisco Del Caribe, Inc. M.G.L. c.138, §23 and therefore, cancels the license forthwith.

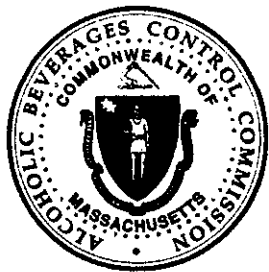
The licensee shall surrender the license immediately to the Commission Investigator hand-delivering this Notice.

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.

**Kim S. Gainsboro**  
**Chairman**

Dated: July 6, 2011

cc: Local Licensing Board  
Frederick G. Mahony, Chief Investigator  
Brad Doyle, Investigator  
File



*Commonwealth of Massachusetts  
Department of the State Treasurer  
Alcoholic Beverages Control Commission  
239 Causeway Street  
Boston, MA 02114  
Telephone: (617) 727-3040  
Fax: (617) 727-1258*

**Steven Grossman**  
*Treasurer and Receiver General*

**Kim S. Gainsboro, Esq.**  
*Chairman*

**NOTICE OF CANCELLATION**

**Re: Marisco Del Caribe, Inc.**  
**Premise: 170 South Union Street**  
**City/Town: Lawrence, MA 01843**  
**License #: 059400138**  
**Heard: January 11, 2011**

After hearing on January 11, 2011 the Commission finds violations of:

M.G.L. Ch.138 §23- Transfer of the privilege of a license without proper approval.

M.G.L. Ch.138 §64- A license issued by the local licensing authorities in violation of §16A or any other provision of this chapter

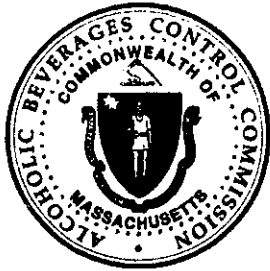
The above-captioned licensee's license is **suspended indefinitely forthwith as of June 29, 2011** until further order from this Commission.

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.

**Kim S. Gainsboro**  
**Chairman**

Dated: June 29, 2011

cc: Local Licensing Board  
Frederick G. Mahony, Chief Investigator  
Brad Doyle, Investigator  
File



*Commonwealth of Massachusetts  
Department of the State Treasurer  
Alcoholic Beverages Control Commission  
239 Causeway Street  
Boston, MA 02114  
Telephone: (617) 727-3040  
Fax: (617) 727-1258*

**Steven Grossman**  
*Treasurer and Receiver General*

**Kim S. Gainsboro, Esq.**  
*Chairman*

## **DECISION**

**Re: Marisco Del Caribe, Inc.**  
**Premise: 170 South Union Street**  
**City/Town: Lawrence, MA 01843**  
**License #: 059400138**  
**Heard: January 11, 2011**

Marisco Del Caribe, Inc. (the "Licensee" or "MCD") 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 11, 2011, regarding alleged violations of M.G.L. c.138, §64 and M.G.L. c.138, §23.

The following documents are in evidence:

1. Investigator Brad Doyle's Report;
2. Commission Transfer of License Application for Marisco Del Caribe;
3. Commission Form 43, Transfer Form, for Marisco Del Caribe dated August 16, 2001;
4. Commission Change of License Application for Marisco Del Caribe dated February 7, 2003;
5. Commission Form 43, New License, for Marisco Del Caribe dated February 27, 2003;
6. Commission Change of License Application for Marisco Del Caribe dated December 31, 2009;
7. Commission Form 43, New License, for Marisco Del Caribe dated December 31, 2009;
8. Demand Letter from Commission dated April 13, 2009;
9. Metro Business Credit Union Application
10. Bank Statements from Metro Credit Union for February and March 2009
11. License Renewal Application for 2009;
12. Metro Credit Union check, number 1127, payable to the City of Lawrence for \$2200.00; memo liquor license;
13. Photocopy of Arturo P. Taveras Massachusetts Driver's License; and

A. Letter from the Dominican Republic Public Ministry.

There is one (1) tape of this hearing.

## FACTS

1. Marisco Del Caribe, Inc. is a Massachusetts corporation organized under M.G.L. Ch. 156D. As of January 21, 1998, Maria Taveras was listed as the president, treasurer and director of MDC and Arturo Taveras was the clerk and a director.
2. In July of 2001, the corporation submitted an application for a wine and malt license, listing the above mentioned officers and directors with a beneficial interest in the license and Arturo Taveras as the manager. (Ex.2-5)
3. On December 18, 2001, the Commission approved by the application. (Ex. 3)
4. In February 2003, the corporation filed an application for a new all-alcohol license listing Maria Taveras as a ninety (90) percent shareholder and the license manager. (Ex. 4)
5. On June 25, 2003, the Commission approved the application. (Ex.5)
6. In December 2009, the corporation submitted a late renewal for 2010. Pursuant to M.G.L. c. 138, § 16A, the renewal was treated as a new application. (Ex.6)
7. The application appears to be a copy of the February 2003 application. (Ex. 4 and 6)
8. On December 31, 2009, the Commission approved the application. (Ex. 7).
9. On February 23, 2009, Aileen Moore and Oasis Reye submitted an application for a business savings and checking account for MDC from Metro Credit Union. The application lists these two individuals as Principals of MDC and as authorized signatories.
10. The account statements covering February 23, 2009 through March 31, 2009 show checks drawn on the account to pay expenses and payroll deductions for MDC.
11. On May 28, 2009, the investigators went to MDC accompanied by Lawrence Police Sergeant Jay Cerullo. When the investigators entered the building, they asked to speak with the owner. The person at the door, pointed to an individual later identified as Oasis Reyes. The investigators asked to speak with Mr. Reyes, who made the following statements
  - I am the manager.
  - I have not seen Arturo Taveras in several months.
  - I pay the employees.
  - I pay the rent every month to Arturo Taveras Realty for \$1000.00.
  - I order the alcohol.
12. Mr. Reyes also admitted to paying for the 2010 liquor license renewal from the Metro Credit Union checking account, from which he was one of the authorized signatories
13. Investigator Doyle testified that from his review of the 2009 license application, it appeared to him that the signature of Arturo Taveras was signed by a different individual. (Ex. 11)
14. The Local Board provided a copy of a check used to pay for the 2009 liquor license renewal. (Ex. 12)
15. This check was drawn from the Metro Credit Union Account in the name of MDC, of which Oasis Reyes is an authorized signatory, and on which he identifies himself as a principal of MDC.

## DISCUSSION

The licensee is charged with violating Ch. 138, §23, transferring the privilege of a license without proper approval and Ch. 138 §64-a license issued by the local licensing authorities in violation of §16A or any other provision of this chapter.

Transferring the Privilege of a license in violation of M.G.L.c. 138, § 23.

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 (1981). The Commission is instructed by the cases of *Cleary v. Cardullo's, Inc.*, 347 Mass. 337, 346-350 (1964) and *Number Three Lounge, Inc. v. Alcoholic Beverages Control Comm.*, 7 Mass.App. 301, 304-308 (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, 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.*, *Supra*.

The evidence that persuades the Commission that an unlawful transfer of the license occurred includes Investigator Doyle's testimony that when he went to MDC he spoke to an employee who identified Mr. Reyes as the owner. Mr. Reyes admitted to the investigators that he was the manager, had not seen Mr. Tavares in months, he paid the employees, he paid the rent every month, he ordered the alcohol, and he paid the 2010 liquor license renewal.

Further, Investigator Doyle provided bank statements in the name of MDC which is the corporation Mr. Tavares allegedly controls and which operated the restaurant out of 170 So. Union St. Lawrence, MA, the licensed premises. Aileen Moore and Oasis Reyes are the only signatories to the bank account. The bank statements show payments to various creditors. The account activity during this period also shows deposits of amounts varying from \$550 to \$9,767 with deposits made almost weekly. Neither Aileen Moore nor Oasis Reyes were disclosed or approved to hold or benefit from this license.

The licensee attempted to convince the Commission that Oasis Reyes was just a manager and that Mr. Tavares himself maintained control of the establishment and had the ability to hire and fire employees as well as oversee the business operation including making deposits and the paying of expenses. In this case, the Commission is persuaded that Mr. Reyes ran the business for his own account. The establishment of bank accounts, collection of sales revenue, payment of bills and ordering the alcohol is, at the least, a direct or indirect interest in the license by Reyes without the required approval. *Number Three Lounge, Inc. v. Alcoholic Beverages Control Commission*, 7 Mass. App. Ct. 301(1979) (the concept of a direct or indirect interest ranges from an absolute proprietary interest to a mere possessory right.)

The acts of handing over control of the licensed premise to Mr. Reyes, who was not approved by this Commission, and allowing him to run it for his own account by hiring and supervising the employees, paying all expenses and collecting the cash receipts is a violation of M.G.L. Ch. 138 §23, transferring the privilege of a license without proper approval.

License Issued By Local Licensing Authorities in Violation of §16A  
or any other provision of chapter 138, Ch. 138 §64.

While Investigator Doyle testified to his observations that warranted an inquiry, based on the evidence presented at the hearing, the Commission is not persuaded that there was a violation of M.G.L. Ch. 138 §64.

CONCLUSION

The Commission finds that the MDC violated M.G.L. Ch. 138 §23, transferring the privilege of a license without proper approval. The Commission cancels this license forthwith.

The Commission is not persuaded that MDC violated M.G.L. Ch. 138 §64.

ALCOHOLIC BEVERAGES CONTROL COMMISSION

Kim S. Gainsboro, Chairman

I, the undersigned, hereby certify that I have reviewed the hearing record and concur with the above decision.

Robert H. Cronin, Commissioner

Dated: June 29, 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: Peter G. Shaheen, Esq.  
Local Licensing Board  
Frederick G. Mahony, Chief Investigator  
Administration  
File