

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

MIR, INC.
102- 106 ESSEX STREET
LAWRENCE, MA 01840
LICENSE#: 059400255
VIOLATION DATE: 05/02/2015
HEARD: 09/01/2015

Mir, 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 1, 2015, regarding an alleged violation of 204 CMR 2.05 (2) Permitting an Illegality on the Licensed Premises, to wit: 527 CMR 10.13 (2) (E)¹ Failure to Complete the Fire and Building Safety Checklist as prescribed by the Marshall, on each day of operation prior to opening the facility to patrons. Prior to the commencement of the hearing, the Licensee stipulated to the violation alleged in Investigator Keefe's Report.²

¹ At the hearing, Licensee's counsel brought to the Commission's attention that 527 CMR 10.13(2)(e) was repealed on January 1, 2015, and the National Fire Protection Association's NFPA-1 (2012 ed.) was adopted in its place. Licensee's counsel indicated that he was not sure if there was a similar provision in the NFPA-1 that applied to the present facts and orally moved to dismiss this case on the basis of the repeal. The hearing proceeded in the event the Licensee's motion to dismiss was denied. The Commission hereby denies the motion to dismiss. Section 20.1.5.6.4 of the NFPA-1, under 527 CMR 1.05, is verbatim of the former 527 CMR 10.13(2)(e). The Commission concludes that the Licensee's due process rights were not violated by the wrong citation on the hearing notice. The violation remained unchanged, and the Licensee had notice of the substance and nature of the violation. "[D]ue process only requires that a notice provide enough information to 'understand the substance and nature of the grounds upon which they are called to answer.'" Elander & Son, Inc. v. Luther, 74 Mass. App. Ct. 1114, *4 (2009) (issued pursuant to Rule 1:28) (quoting Langlitz v. Bd. of Registration in Chiropractors, 396 Mass. 374, 277 (1985)). "Mere defects in matters of form will not invalidate a notice if enough remains for the person whose rights may be affected reasonably to understand the substance and the nature of the ground upon which he is called upon to answer." Higgins v. License Commissioners of Quincy, 308 Mass. 142, 146 (1941).

² The Licensee signed and filed a Stipulation of Facts in the event its motion to dismiss was denied. As indicated in note 1 above, the Commission denies the motion to dismiss.

The following documents are in evidence:

1. Investigator Keefe's Violation Report dated May 2, 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 file.

FACTS

1. On Saturday, May 2, 2014 at approximately 11:30 p.m., Investigators Kujawski, Keefe, and Bailey ("Investigators") investigated the business operation of Mir Inc. to determine the manner in which their business was being conducted.
2. Upon entering the premises, Investigators identified themselves to the manager on duty, Jose Marine.
3. Investigators asked the staff if they had filled out the Fire and Building Safety Checklist.
4. The staff produced a folder which contained completed Fire and Building Safety Checklists, except for the current evening. Staff stated the checklist for this evening had not yet been completed.
5. Investigators observed over 100 people present at the establishment at that time.
6. Investigators advised the staff that before opening and allowing patrons into the establishment, the Fire and Building Safety Checklist as prescribed by the Marshall must be completed.
7. Investigators informed Mr. Marine that a violation report would be submitted to the Chief Investigator for review.

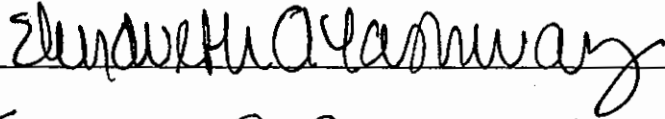
CONCLUSION

Based on the evidence, the Commission finds the Licensee violated 204 CMR 2.05 (2) Permitting an Illegality on the Licensed Premises, to wit: 527 CMR 1.05—NFPA-1 § 20.1.5.6.4,³ Fire and Building Safety Checklist. Therefore, the Commission **suspends the License for two (2) days of which two (2) days will be held in abeyance for a period of two (2) years provided no further violations of Chapter 138 or Commission Regulations occur.**

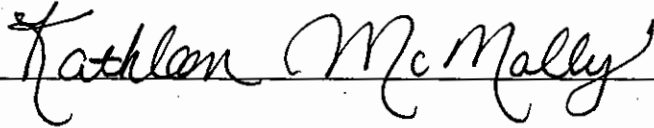
³ See supra note 1.

ALCOHOLIC BEVERAGES CONTROL COMMISSION

Elizabeth A. Lashway, Commissioner



Kathleen McNally, Commissioner



Dated: September 11, 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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cc: Local Licensing Board
Frederick Mahony, Chief Investigator
Dennis Keefe, Investigator
Jan Kujawski, Investigator
Rose Bailey, Investigator
Salim R. Tabit, Esq. via facsimile 978-327-5144
Administration, File