

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

*Steven Grossman*  
*Treasurer and Receiver General*

**NOTICE OF SUSPENSION**

*Kim S Gainsboro, Esq.*  
*Chairman*  
June 18, 2013

**EDWARD CLARK POST #107 AM. LEGION INC. DBA AMERICAN LEGION**  
**11 WEST CENTRAL ST.**  
**NATICK, MA 01760**  
**LICENSE#: 076800007**  
**VIOLATION DATE: 01/17/2013**  
**HEARD: 05/14/2013**

After a hearing on May 14, 2013, the Commission finds Edward Clark Post #107 Am. Legion Inc. dba American Legion in violation of:

- 1) 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;
- 2) M.G.L. Ch. 138 §64 Failure to comply with the laws of the Commonwealth, to wit: M.G.L. Ch. 156D, §16.22; 950 CMR 113.57 Failure to file Annual Reports with the Secretary of the Commonwealth, Corporations Division.

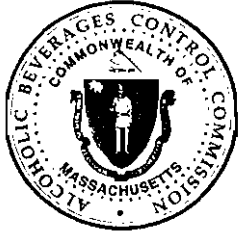
The above-captioned licensee's license is **SUSPENDED INDEFINITELY EFFECTIVE FORTHWITH** until further written order from this Commission.

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

cc: Local Licensing Board  
Frederick G. Mahony, Chief Investigator  
Tara Kelleher, Investigator  
Frederick W. Riley, Esq. via fax 781-581-7301  
Administration  
File



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

*Steven Grossman*  
*Treasurer and Receiver General*

*Kim J. Guinsboro, Esq.*  
*Chairman*

**DECISION**

**EDWARD CLARK POST #107 AMERICAN LEGION INC.**  
**d/b/a AMERICAN LEGION**  
**11 WEST CENTRAL ST.**  
**NATICK, MA 01760**  
**LICENSE#: 076800007**  
**VIOLATION DATE: 01/10/2013**  
**HEARD: 05/14/2013**

Edward Clark Post #107 Am. Legion Inc. d/b/a American Legion (the "Licensee" or "the Post") holds an all alcoholic beverages club-type license issued pursuant to M.G.L. c. 138, §12. The Alcoholic Beverages Control Commission (the "Commission") held a hearing on Tuesday, May 14, 2013, regarding an alleged violation of:

- 1) 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; and,
- 2) M.G.L. Ch. 138 §64 Failure to comply with the laws of the Commonwealth, to wit: M.G.L. Ch. 156D, §16.22; 950 CMR 113.57 Failure to file Annual Reports with the Secretary of the Commonwealth, Corporations Division.

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

The following documents are in evidence:

1. Licensee's Stipulation of Facts;
2. Investigator Kelleher's Investigative Report dated January 10, 2013;
3. Secretary of the Commonwealth, Corporate Division, Involuntary Revocation dated June 18, 2012; and
4. Secretary of the Commonwealth, Corporate Division, Certificate of Change of Directors / Officers of Non-Profit Corporation dated May 13, 2013.

Submitted by Edward Clarke Post #107 which includes:

- A-1. Commission Notice of Hearing dated April 1, 2013 for hearing to be held May 14, 2013;
- A-2. Secretary of the Commonwealth, Revival Certificate dated April 23, 2013;
- A-3. Secretary of the Commonwealth Annual Reports for 2006-2007; 2009, 2011-2012;
- A-4. Names and Address of Officers, with List of Employees and Salaries, dated May 13, 2013;
- A-5. Income and Charitable Donations for 2009, 2011, and 2012;
- A-6. Five Letters of Recommendation;
- A-7. Discharge Papers for Thomas Greene; and
- A-8. Commonwealth of Massachusetts House Docket no. 1547 dated January 18, 2013.

There is one (1) audio recording of this hearing, and three witnesses testified.

### FACTS

1. On Friday, January 10, 2013, at approximately 9:00 p.m. Investigators Keefe and Kelleher investigated the business operation of Edward Clark Post #107 Am. Legion Inc. d/b/a American Legion to determine the manner in which their business was being conducted, and to investigate complaints filed with this Commission.
2. Investigators entered the premises, proceeded to the bar area and identified themselves to the bartender on duty.
3. A male patron stated in an aggressive manner that he was a member of the board, and wanted to “know why [investigators] were there.”
4. Investigators identified themselves to the male patron and asked for his name.
5. The male patron responded, “Bill” but refused to give his surname.
6. Investigators spoke to the bartender and asked to see the liquor license, which was located at the opposite end of the bar.
7. As investigators proceeded to the other end of the bar, the male patron, “Bill” yelled to customers in the entire bar area in an intimidating manner, “don’t tell them nothing, say nothing.”
8. Customers in the bar turned in the direction of investigators and asked “is there a problem here, can we help you with something?”
9. Investigators then asked the bartender to step away from the bar so that they could speak to him in a safe area, as the customers in the bar continued to make hostile intimidating comments to investigators.
10. Investigators requested that the bartender contact the manger of record but the bartender was unable to do this, as he was unclear as to who the manger was.
11. Investigators asked the bartender to identify the male patron “Bill”.
12. The bartender stated, “he’s just an old drunk who thinks he’s on the board, he doesn’t know anything.”
13. Investigators then asked if the bartender knew the male patron’s last name. The bartender responded, “Thistle.”
14. Investigators observed a “Board of Directors” list affixed to a board on the wall in the bar area. The Board of Directors list named a William Thistle as Senior Vice Commander.
15. Investigators discussed with the bartender the level of intoxication the patrons appeared to have, and advised him that it was his responsibility not to over-serve alcohol to the patrons, as well as to ensure that such patrons had a safe mode of transportation home.
16. The bartender stated that he understood these responsibilities, and he intended to close the bar as soon as the investigators completed their business with him.
17. Investigators provided the bartender with their contact information, and requested that the manager of record contact them as soon as possible.
18. Investigators conducted an administrative review of the licensee’s file.
19. The review indicated that the licensee has failed to submit applications for new officers and/or directors since its inception on October 6, 1975.
20. The review also indicated that, pursuant to M.G.L. Ch. 138, §1, the licensee has failed to provide the Commission with an annual list of the names and residences of all officers, and the salaries of employees, since November 18, 1985.
21. A review of the Secretary of the Commonwealth, Corporate Division reveals that the licensee has failed to file annual reports, pursuant to M.G.L. Ch. 156D, §16.22; 950 CMR 113.57. The website lists the corporation has been “involuntarily revoked” as of June 18, 2012.
22. During the Commission hearing, Counsel for the Licensee represented to the Commission that the Annual Reports required to be filed with the Secretary of State’s Office are current.

23. The records from the Secretary of State Corporations Division indicate that the Licensee Corporation filed the necessary paperwork for the Officers and Directors of the Corporation as of May 13, 2013. The corporate status is current, and no longer “involuntary revoked.”
24. In correspondence from the attorney for the Licensee (that was not submitted in evidence) the Post provided some information regarding the employees, a finance officer, and a canteen manager. The information provided consisted of their names, addresses, positions held within the licensed business and hourly wages. This information was submitted by letter dated April 25, 2013 but the information submitted on two (2) single sheets of paper is not dated and does not state the year for which the information applies. The information provided does not identify the period for which the identified directors served. No gross income received by each individual was identified in the information provided.

### DISCUSSION

Licenses to sell alcoholic beverages are a special privilege subject to public regulation and control, Connolly v. Alcoholic Beverages Control Commn., 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). 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.”

Licenses to sell alcoholic beverages are a special privilege subject to public regulation and control, Connolly v. Alcoholic Beverages Control Commn., 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 section [12], the power to approve or disapprove applicants for licenses. See Butler v. East Bridgewater, 330 Mass. 33, 36-37, Connolly v. Alcoholic Beverages Control Commission, 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. Alcoholic Beverages Control Commission, 334 Mass. 613, 617 (1956).

**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 the salary or compensation received by each employee engaged in the handling or selling of alcoholic beverages:**

M.G.L. Ch. 138, section 1 states, in pertinent part, that the holder of a club-type § 12 license, like the Post, “Such club shall file with the local licensing authorities and the commission annually within three months after January first in each year 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.” The Licensee filed a document with the Commission which appears to be for current year 2013. Under a cover letter dated April 25, 2013 and a second dated May 13, 2013. No evidence was submitted that showed the Post filed any of this information with the local licensing authorities. The documents filed with the Commission did not comply with statutory requirements established in section 1 of chapter 138 of the General Laws, viz., “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.” The Licensee has not filed any of these statutorily required annual reports since 1985.

The Commission finds that the Licensee committed a violation of M.G.L. Ch. 138, section 1. The Commission is requiring the Licensee to file the required annual reports for the last ten (10) years, from calendar year 2003 through calendar year 2012.

**M.G.L. Ch. 138 §64 Failure to comply with the laws of the Commonwealth, to wit: M.G.L. Ch. 156D, §16.22; 950 CMR 113.57 Failure to file Annual Reports with the Secretary of the Commonwealth, Corporations Division:**

The Post was charged with violating M.G.L. Ch. 138 §64 Failure to comply with the laws of the Commonwealth. The allegations and the notice of hearing contained the added specification of the manner in which the Post allegedly violated M.G.L. Ch. 138 §64, viz., that the Post failed to file annual reports with the Secretary of the Commonwealth as required by statute. The statute that creates this obligation on the Post was cited to be M.G.L. Ch. 156D, §16.22. A regulation that implements M.G.L. Ch. 156D, §16.22 was also cited 950 CMR 113.57. The Post admitted to this violation without claim of prejudice in its opportunity to identify the violation alleged or to prepare a defense to the charge or to prepare and present mitigating evidence to the violation as alleged.

M.G.L. Ch. 156D, §16.22, by its plain language, does not apply to chapter 180, non-profit corporations such as the Edward Clark Post. Similarly, 950 CMR 113.57, the regulation that implements M.G.L. Ch. 156D, §16.22, does not apply to chapter 180, non-profit corporations like the Post. But this does not mean the Post did not violate a law of the Commonwealth by failing to file annual reports with the Secretary of the Commonwealth.

M.G.L. Ch. 180, §26A does require non-profit corporations, like the Post, to file annual reports with the Secretary of the Commonwealth. The evidence presented to the Commission at the hearing included testimony that a review of the website of the Secretary of the Commonwealth, Corporate Division reveals

that the licensee Post has failed to file annual reports, pursuant to M.G.L. Ch. 180, §26A; 950 CMR 113.57 This website lists that the corporation has been “involuntarily revoked” as of June 18, 2012.

During the Commission hearing, Counsel for the Licensee represented to the Commission that the Annual Reports required to be filed with the Secretary of State’s Office are current. The records from the Secretary of State Corporations Division indicate that the Post filed the necessary paperwork for the Officers and Directors of the Corporation as of May 13, 2013. The corporate status is current, and no longer “involuntary revoked.”

The Commission finds that the licensee committed a violation of M.G.L. Ch. 138 §64, Failure to comply with the laws of the Commonwealth, to wit: M.G.L. Ch. 180, §26A; 950 CMR 113.57, Failure to file Annual Reports with the Secretary of the Commonwealth, Corporations Division.<sup>1</sup>

Evidence presented during the course of the hearing indicates that Investigators conducted an administrative review of the licensee’s file. The administrative review indicates that the licensee has failed to submit applications for new officers and/or directors since its inception on October 6, 1975. The Commission is referring this matter to the Investigative Unit for further action regarding this information, forthwith.

**The Commission is extremely concerned with evidence presented to the Commission regarding the conduct of one individual member of the Board of Directors, as well as the patrons, when Investigators Kelleher and Keefe entered the premises to perform their duties, and to do their jobs. The Commission absolutely, positively, emphatically, and unequivocally cannot and does not condone hindering and delaying Commission investigators, a lack of cooperation and interference with the Investigators in the performance of their duties in their professional capacity, under any circumstances, and in any condition.** (Emphasis supplied.) The Commission notes that conduct such as that described in the hearing before the Commission can be prosecuted criminally pursuant to M.G.L. Ch. 138, §63A and M.G.L. Ch. 138, §34B (“[a]ny person in a licensed premises shall, upon request of an agent of the commission ... state his name, age, and address. Whoever, upon such request, refuses to state his name, age or address, or states a false name, age, or address, including a name or address which is not his name or address in ordinary use, shall be guilty of a misdemeanor and shall be punished.”) The conduct of William Thistle is an aggravating circumstance that, given his posted title of Director and Senior Vice Commander of the Post, adversely impacts the Post.

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<sup>1</sup> Evidence presented during the course of the hearing indicates that Investigators conducted an administrative review of the licensee’s file. The administrative review indicates that the licensee has failed to submit applications for new officers and/or directors since its inception on October 6, 1975. The Commission is referring this matter to the Investigative Unit for further action regarding this information, forthwith including, but not limited to, prosecution for violating M.G.L. Ch. 138, §15A. See, e.g., In Re: George Dilboy Post #529 Inc. V.F.W. Of U.S., Somerville, (ABCC Decision dated January 3, 2012.)

## CONCLUSION

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

- 1) 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;
- 2) M.G.L. Ch. 138 §64 Failure to comply with the laws of the Commonwealth, to wit: M.G.L. chapter 180, §26A; 950 CMR 113.57 Failure to file Annual Reports with the Secretary of the Commonwealth, Corporations Division.

Therefore, for violation of M.G.L. Ch. 138, §1 the Commission **INDEFINITELY SUSPENDS** the license of Edward Clark Post #107 American Legion Inc. d/b/a American Legion **effective forthwith**, until further written order of the Commission.

Furthermore, for violation of M.G.L. Ch. 138 §64 Failure to comply with the laws of the Commonwealth, to wit: M.G.L. Ch. 180, §26A, the Commission suspends this license for an additional Thirty (30) days, on and after, the indefinite suspension, as the Commission considers the conduct of that individual, Mr. William Thistle, as a violation of M.G.L. Ch. 138, section 34B, and an aggravating circumstance attributable to the Licensee for the Licensee's failure to comply with the fundamental requirements of accountability and responsibility as the holder of an alcohol license pursuant to M.G.L. Ch. 138.

The Commission further notifies the Post that the Commission will not consider approving any application for a permit pursuant to Chapter 336 of the Acts of 2004 for three (3) years from the date of this decision.

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. Good cause for the Commission to consider issuing a further written order revising the order of indefinite suspensions will include, but not be limited to, the Licensee filing with both the Commission and the local licensing authorities the appropriate annual reports pursuant to M.G.L. Ch. 138, section 1, for the years 2003 through 2012 and the Licensee files the appropriate application for approval of the current officers and directors of the Post and that appropriate application if granted by the local licensing authorities and approved by the Commission.

The Commission will also not consider any further written order unless Mr. William Thistle personally appears before the Commission at the hearing to reconsider this order of indefinite suspension and the Licensee becomes current for the last ten (10) years, from 2003 through 2012, on the annual reports required by M.G.L. Ch. 138, section 1.

The Commission is referring this matter regarding the licensee's failure to submit applications for new officers and/or directors since its inception on October 6, 1975, to the Investigative Unit for further action forthwith.

ALCOHOLIC BEVERAGES CONTROL COMMISSION

Kathleen McNally, Commissioner *Kathleen McNally*

Susan Corcoran, Commissioner *Susan Corcoran*

DATE: June 18, 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: Frederick W. Riley, Esq. via fax 781-581-7301  
Local Licensing Board  
Frederick G. Mahony, Chief Investigator  
Tara Kelleher, Investigator  
Dennis Keefe, Investigator  
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