



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

Steven Grossman
Treasurer and Receiver General

AMENDED
NOTICE OF SUSPENSION

Kim S. Gainsboro, Esq.
Chairman

October 11, 2013

CLUB-PASSE-TEMPS OF LOWELL MA.
369-381 MOODY STREET
LOWELL, MA 01852
LICENSE#: 063000085
VIOLATION: 02/06/2013
HEARD: 07/09/2013 and 09/24/2013

After hearings on July 09, 2013 and September 24, 2013, the Commission finds Club-Passe-Temps of Lowell MA in violation of:

- 1) M.G.L. c. 138 §63A- Hindering or Delaying an Investigator of the Commission;
- 2) M.G.L. c. 138 §15A- Change of Officers and Directors in the corporation without authorization;
- 3) M.G.L. c.138 §64 – License issued under this chapter by the Local Licensing Authorities in violation of §16A or any other provision of this chapter.

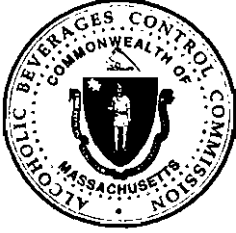
As such, the Commission **suspends the licensee's license for a total of eighty-eight (88) days to be served. The suspension shall commence on Wednesday, August 14, 2013 and terminate on Saturday, November 9, 2013.** The license will be delivered to the Local Licensing Board or its designee on Wednesday, August 14, 2013 at 9:00 A.M. It will be returned to the licensee Sunday, November 10, 2013.

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. All checks must be certified and accompanied by 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

cc: Local Licensing Board
Frederick G. Mahony, Chief Investigator
Jan Kujawski, Investigator
Rose Bailey, Investigator
Caroline Guarino-Wilichoski, Investigator
Philip S. Nuyman, Esq. via fax 978-934-0614
Administration



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Department of the State Treasurer
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MEMORANDUM AND ORDER ON LICENSEE'S
REQUEST FOR RECONSIDERATION OF
INDEFINITE SUSPENSION

CLUB-PASSE-TEMPS OF LOWELL MA.
369-381 MOODY STREET
LOWELL, MA 01852
LICENSE#: 063000085
VIOLATION: 02/06/2013
HEARD: 09/24/2013

Club-Passe-Temps of Lowell MA (the "Licensee") holds an all alcoholic beverages club license issued pursuant to M.G.L. c. 138, §12. The Alcoholic Beverages Control Commission (the "Commission") held a hearing on Tuesday, July 9, 2013, regarding an alleged violation of:

- 1) M.G.L. c. 138 §63A -Hindering or Delaying an Investigator of the Commission;
- 2) M.G.L. c. 138 §15A- Change of Officers and Directors in the corporation without authorization;
- 3) M.G.L. c.138 §64 -License issued under this chapter by the Local Licensing Authorities in violation of §16A or any other provision of this chapter

By decision dated August 14, 2013, the Commission found the licensee violated the above-captioned charges. The Commission **INDEFINITELY SUSPENDED** the license of Club-Passe-Temps of Lowell MA **effective forthwith**, until further written order of the Commission.

The Commission held that it would consider issuing a further order upon written request of the Licensee showing good cause to reconsider this indefinite suspension and a hearing before the Commission that the licensee attends. The term good cause includes, but is not limited to, the Licensee filing with both the Commission and the Local Board the appropriate applications for a change in the current officers and directors of the Club-Passe-Temps of Lowell, MA so that David Oulette is no longer a director or officer of the Licensee and that appropriate application is granted by the Local Licensing Authorities and approved by the Commission for the license manager to be changed to an individual other than Mr. David Oulette.

The Licensee filed a written request to reconsider the indefinite suspension. The Licensee attended a hearing before the Commission on Tuesday, September 24, 2013, and argued that good cause exists to reconsider the indefinite suspension.

At this hearing, the following documents were admitted in evidence:

1. The Commission Decision dated August 14, 2013;
2. Request for Reconsideration dated September 16, 2013 in which was stated that:
 - a) Licensee's Application for change of officers and directors made to the Commission, the City of Lowell, and the Secretary of State Corporations Division;

- a) Licensee's Application for change of officers and directors made to the Commission, the City of Lowell, and the Secretary of State Corporations Division;
- b) DOR has issued a Certificate of Good Standing;
- c) The manager of record is Robert Arcand.

There is one (1) audio recording of this hearing. One (1) witness testified and the Commission took administrative notice of the Commission records regarding this Licensee.

At the hearing, the Licensee presented testimony that David Oulette is no longer a director or officer of the Licensee. All necessary papers have been filed with the Local Board. The appropriate application has been approved, along with the new manager Robert Arcand, the president and Board of Directors. The DOR has issued a Certificate of Good Standing. Along with this evidence and argument at the hearing, the Commission was persuaded that, immediately upon receipt of the Commission Decision and Notice of the Indefinite Suspension, the Licensee complied with the order and suspended all licensed activities, and that the Licensee took steps to cure the non-compliance that formed the basis for the violations that resulted in the order of indefinite suspension.

However, the Commission takes very seriously the violation of M. G. L. c. 138 §63A Hindering/Delaying a Commission Investigator. The investigators often work under difficult circumstances. The Commission will not tolerate any conduct from a Licensee towards a Commission Investigator that is anything less than respectful or compliant. As a result, the order of Indefinite Suspension as to this violation will be lifted and a definite period of suspension will be imposed.

CONCLUSION

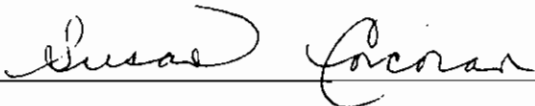
Based on the evidence, the Commission reconsiders and reverses its prior order of INDEFINITE SUSPENSION of Club-Passe-Temps of Lowell MA license **effective forthwith** relating to the violations:

- 1) M.G.L. c. 138 §15A- Change of Officers and Directors in the corporation without authorization;
- 2) M.G.L. c.138 §64 – License issued under this chapter by the Local Licensing Authorities in violation of §16A or any other provision of this chapter.

The indefinite suspension is reconsidered and reversed to a suspension of fifty-eight (58) days. The license has been suspended since August 14, 2013 and thus the suspension has been served.

As to the violation of M. G. L. c. 138, §63A Hindering/Delaying Investigator, the Commission also reconsiders and amends its decision dated August 14, 2013 and hereby **suspends the license for thirty (30) days to be served on and after the fifty-eight (58) day suspension, for a total of eighty-eight (88) days.**

ALCOHOLIC BEVERAGES CONTROL COMMISSION

Susan Corcoran, Commissioner 

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

Kathleen McNally, Commissioner 

Dated: October 11, 2013

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 Mahoney, Chief Investigator
- Jan Kujawski, Investigator
- Rose Bailey, Investigator
- Caroline Guarino-Wilichoski, Investigator
- Philip S. Nuyman, Esq. via fax 978-934-0614
- Administration
- File