



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

**MEMORANDUM AND ORDER ON
LICENSEE'S REQUESTS FOR PROTECTIVE ORDERS**

**MASSACHUSETTS FINE WINE & SPIRITS, LLC D/B/A TOTAL WINE & MORE
321 SPEEN STREET
NATICK, MA 01760
LICENSE # 076800021
HEARD: 05/20/2015**

Massachusetts Fine Wine & Spirits, LLC d/b/a Total Wine & More ("Licensee") has requested two separate protective orders as they arise out of the investigation into the license transfer application of an all-alcohol license issued pursuant to M.G.L. c. 138, §15 to the Licensee. By decision dated June 30, 2015, the Commission approved the action of the Local Board in approving the transfer of the M.G.L. c. 138, §15 all alcoholic beverages license to the Licensee. All that remains before the Commission are the Licensee's two requests for protective orders.

As part of the investigation into the propriety of the transfer of the §15 license, a Commission investigator requested several documents from the Licensee. These documents were provided on or about February 26, 2015, with a request that several of them be subject to a protective order. The first set of documents of which the Licensee is seeking a protective order includes the following (as described by the Licensee):

1. Lien Subordination Agreement;
2. Note Pledge Agreement;
3. Pledge Agreement;
4. Subordination Agreement (Owners);
5. Subordination Agreement (Related Equity Holder Indebtedness);
6. Landlord Waiver;
7. Permitted Acquisition Certificate; and
8. Quarterly Compliance Certificate.

In its second request for a protective order, which was served on the Commission on or around April 14, 2015, the Licensee requested the following documents be subject to a protective order:

1. "Waypoint Report" for David J. Trone;
2. "Waypoint Report" for Robert L. Trone; and
3. "Waypoint Report" for Retail Services & Systems Inc., et al and Total Wine & More.

The Licensee argues that these documents are exempt from public records requests under M.G.L. c. 4, §7, ¶26 (f), and M.G.L. c. 93H. However, neither of these statutes is applicable to the documents in question.

See M.G.L. c. 4, §7 ¶26(f) (investigatory materials are exempt only when release could prejudice the possibility of effective law enforcement); 201 CMR 17.01 (regulations issued under 93H "implements the provisions of M.G.L. c. 93H relative to the standards to be met by *persons* who own or license personal information") (Emphasis added); 201 CMR 17.02 ("Person, a natural person, corporation, association, partnership or other legal entity, *other than a[] . . . commission*") (Emphasis added).

In any event, the Commission redacts all "personal information." "Personal information" is a person's first name and last name or first initial and last name in combination with any one or more of the following data elements that relate to such a person: (a) Social Security number; (b) driver's license number or state-issued identification card number; or (c) financial account number, or credit or debit card number, with or without any required security code, access code, personal identification number or password, that would permit access to a resident's financial account; "provided, however, that personal information shall not include information that is lawfully obtained from publicly available information, or from federal, state or local government records lawfully made available to the general public." M.G.L. c. 93H, §1. It also redacts all information statutorily exempt from the public records laws, including but not limited to Criminal Offender Record Information, M.G.L. c. 6, §167; Hospital Records; M.G.L. c. 11, §70; Patient's Right to Confidentiality of Records, Medical and Mental Health Facilities; M.G.L. c. 111, §70E; and Personal Data, c. 66A. Any further redaction is not permissible because the public records laws in Massachusetts dictate what the Commission must make available for public inspection.

Accordingly, the Licensee's two requests for protective orders are **DENIED**.

ALCOHOLIC BEVERAGES CONTROL COMMISSION

Kim S. Gainsboro, Chairman,

Kathleen McNally, Commissioner

Elizabeth A. Lashway, Commissioner

Dated: July 13, 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.

cc: Trish Farnsworth, Esq. via facsimile 617-439-3987
Walter J. Sullivan Jr., Esq. via facsimile 617-226-3801
Local Licensing Board
Frederick G. Mahony, Chief Investigator
Rose Bailey, Investigator
Administration, File