

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

Deborah B. Goldberg
Treasurer and Receiver General

Kim S. Gainsboro, Esq.
Chairman

NOTICE OF SUSPENSION

December 17, 2015

PREETI, INC. DBA KABAB CORNER
4110A MYSTIC VALLEY PARKWAY
MEDFORD, MA 02155
LICENSE#: 068000067
VIOLATION DATE: 07/15/2013
HEARD: 12/15/2015

After a hearing on December 15, 2015, the Commission finds Preeti, Inc. dba Kabab Corner violated:

- 1) M.G.L. c. 138, §23 Sale of Alcoholic Beverages other than those purchased from a licensee under §18 or §19 or from a holder of a special license under §22A;
- 2) M.G.L. c. 138 §23 Transfer of the privilege of a license without proper approval;
- 3) M.G.L. c. 138, §26 Failure to have the appointment of the manager approved by the Licensing Authority.

The above-captioned Licensee's license is **SUSPENDED INDEFINITELY EFFECTIVE FORTHWITH** until further written order of the 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.

ALCOHOLIC BEVERAGES CONTROL COMMISSION

Kim S. Gainsboro
Chairman

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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
Tara Kelleher, Investigator
Derege Demissie, Esq. via facsimile 617-868-2520
Administration, File



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DECISION

PREETI, INC. D/B/A KABAB CORNER
4110A MYSTIC VALLEY PARKWAY
MEDFORD, MA 02155
LICENSE#: 068000067
VIOLATION DATE: 07/15/2013
HEARD: 12/15/2015

Preeti, Inc. d/b/a Kabab Corner (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, December 15, 2015, regarding alleged violations of:

- 1) M.G.L. c. 138, §23 Sale of Alcoholic Beverages other than those purchased from a licensee under §18 or §19 or from a holder of a special license under §22A;
- 2) M.G.L. c. 138 §23 Transfer of the privilege of a license without proper approval;
- 3) M.G.L. c. 138, §26 Failure to have the appointment of the manager approved by the Licensing Authority.

Prior to the commencement of the hearing, the Licensee stipulated to the violations alleged in Investigator Kelleher's Report.

The following documents are in evidence as exhibits:

1. Investigator Kelleher's Report dated July 15, 2013; 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 Commission file.

FACTS

1. Preeti, Inc. dba Kabab Corner applied for a c. 138, §12 license to be exercised at 4110A Mystic Valley Parkway, Medford, MA. The application was granted in April 2009 with Mohinder Badwal as President, Anil Kumar as Treasurer, and approved manager, Anil Kumar.
2. On Monday, July 15, 2013, at approximately 2:00 p.m., Investigators Temple and Kelleher ("Investigators") conducted an investigation of the business operation of Preeti, Inc. dba Kabab Corner to determine the manner in which its business was being conducted.
3. Investigators entered the licensed premises and were met by Rajesh Kumar, who identified himself as the manager.
4. Investigators conducted an inspection of the bar area where they observed several bottles of wine which had retail price stickers affixed to them.
5. Investigators took the wine with retail price stickers into evidence:
 - 3 bottles Arturo Tieruca Savignon Blanc (\$8.99);
 - 3 bottles Blackstone Merlot (\$8.99);
 - 4 liters Carol and Rossi Burgandy (\$13.99);
 - 1 bottle Morse Code Shiraz (\$9.99)
 - 1 bottle Mountain View Chardonnay (\$10.99);
 - 1 bottle 90+ Pinot Grigio (\$9.99); and
 - 3 bottles Piemonte Pinot Noir (\$8.99)
6. Investigators asked Rajesh from where he purchased the wine. Rajesh replied, "sometimes I get it at the store, sometimes Anil brings it; if I run out I call and have it delivered."
7. Rajesh provided investigators with the business card of Chris Lianos, of Ball Square Liquors, Somerville, MA. He stated that he had liquor delivered from Ball Square Liquors, "two or three times."
8. Investigators asked if Ball Square Liquors was aware that they were delivering to a restaurant. Rajesh responded, "I call them, tell them I'm from Kabab Corner, he delivers here."
9. Mr. Rajesh further stated that he purchased liquor from a liquor store "only once for \$300.00; I don't know how many times for Anil."
10. Rajesh then took investigators into the walk-in storage cooler where they observed several boxes of alcohol which had a distributor shipping label attached addressed to "Ball Square Liquors" in Somerville, MA.
11. Investigators took the boxes of alcohol as evidence:
 - 12 bottles of Kingfisher Lager;
 - one 24-pack of Kingfisher [beer] with a retail sticker \$8.69;
 - 11 bottles of Heineken beer;
 - 6 bottles of Mountain View Chardonnay; and
 - 5 bottles of Taj beer.
12. Investigators also took two 12-packs of Taj beer which Rajesh advised he had purchased from a retail package store for his personal consumption.
13. Investigators asked Rajesh how often Anil Kumar was at the restaurant. Rajesh responded, "maybe once a week." He stated that he runs the restaurant on a daily basis and "is in charge every day."

14. Investigators spoke to Anil Kumar via telephone. Anil advised investigators that Rajesh is "currently the manager" and that "he [Anil] is the sleeping partner to help them open the restaurant for them because they are my cousins."
15. Anil admitted that he is "hardly ever" at the restaurant, "maybe once a week."
16. In order to properly identify Rajesh for their report, investigators asked him for his license.
17. Rajesh stated that he did not have a driver's license or a passport.
18. When investigators asked Rajesh if he had a green card, he responded, "no, no green card." When asked if he was in the United States legally, Rajesh responded, "no."
19. Investigators informed Rajesh Kumar of the violation and that a report would be filed with the Chief Investigator for review.
20. It should be noted that investigators had gathered evidence from Ball Square Liquors in Somerville, MA which included information of this Licensee as a customer in their database. The total sales of all entries for Kabob [sic] Corner/Anil Kumar amounted to approximately \$24,673.00.

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). The procedure for the issuance of licenses to sell alcoholic beverages is set out in M.G.L. c. 138. Licenses must be approved by both local licensing authorities and the ABCC. M.G.L. c. 138, §§12, 67. See Beacon Hill Civic Assn. v. Ristorante Toscano, Inc., 422 Mass. 318, 321 (1996). Section 23 of c. 138 provides, in pertinent part: "Any license under this chapter held by an individual, partnership, or corporation may be transferred to any individual, partnership or corporation qualified to receive such a license in the first instance, if, in the opinion of the licensing authorities, such transfer is in the public interest." Section 2 of c. 138 provides, in pertinent part: "No person shall ... sell ... alcoholic beverages or alcohol, except as authorized by this chapter [.] Violation of any provision of this section shall be punished except as provided in section twenty-two [for unlawful transportation of alcoholic beverages] by a fine of not less than one hundred nor more than one thousand dollars or by imprisonment for not more than one year, or both."

In reviewing the authority of the Commission, the Supreme Judicial Court 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. Supreme Malt Products Co., Inc. v. Alcoholic Beverages Control Commission, 334 Mass. ---; Ziffrin, Inc. v. Reeves, 308 U.S. 132, 138-139; Carter v. Virginia, 321 U.S. 131, 137-143. 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. Particularly in view of the extent to which the policy of c. 138, and the basis for action under it, have been specified, as already indicated, there is no invalid delegation of authority to the commission in leaving to it, as was done in § [12], the power to approve or disapprove applicants for licenses. See Butler v. East Bridgewater, 330 Mass. 33, 36-37. Connolly v. ABCC, 334 Mass. 613, 619, (1956).

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. In the very respect here in issue, the approval or disapproval of the action of local licensing authorities, that history indicates that the Commission was charged with important responsibilities and that it was not to be narrowly restricted in performing them.” Connolly v. ABCC, 334 Mass. 613, 617 (1956).

M.G.L. c. 138, § 23 – Transfer of the privilege of a license without proper approval:

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, 429 N.E.2d 62, 65 (1981). The Commission is instructed by the cases of Cleary v. Cardullo’s, Inc., 347 Mass. 337, 346-350, 198 N.E.2d 281 (1964) and Number Three Lounge, Inc. v. Alcoholic Beverages Control Commission, 7 Mass. App. Ct. 301, 304-308, 387 N.E.2d 181 (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, 429 N.E.2d at 65, 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., 12 Mass.App.Ct. at 773-774, 429 N.E.2d at 66. When Mr. Kumar transferred the management of the license to Rajesh Kumar he did it in violation of this statute.

CONCLUSION

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

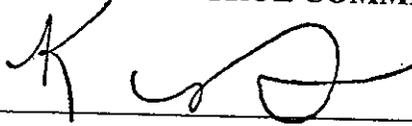
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- 2) M.G.L. c. 138 §23 Transfer of the privilege of a license without proper approval;
- 3) M.G.L. c. 138, §26 Failure to have the appointment of the manager approved by the Licensing Authority

Therefore, the Commission **INDEFINITELY SUSPENDS** the license of Preeti, Inc. dba Kabab Corner **EFFECTIVE FORTHWITH** until further written order of the Commission.

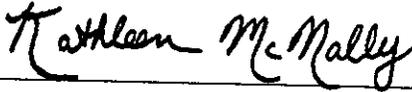
The Commission will not issue any further order without a written request from the Licensee showing good cause to reconsider this indefinite suspension and a hearing before the Commission that the Licensee attends.

ALCOHOLIC BEVERAGES CONTROL COMMISSION

Kim S. Gainsboro, Chairman



Kathleen McNally, Commissioner



Dated: December 17, 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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