



*Commonwealth of Massachusetts
Alcoholic Beverages Control Commission
95 Fourth Street, Suite 3
Chelsea, Massachusetts 02150-2358*

Jean M. Lorizio, Esq.
Chairman

NOTICE OF REVOCATION

February 2, 2021

**PLEASANT VIEW CITIZENS CLUB
10 A DEWEY STREET
METHUEN, MA 01844
LICENSE#: 00013-CL-0696
VIOLATION DATE: 12/06/2020
HEARD: 1/12/2021**

After a hearing on January 12, 2021, the Commission finds Pleasant View Citizens Club violated:

- 1) 204 CMR 2.05 (2) Permitting an Illegality on the Licensed Premises, to wit: Mass. Exec. COVID-19 Order No. 37 (June 6, 2020) - Violation of sector specific workplace safety standards for restaurants to address COVID-19;
- 2) 204 CMR 2.05 (2) Permitting an Illegality on the Licensed Premises, to wit: Mass. Exec. COVID-19 Order No. 40 (June 19, 2020) - Violation of sector specific workplace safety standards for restaurants to address COVID-19;
- 3) 204 CMR 2.05 (2) Permitting an Illegality on the Licensed Premises, to wit: Violation of Mass. Exec. COVID-19 Order No. 54 (Nov. 2, 2020);
- 4) M.G.L. Ch. 138, § 1 Failure to file with the Commission annually a list of the names and residences of its officers, together with the amount of salary or compensation received by each employee engaged in the handling or selling of alcoholic beverages;
- 5) M.G.L. Ch. 138, § 15A Change of Officers and Directors without authorization;
- 6) M.G.L. Ch. 138 § 64 License issued under this chapter by the Local Licensing Authorities in violation of § 16A or any other provision of this chapter;
- 7) M.G.L. Ch. 138, § 26 Operating without an approved manager.

On the charge, M.G.L. Ch. 138, § 64 License issued under this chapter by the Local Licensing Authorities in violation of § 16A or any other provision of this chapter, the Commission **REVOKES the license of Pleasant View Citizens Club EFFECTIVE FORTHWITH.**

Since the Commission REVOKES the license based on the statutory requirements under M.G.L. c. 138, § 64, it need not impose a penalty for the other violations found.

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



Jean M. Lorizio
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
Kyle E. Gill, Esq., Associate General Counsel
Dennis Keefe, Investigator
Joseph Di Cicco, Investigator
Michael Flanagan, Dept. of Labor Standards
Administration, File



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DECISION

**PLEASANT VIEW CITIZENS CLUB
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METHUEN, MA 01844
LICENSE#: 00013-CL-0696
VIOLATION DATE: 12/06/2020
HEARD: 1/12/2021**

Pleasant View Citizens Club (the "Licensee") holds an alcoholic beverages license issued pursuant to M.G.L. c. 138, § 12. The Alcoholic Beverages Control Commission ("ABCC" or "Commission") held a remote hearing via Microsoft Teams on Tuesday, January 12, 2021, regarding alleged violations of:

- 1) 204 CMR 2.05 (2) Permitting an Illegality on the Licensed Premises, to wit: Mass. Exec. COVID-19 Order No. 37 (June 6, 2020) - Violation of sector specific workplace safety standards for restaurants to address COVID-19;
- 2) 204 CMR 2.05 (2) Permitting an Illegality on the Licensed Premises, to wit: Mass. Exec. COVID-19 Order No. 40 (June 19, 2020) - Violation of sector specific workplace safety standards for restaurants to address COVID-19;
- 3) 204 CMR 2.05 (2) Permitting an Illegality on the Licensed Premises, to wit: Violation of Mass. Exec. COVID-19 Order No. 54 (Nov. 2, 2020);
- 4) M.G.L. Ch. 138, § 1 Failure to file with the Commission annually a list of the names and residences of its officers, together with the amount of salary or compensation received by each employee engaged in the handling or selling of alcoholic beverages;
- 5) M.G.L. Ch. 138, § 15A Change of Officers and Directors without authorization;
- 6) M.G.L. Ch. 138 § 64 License issued under this chapter by the Local Licensing Authorities in violation of § 16A or any other provision of this chapter;
- 7) M.G.L. Ch. 138, § 26 Operating without an approved manager.

The above-captioned occurred on December 6, 2020 according to Investigator Keefe's Report.

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

The following documents are in evidence:

1. Investigator Keefe's Report;
2. Certified Copy of ABCC file for Licensee;
3. Secretary of the Commonwealth, Business Entity Summary for Pleasant View Citizens Club, 1/11/2021;
4. Massachusetts Executive COVID-19 Order No. 37, 6/6/2020;
5. Massachusetts Executive COVID-19 Order No. 40, 6/19/2020;
6. Massachusetts Executive COVID-19 Order No. 54, 11/2/2020;
7. Massachusetts Sector Specific Workplace Safety Standards for Restaurants to Address COVID-19, 11/5/2020;
8. ABCC Enforcement Memorandum, 1/11/2021;
9. Licensee Stipulation of Facts;
- A. Photographs (5) of Interior of Licensed Premise.

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

FINDINGS OF FACT

1. On Sunday, December 6, 2020, Investigators Di Cicco and Keefe ("Investigators"), conducted an investigation of Pleasant View Citizens Club to determine the manner in which its business was being conducted, and to ensure compliance with Massachusetts Governor Charles Baker's Executive COVID-19 Orders. (Testimony, Exhibit 1)
2. From outside the licensed premises, Investigators observed multiple individuals walking inside without any facial coverings, some in possession of alcoholic beverages. Id.
3. Investigators entered the establishment and observed approximately six (6) individuals in possession of alcoholic beverages seated at the bar in close proximity to one another. There was no plexiglass barrier between the bar workstation and the patrons seated at the bar nor any barriers between the patrons. Id.
4. Investigators did not observe any indication of food service. Id.
5. Investigators observed multiple individuals standing or walking around without facial coverings, most of them in possession of alcoholic beverages, and less than 6 feet apart from one another. Id.
6. Investigators observed a group of patrons standing and playing a shuffleboard game. None of the patrons wore a facial covering. Id.
7. Investigators approached an unknown male individual (MI-1) without a facial covering, identified themselves, and asked to speak with an employee. MI-1 walked behind the bar and was observed on a cellular telephone. Id.
8. Another male individual (MI-2) positioned himself behind the Investigators and near the exit. Id.

9. Investigators continued to observe patrons walking about the premise without facial coverings and in possession of alcoholic beverages. Id.
10. Investigators observed a male individual exit the licensed premises and return with masks in hand. That individual then distributed the facial coverings to individuals within the premises. Id.
11. Investigators observed a female individual (FI-1) without any facial covering, come up from the basement and walk behind the bar. Investigators identified themselves and asked to speak with her outside. Id.
12. Male individual (MI-2) approached the FI-1. MI-2 then identified himself as the bartender and informed Investigators that he would speak with them outside. Id.
13. Investigators observed that MI-2 was not wearing any facial covering and was in possession of an alcoholic beverage. Id.
14. Investigators stepped outside the premises with FI-1 and MI-2. Investigator Di Cicco spoke with MI-2 about being the bartender and consuming an alcoholic beverage while on duty. MI-2 then stated that he was not the bartender. Id.
15. Investigator Keefe attempted to address the COVID complaint with FI-1 and inquired as to whether food was being served. FI-1 stated she had just started her shift and that MI-1 had been on duty before she arrived. FI-1 stated she was now the only employee working, she had not yet served any food, and that frozen food was kept in the basement. Id.
16. A third male individual (MI-3) came outside and provided Investigators with the liquor license. Id.
17. Investigators gave a business card to FI-1 and asked her to have the manager or president of the club contact them. Id.
18. At no point during the investigation did FI-1 put on a facial covering. Id.
19. On Monday, December 7, 2020, Robert Berube contacted Investigator Keefe. Mr. Berube identified himself as treasurer of the club. Mr. Berube identified Shawn Danahy as President of the club but stated Mr. Danahy was not available. Id.
20. Investigator Keefe asked Mr. Berube to identify the manager of record. Mr. Berube stated the club does not have a manager of record. When asked who is responsible for making decisions at the club, Mr. Berube stated decisions are made by the board of directors. Mr. Berube stated that he signs all paperwork. Id.
21. Investigator Keefe conducted an administrative review of the Commission's file regarding the Licensee. Thomas Hambleton is the last approved manager of record. Mr. Hambleton is identified as manager of record on the annual renewal applications from 2007 to the present. (Testimony, Exhibit 2)
22. Mr. Hambleton was approved as manager on December 28, 2005. The application seeking such approval identified the corporate officers as:

- President, Thomas Hambleton;
 - Vice-President, William McMahon;
 - Clerk/Secretary, James Fitzpatrick;
 - Treasurer, Raymond Tulley. (Testimony, Exhibit 2)
23. Administrative review of the Licensee's file shows the corporate officers listed in the 2005 change of manager application were never approved by the Local Licensing Authority ("LLA") and the ABCC. Id.
24. The Licensee's Renewal Applications for 2006 through 2016 were signed by Raymond Tulley, Treasurer. Mr. Tulley was not an approved officer, director, or manager of record by the LLA and the ABCC. Id.
25. The Renewal Applications for 2019 and 2020 were signed by Robert Berube. Mr. Berube has not been approved as an officer, director, or manager of record by the LLA and the ABCC. Id.
26. A review of the Secretary of the Commonwealth's Corporations division indicates that the current officers and directors of the club are:
- President, Brian McCarthy;
 - Clerk, Charles Maroun;
 - Treasurer, Stephen Gauvin. (Testimony, Exhibit 3)
27. The Licensee has not filed an annual report with the Secretary of the Commonwealth since December 26, 1990. The Corporations division website indicates the Licensee's certificate was involuntarily revoked on June 18, 2012. Id.
28. On December 9, 2020, Investigators Keefe and Di Cicco contacted Mr. Berube to inquire about Thomas Hambleton, the approved manager of record. Mr. Berube stated that Mr. Hambleton is not around anymore and has not attended any club meetings in years. Mr. Berube stated that he and Mr. Danahy are the only corporate officers. (Testimony, Exhibit 1)
29. Investigators asked Mr. Berube who orders the alcoholic beverages and signs checks for the club. Berube stated that he orders alcohol from various distributors and writes checks. Id.
30. Mr. Berube informed Investigators that he has been signing the annual renewal application. When asked if he had ever applied to become a corporate officer, director or manager of the licensee entity, Mr. Berube responded in the negative. Id.
31. Investigators made Mr. Berube aware of their observations and Mr. Berube stated that he would take corrective action to come into compliance. Id.
32. Investigators advised Mr. Berube of the violations and that a report would be filed with the Chief Investigator for review. Id.

33. Investigators later provided Mr. Berube, via email, the Sector Specific Safety Standards for Restaurants and COVID-19 Orders. *Id.*
34. Mr. Berube attended the Commission hearing and testified he is the Financial Secretary of the Licensee club, a position he has held for the last 3 years. He testified that Mr. Hambleton has not attended club meetings for approximately 5 years. (Testimony)
35. Mr. Berube further testified that he has renewed the license with the Local Board for the last 3 years. *Id.*
36. Mr. Berube was shown the 2019 and 2020 renewal applications and confirmed his signature on both documents. (Testimony, Exhibit 2)
36. The Licensee has held a license under M.G.L. c. 138, § 12 since 1962 with no prior violations. (Exhibit 2)

DISCUSSION

Under the pertinent provisions of M.G.L. Ch.138, § 16A, a license “shall be automatically renewed for the next annual license period upon application by the holder thereof during the month of November and shall be automatically renewed...provided that said license is of the same type as the expiring license and covers the same licensed premises. If the application does not meet the conditions hereunder it shall be treated as an application for a new license and all the procedures set forth under section 15A shall be applicable thereto.” If “it appears to the commission that a license has been issued under this chapter by the local licensing authorities...in violation of section sixteen A or any other provision of this chapter, the commission *shall*, after notice to said authorities and to the holder of such license and after reasonable opportunity for them to be heard by it, revoke such license, whereupon such license shall be surrendered to said authorities, and the decision of the commission shall be final and conclusive.” M.G.L. Ch. 138, § 64

The Commission has a longstanding administrative practice under M.G.L. Ch. 138, § 15A allowing “all persons who have a direct or indirect beneficial interest in said license” to sign the application for renewal. A corporate officer, a director, a shareholder, a license manager, or an individual owner, who has been previously disclosed to and approved by both the LLA and the Commission, must sign the renewal form.

The last approved officers of the licensee are as follows: Oswald Liehr, President; George Van Acker, Vice President and Manager of Record; Leslie Bromhall, Secretary; and Ralph Nesbitt, Treasurer. Only these individuals were authorized to sign a renewal application. Because this is a “club” type of license under M.G.L. Ch.138, § 12, no individual was a shareholder or held in such a capacity a lawful direct or indirect beneficial interest. A review of the signature on the renewal applications for the years 2006 through 2016, and for 2019 and 2020 revealed that the signature is not that of Messrs. Liehr, Van Acker, Bromhall or Nesbitt. The renewal applications for 2006 through 2016 were signed by Ralph Tulley. The renewal application for 2019 and 2020 were signed by Robert Berube. Neither Raymond Tulley nor Robert Berube was the license manager, or a corporate officer or director that had been disclosed and approved in writing by both the LLA and the Commission. The LLA approved the Licensee’s renewal applications for 2006 through 2016, and 2019-2020 despite the fact that the Licensee did not comply with the renewal

requirements expressly set forth in M.G.L. Ch.138, § 16A. Consequently, the license was renewed by the LLA contrary to the requirements of, and in violation of, M.G.L. Ch.138, § 16A.

Notwithstanding the fact that the LLA approved this Licensee's thirteen annual renewals with an unauthorized person's signature, the Commission cannot let stand an action of the LLA that it could not lawfully authorize in the first place. See Hastings Associates, Inc. v. Local 369 Building Fund, Inc., 42 Mass.App.Ct. 162, 178 (1997) (there is a "strong public policy favoring enforcement of our licensing laws regarding the selling of alcoholic beverages"); Beacon Hill Civic Assn. v. Ristorante Toscano, Inc., 422 Mass. 318, 320-324 (1996) (private contract purporting to transfer control of license held to be illegal and unenforceable under public policy expressed in the Liquor Control Act, chapter 138); Zelman v. ABCC, 335 Mass 515 (1957). The Commission finds that the renewal of the license of Pleasant View Citizens Club for calendar years 2006 through 2016, 2019 and 2020 violated M.G.L. Ch.138, § 64.

The specific language of this chapter mandates that the Commission revoke the license. Rigali v. Cahill, Hampden Superior Court C.A. No. 2008-00362, Memorandum and Order Dated July 22, 2009 (Veils, J.) (where renewal of license was "in clear violation of the plain language of M.G.L. Ch.138, § 16A, the Commission was obligated to revoke the license pursuant to M.G.L. Ch.138, § 64."); see In Re: Margaret's Restaurant, Inc., dba Hokey's, Oxford, MA (ABCC Decision dated October 18, 2005); In re: Pop's Cafe, Inc., Holyoke, MA (ABCC Decision dated March 12, 2008). As the Commission acknowledged in Margaret's, no other sanction is available for the Commission to consider given the express language of the statute. Id. "Revocation for violations of § 16A was established by the Legislature in G. L. c. 138, §64, not by ABCC." Dawes Avenue Variety, Inc. v. ABCC, Berkshire Superior Court C.A. No. 1876CV0105, Memorandum and Order Dated February 19, 2019 (Agostini, J.) The Commission has no discretion here and must revoke the license forthwith.

The Commission finds that the renewal of the license of Pleasant View Citizens Club for calendar years 2006 through 2016, 2019 and 2020 violated Ch.138 §64 – License issued under this chapter by the LLA in violation of section 16A or any other provision of this chapter.

CONCLUSION

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

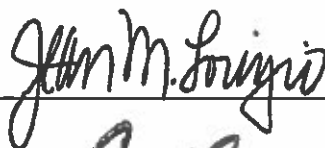
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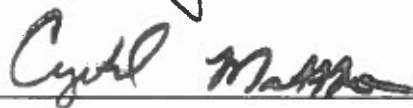
Since the Commission **REVOKES** the license based on the statutory requirements under M.G.L. c. 138, § 64, it need not impose a penalty for the other violations found.

ALCOHOLIC BEVERAGES CONTROL COMMISSION

Jean M. Lorizio, Chairman



Crystal Matthews, Commissioner



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

Deborah A. Baglio, Commissioner



Dated: February 2, 2021

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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