

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

Steven Grossman
Treasurer and Receiver General

Kim S. Gainsboro, Esq.
Chairman

NOTICE OF SUSPENSION

October 18, 2012

NICK STONE, INC. DBA NO.9, THE ALE HOUSE GRILL
118 FERRY ST.
MALDEN, MA 02148
LICENSE#: 064600019
HEARD 10/16/2012

After a hearing on October 16, 2012, the Commission finds Nick Stone, Inc. dba No.9, The Ale House Grill in violation of:

- 1) 204 CMR 2.05(2) Permitting an Illegality on the licensed premises, to wit: M.G.L. c. 94 §186- Falling Below the Standard of Purity (5 Counts); and
- 2) 527 CMR 10.13 (2) (e) - 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 as required.

The Commission **suspends the licensee's license for a total of seven (7) days to be served. The suspension shall commence on Wednesday, December 5, 2012 and terminate on Tuesday, December 11, 2012.** The license will be delivered to the Local Licensing Board or its designee on Wednesday, December 5, 2012 at 9:00 A.M. It will be returned to the licensee Wednesday, December 12, 2012.

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.

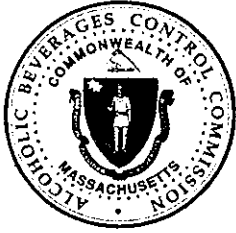
You are advised that you have the right to appeal this decision under M.G.L. c. 30A to Superior Court within thirty (30) days upon receipt of this notice.

ALCOHOLIC BEVERAGES CONTROL COMMISSION

Kim S. Gainsboro
Chairman

cc: Local Licensing Board
Frederick G. Mahony, Chief Investigator
Paul Capurso, Investigator
John W. Parcellin, Esq., via facsimile
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The Commonwealth of Massachusetts
Department of the State Treasurer
Alcoholic Beverages Control Commission
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DECISION

NICK STONE, INC. DBA NO.9, THE ALE HOUSE GRILL
118 FERRY ST.
MALDEN, MA 02148
LICENSE#: 064600019
HEARD 10/16/2012

Nick Stone, Inc. dba No.9, The Ale House Grill (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, February 7, 2012, regarding an alleged violation of:

- 1) 204 CMR 2.05(2) Permitting an Illegality on the licensed premises, to wit: M.G.L. c. 94 §186-Falling Below the Standard of Purity (5 Counts); and
- 2) 527 CMR 10.13 (2) (e) - 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 as required.

Prior to the commencement of the hearing, the licensee stipulated to the violation alleged in Investigator Capurso's Violation Report.

The following exhibits are in evidence:

1. Licensee's Stipulation of Facts; and
 2. Investigator Capurso's Investigative Report dated October 29, 2011.
- A. Licensee's Invoices

There is one (1) audio recording of this hearing.

FACTS

1. On Thursday, May 31, 2012, at approximately 9:00 p. m., Investigators Teehan, and Keefe investigated the business operation of Nick Stone, Inc. dba No.9, The Ale House Grill to determine the manner in which their business was being conducted and to address a complaint made to the Commission.
2. Investigators entered the licensed premises, identified themselves to the bartender on duty, and received permission to inspect the bar area.
3. The bartender on duty contacted the owner, Mr. Nick Luciani, who stated he was on his way to the location.

4. While inspecting the bar area, investigators observed bottles of alcohol which contained foreign matter, specifically fruit flies.
5. Investigators took five (5), one-liter bottles in evidence:
 - a. Captain Morgan Rum;
 - b. Jameson Whiskey;
 - c. Jim Beam Whiskey;
 - d. Jose Cuervo Tequila; and
 - e. Sauza Tequila.
6. Investigators asked Mr. Luciani to show them his daily Fire and Building Safety Checklist.
7. Mr. Luciani stated that he had not filled out the Fire and Building Safety Checklist forms for some time, and that he could not remember the last time he had filled them out, nor where any previous forms were kept.
8. Investigators inspected the liquor storage area and found several empty bottles of alcohol in two (2) different rooms.
9. Investigators also observed an empty Svedka Vodka box which had a shipping label for Kappy's Liquors in Medford, MA.
10. Mr. Luciani could not explain how or why this box from Kappy's Liquors was at his location.
11. Investigators requested that Mr. Luciani provide them with copies of the invoices for alcoholic beverages.
12. Mr. Luciani stated he did not keep the invoices on the licensed premises.
13. Investigators requested that Mr. Luciani provide them with invoice copies by June 5, 2012, and Mr. Luciani stated he would do so.
14. On June 13, 2012, Investigator Capurso contacted Mr. Luciani and stated he had not received the invoice copies requested.
15. Mr. Luciani stated, "I thought you said that if I don't have them to you by Tuesday, June 5th, then forget it."
16. Investigator Capurso informed Mr. Luciani that the invoices for alcoholic beverages should be at the Commission offices no later than noon the next business day.
17. On June 14, 2012, Mr. Lucian delivered his invoices from Horizon Beverage. The most recent invoice was dated December 8, 2011, with the earliest date in 2009.
18. Investigators did not see on the invoices several items of alcoholic beverages that had been found in the storage room or on the bar of the licensed premises. Those alcoholic beverages not invoiced were Grey Goose Vodka, Absolute Vodka, and Svedka Vodka.
19. Investigator Capurso informed Mr. Luciani of the violation, and showed to him the confiscated bottles of alcoholic beverage that contained the foreign matter.
20. Investigator Capurso informed Mr. Luciani that a report would be submitted to the Commission for review.

CONCLUSION

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

- 1) 204 CMR 2.05(2) Permitting an Illegality on the licensed premises, to wit: M.G.L. c. 94 §186-Falling Below the Standard of Purity (5 Counts); and
- 2) 527 CMR 10.13 (2) (e) - 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 as required.

Therefore, the Commission **suspends the license for a period of fifteen (15) days with seven (7) days to be served and eight (8) days to be held in abeyance for a period of two (2) years, provided no further violations of Chapter 138 or Commission Regulations occur.**

ALCOHOLIC BEVERAGES CONTROL COMMISSION

Susan Corcoran, Commissioner *Susan Corcoran*

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

Kathleen McNally, Commissioner *Kathleen McNally*

Dated: October 18, 2012

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
John W. Parcellin, Esq., via facsimile
Administration
File