



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

February 14, 2013

NORTH END BOAT CLUB
282 MERRIMAC ST.
NEWBURYPORT, MA 01950
LICENSE#: 079600011
HEARD: 01/29 /2013

After a hearing on January 29, 2013, the Commission finds North End Boat Club in violation of:

- 1) 204 CMR 2.05 (2) Permitting an Illegality on the Licensed Premises, to wit: M. G. L. c. 138 §15A Change of Officers and Directors in the Corporation (Year 2004, 2005, 2006, 2008, 2009, 2011);
- 2) M. G. L. c. 138 §1 Failure to File Annually With the Commission Names and Residence of Each Corporate Officer (Since 1985);
- 3) 527 CMR 10.00 (2) (D) Failure To Have Fire & Building Safety Checklist (2 Counts) (December 31, 2012 and January 2, 2013);
- 4) 527 CMR 10.13 (D) Emergency Planning and Preparedness, Designation of a Crowd Manager (2 Counts) (December 31, 2012 and January 2, 2013); and
- 5) M. G. L. c. 138 §63A Hindering/Delaying Investigator for the Commission (2 Counts) (January 4, 2013 and January 7, 2013).

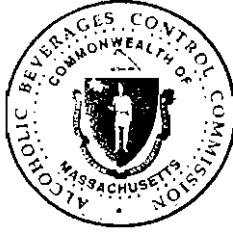
The above-captioned licensee's license is **SUSPENDED INDEFINITELY FORTHWITH** until further written order from this Commission.

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
Caroline Guarino-Wilichoski, Investigator
Daniel J. Shanahan, Esq. via Facsimile 781-229-2368
Administration
File



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

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DECISION

NORTH END BOAT CLUB
282 MERRIMAC ST.
NEWBURYPORT, MA 01950
LICENSE#: 079600011
HEARD: 01/29 /2013

The North End Boat Club (the "Licensee") holds an all alcoholic beverages club license issued pursuant to M.G.L. c. 138, §12. The Alcoholic Beverages Control Commission (the "Commission") held a hearing on Tuesday, January 29, 2013, regarding an alleged violation of:

- 1) 204 CMR 2.05 (2) Permitting an Illegality on the Licensed Premises, to wit: M. G. L. c. 138 §15A Change of Officers and Directors in the Corporation;
- 2) M. G. L. c. 138 §1 Failure to File Annually With the Commission Names and Residence of Each Corporate Officer;
- 3) 527 CMR 10.00 (2) (D) Failure To Have Fire & Building Safety Checklist (2 Counts);
- 4) 527 CMR 10.13 (D) Emergency Planning and Preparedness, Designation of a Crowd Manager (2 Counts); and
- 5) M. G. L. c. 138 §63A Hindering/Delaying Investigator for the Commission (2 Counts).

The above captioned violations occurred, according to Investigator Guarino-Wilichoski's Report, during:

- Count 1 – Years 2004, 2005, 2006, 2008, 2009, and 2011;
- Count 2 – Since 1985;
- Count 3 – December 31, 2012 and January 2, 2013;
- Count 4 – December 31, 2012 and January 2, 2013; and
- Count 5 – January 4, 2013 and January 7, 2013.

Prior to the commencement of the hearing, the Licensee stipulated to the first four (4) of the five (5) violations alleged in Investigator Guarino-Wilichoski's Investigative Report. The licensee disputes the alleged violation of M.G.L. c. 138, §63A (2 Counts).

The following documents are in evidence:

1. Licensee's Stipulation of Facts to four (4) of the five (5) violations alleged; and
2. Investigator Guarino-Wilichoski's Investigative Report dated January 10, 2013, which includes:
 - o Demand Notice for documents dated January 2, 2013 hand-served to manager of record, Michael Rurak;
 - o Demand Notice for interview of employee Gail Nason by Investigator Guarino-Wilichoski and Inspector Simons Newburyport Police Department dated January 3, 2013, hand-served to manager of record, Michael Rurak;

- 2013 Licensee's Certificate of Inspection;
- Secretary of State – Corporations Division filings dated July 27, 2011 Certificate of Change of Directors or Officers for Licensee by John Vaughn, Clerk of the Corporation;
- 2010 Annual Report filed by Donald Willard, Secretary of the Corporation;
- 2010 Certificate of Change of Directors filed by Donald Willard, Clerk;
- 2009 Annual Report filed by Donald Willard, Secretary;
- 2008 Annual Report filed by Donald Willard, Secretary;
- 2008 Certificate filed by Donald Willard, Clerk;
- 2007 Annual Report filed by William Cox, Secretary;
- 2007 Certificate filed by William Cox, Clerk;
- 2006 Annual Report filed by William Cox, Secretary;
- 2006 Certificate filed by William Cox, Clerk;
- 2005 Annual Report filed by William Cox, Secretary;
- 2005 Certificate of Resident Agent filed by William Cox, Clerk.

The Commission took administrative notice of the State Fire Marshall's list, dated December 1, 2012, of Certified Crowd Managers, as well as the Licensee's Commission records. There is one (1) audio recording of this hearing, and three (3) witnesses testified.

We make the following findings of fact based on the evidence presented at the hearing:

FACTS

1. On Wednesday, January 2, 2013, Inspector Matthew Simons of the Newburyport Police Department contacted Investigator Guarino-Wilichoski regarding an alleged liquor law violation at the North End Boat Club. (Exs. 1, 2)
2. The North End Boat Club, located at 282 Merrimac Street, Newburyport, MA, has held a §12 on-premises all alcoholic beverages/club license for fifty-four (54) years, since 1958. (Commission Records)
3. On Wednesday, January 2, 2013, at approximately 3:35 p. m., Investigator Guarino-Wilichoski and Newburyport Police Inspector Matthew Simon went to the North End Boat Club to conduct an investigation regarding the business operations of the Licensee. (Exs. 1, 2)
4. When they arrived, they spoke with bartender Bonnie McNeil, and asked her to contact the manager of record, Michael Rurak, to come to the club to speak with them. (Exs. 1, 2)
5. At approximately 4:00 p. m., Mr. Rurak arrived at the licensed premises and Investigator Guarino-Wilichoski served Mr. Rurak a Demand Notice Pursuant to M.G.L. c. 138, §§56, 63 and 63A, for production of documents relative to the business operation of the establishment. (Exs. 1, 2)
6. Pursuant to the Demand Notice, Mr. Rurak was directed to deliver the requested documents to Inspector Simons and/or Investigator Guarino-Wilichoski by Friday, January 4, 2013. (Exs. 1, 2)
7. Investigator Guarino-Wilichoski asked Mr. Rurak to identify the bartender working on December 31, 2012. Mr. Rurak identified the individual as Gail Nason. (Exs. 1, 2)
8. Investigator Guarino-Wilichoski advised Mr. Rurak that they wanted to meet with Ms. Nason on Monday, January 7, 2013, at the Newburyport Police Department. (Exs. 1, 2)

9. On Thursday, January 3, 2013, Investigator Guarino-Wilichoski and Inspector Simons contacted Mr. Rurak by phone, and he agreed to come to the Newburyport Police Department. (Exs. 1, 2)
10. When Mr. Rurak arrived Investigator Guarino-Wilichoski served him with a second Demand Notice Pursuant to M.G.L. c. 138, §§56, 63, and 63A. This Demand Notice was for an interview with Ms. Nason scheduled for Monday, January 7, 2013, at the Newburyport Police Department. (Ex. 2, Testimony)
11. As of 4:00 p.m. Friday, January 4, 2013, Mr. Rurak had not produced any of the requested documents identified in the Demand Notice served on January 2, 2013. (Ex. 2, Testimony)
12. Moreover, Mr. Rurak had not contacted either Investigator Guarino-Wilichoski or Inspector Simons to request an extension of the deadline, or explain why the documents were not produced. (Ex. 2, Testimony)
13. On Monday, January 7, 2013, at approximately 5:00 p. m., Investigator Guarino-Wilichoski and Inspector Simons met with Mr. Rurak and Ms. Nason, along with Attorney Gerard LaFlamme (representing the licensee) and Attorney Charles Rotondi (representing Ms. Nason), at the Newburyport Police Department. (Ex. 2, Testimony)
14. Investigator Guarino-Wilichoski provided each attorney a copy of M.G.L. c. 138 §63A. (Ex. 2, Testimony)
15. Investigator Guarino-Wilichoski explained that the investigation covered the business operation of the licensee. (Ex. 2, Testimony)
16. Neither Mr. Rurak nor Ms. Nason was in custody. (Testimony)
17. All of the questions surrounded the business operations of the Licensee. (Ex. 2, Testimony)
18. Attorney LaFlamme advised his client, Mr. Rurak, not to answer any questions. (Ex. 2, Testimony)
19. Investigator Wilichoski asked Mr. Rurak if he was the manager of record for the North End Boat Club, and he answered, that he had been the license manager since 2008. (Ex. 2, Testimony)
20. Investigator Wilichoski asked Mr. Rurak if he was paid by the licensee. (Ex. 2, Testimony)
21. Mr. Rurak replied, “Yes”, but his attorney advised him again not to answer any questions. (Ex. 2, Testimony)
22. Although Investigator Guarino-Wilichoski continued to question Mr. Rurak, he refused to answer the following questions regarding the business operation of the Licensee:
 - o Are you an employee of the North End Boat Club?
 - o How many hours per week do you work at the licensed premises?
 - o Do you order the alcoholic beverages for the licensee?
 - o Do you know the capacity of the licensed premises?
 - o Are you a certified crowd manager for the licensed premises?
 - o Are you aware of the crowd manager rule?

- o Was Mr. Sarkis on call to work at the licensed premises on the night of December 31st? (Ex. 2, Testimony)
23. At the January 7, 2013 meeting, Mr. Rurak provided some of the documents requested in the Demand Notice of January 2nd. (Ex. 2, Testimony)
 24. As of Thursday, January 10, 2013, Mr. Rurak still had refused to provide the following documents:
 - o Names and address of all employees who worked at the licensed premises from January 1, 2012, to January 1, 2013.
 - o Names and address of all employees (paid and unpaid) who worked at the licensed premises on Monday, December 31, 2012, and which hours or shift they worked.
 - o Payroll records, including W2 and/or W9 forms, for all employees from January 1, 2012, to January 1, 2013.
 - o Any and all invoices, statements, bills of lading, check ledgers, cancelled checks or any other documentation relating to alcoholic beverages purchase/sale by the licensee for the period from January 1, 2012, to January 1, 2013. (Ex. 2, Testimony)
 25. In addition, although the Licensee has filed Certificate of Change of Officers/Directors with the Massachusetts Secretary of State's Office for 2004-2006, 2008, 2009, and 2011, it has failed to file any paperwork with either the Local Board or with the Commission regarding Change of Officers/Directors in the Corporation. (Ex. 2, Testimony)
 26. Furthermore, since 1985, the Licensee has failed to file the names and addresses of all corporate officers, along with the salary or compensation received by each employee who handles or sells alcoholic beverages with either the Local Board or with the Commission. (Ex. 2, Testimony)
 27. A review of the Newburyport Building Department record indicates that the capacity for the licensed premises is one hundred fifty-three (153) people, however, as of December 1, 2012, the only certified crowd manager is Michael Rurak. (Ex. 2, Testimony)
 28. Mr. Rurak admitted that that Bonnie McNeil and Gail Nason are not certified Crowd Managers, and therefore, not certified to complete the Crowd Manager Safety Checklist. (Ex. 2, Testimony)
 29. As of the date of the hearing, January 29, 2013, Mr. Rurak had still not produced the outstanding documents. (Testimony)

DISCUSSION

M.G.L. c. 138 gives the Commission the authority to grant, revoke and suspend licenses. c. 138 was "enacted to serve the public need and... to protect the common good." M.G.L. c.138, §23, as amended through St. 1977, c. 929, §7. "[T]he purpose of discipline is not retribution but the protection of the public." Arthurs v. Board of Registration in Medicine, 383 Mass. 299, 317 (1981). The Commission is given 'comprehensive powers of supervision over licensees,' Connolly v. Alcoholic Beverages Control Comm., 334 Mass. 613, 617 (1956), as well as broad authority to issue regulations. The Local Board has authority to enforce Commission regulations. New Palm Gardens, Inc. v. Alcoholic Beverages Control Commission, 11 Mass. App. Ct. 785, 788 (1981).

The law is well-settled that 'under the regulation, [204 C.M.R 2.05(2)] the responsibility of the licensee is to exercise sufficiently close supervision so that there is compliance with the law on the premises. A vendor who sells alcohol is "bound at his own peril to keep within the condition of his license."

Commonwealth v. Gould, 158 Mass. 499, 507 (1893). Burlington Package Liquors, Inc. v. Alcoholic Beverages Control Commission, 7 Mass. App. Ct. 186, 190 (1979). It is, thus, quite possible for a licensee to offend the regulatory scheme without scienter. Rico's of the Berkshires, Inc., v. ABCC, 19 Mass. App. Ct. 1026, 1027 (1985) (rescript). Hence, the licensee is responsible for illegalities, disturbances, and/or disorders that occur on the licensed premises.

M.G.L. c. 138 §15A, to wit: Failure To Notify Licensing Authorities Of A Change Of Officers And Directors.

M.G.L. c. 138, §15A requires that a licensee or applicant for an alcoholic beverages license disclose all individuals who have a direct or indirect beneficial interest in the license. The Appeals Court held in Number Three Lounge, Inc. v. Alcoholic Beverages Control Commission, 7 Mass. App. Ct. 301 (1979), the concept of a “direct or indirect beneficial interest” in a license can range from an ownership interest to an absolute proprietary interest to a mere possessing right and includes the right of control. The officers and directors of a corporation are the control group of that corporation.

In this case, the Licensee changed the officers and directors without the statutorily required prior approval from both the Local Board and the Commission. The Licensee apparently changed officers on an annual basis and also periodically changed the directors of the corporation. The Licensee neither sought nor received the statutorily required approvals of these changes. This is a violation of M.G.L. c. 138 §15A.

M. G. L. c. 138 §1 Failure to File Annually With the Commission Names and Residence of Each Corporate Officer

The Licensee holds a club-type of license issued pursuant to M.G.L. c. 138, §12. This term “club” is a term of art defined in M.G.L. c. 138, §1. Within this definition are a series of obligations imposed on the holder of a club license. Among these obligations is the obligation that the “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.”¹ Here, the Licensee did not file, and thus could not produce, these statutorily required annual reports. This violates the Licensee’s obligation under M.G.L. c. 138, §1.

527 CMR 10.00 (2) (D) Failure To Have Fire & Building Safety Checklist (2 Counts)

In the Commonwealth, each on-premises alcoholic beverages licensee is required to complete the Fire and Building Safety Checklist as prescribed by the Commonwealth’s Fire Marshall, on each day of operation prior to opening the facility to patrons. 527 CMR 10.13 (2) (e). This regulation became effective June 1, 2011. Investigator Guarino-Wilichoski asked the Licensee to produce the daily Fire and Building Safety Checklist. While the Licensee did produce some check lists, these checklists were not prepared and signed by certified Crowd Managers, and therefore, the individuals were not certified to complete the Crowd Manager Safety Checklist as required to meet this compliance obligation. Hence, the Licensee did

¹ This definition of club also provides that “no member or any officer, agent or employee of the club is paid, or directly or indirectly receives in the form of salary or other compensation, any profits from the disposition or sale of alcoholic beverages beyond the amount of such salary as may be fixed and voted annually within two months after January first in each year by the members or by its directors or other governing body and as shall in the judgment of the local licensing authorities and the commission be reasonable and proper compensation for the services of such member, officer, agent or employee.”

not complete the fire and building safety checklist as prescribed by the Fire Marshal on each day of operation prior to opening the facility to patrons as required since the year 2011, and thus permitted this illegality on the licensed premises.

527 CMR 10.13 (D) Emergency Planning and Preparedness, Designation of a Crowd Manager (2 Counts)

By regulation authorized by Chapter 304 of the Acts of 2004, *An Act Relative To Fire Safety In The Commonwealth*, each owner or operator of nightclub, dance hall, discotheque or bar, with an occupant load of 100 persons or more shall designate one Crowd Manager, for every two hundred and fifty (250) occupants, or portion thereof based upon the Certificate of Inspection under 780 CMR as required since June 1, 2011. On the date of the visit to the licensed premises, the Licensee was asked to identify the Crowd Manager required by law. The Licensee could not. The Licensee permitted this illegality on the licensed premises.

M. G. L. c. 138 §63A Hindering/Delaying Investigator for the Commission (2 Counts)

M.G.L. c. 138, §63A is violated when a person "hinders or delays any authorized investigator . . . in the performance of his duties . . . or . . . refuses to give to such investigator . . . such information as may be required for the proper enforcement of this chapter." Lion Distributors, Inc. v. Alcoholic Beverages Control Commission, 15 Mass. App. Ct. 988 (1983).

In this case, Investigator Guarino-Wilichoski served Mr. Rurak, the license manager, in hand with the demand for information. As of the date of the hearing, Mr. Rurak had still not produced all of the requested documents. Moreover, he refused to answer questions pertaining to the business operation of the Licensee. This is his responsibility as the license manager. The license manager's inability to furnish such fundamental information on the legitimate operations of a licensee has been held to be valid grounds to terminate the license. BAA Massachusetts, Inc. v. ABCC, 49 Mass. App. Ct 839, 848 (2000). The license manager's refusal to answer such questions violated M.G.L. c. 138, §63A.

In the Lion Distributors case, Commission investigators served a demand notice on the licensee for documents. Id. As in this case, the licensee produced some of the requested documents, but refused to produce others. The Court found that there was sufficient evidence to support the Commission's findings that there was a denial of access to the licensee's records. Id. The Court went on to say, "Although one also may not "refuse[] to admit . . . or lock[] out" any inspector under §63A, we reject the plaintiff's contention that the provision is confined to a refusal of entry to premises. Since the findings referred to in part I of this opinion show that the plaintiff hindered the investigators in the performance of their duties, such findings are sufficient to establish a violation of §63A." Id. Given this analysis, in the present case before the Commission, the Licensee has violated the provisions of M.G.L. c. 138, §63A.

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. 138 §15A Change of Officers and Directors in the Corporation;
- 2) M. G. L. c. 138 §1 Failure to File Annually With the Commission Names and Residence of Each Corporate Officer;
- 3) 527 CMR 10.00 (2) (D) Failure To Have Fire & Building Safety Checklist (2 Counts);
- 4) 527 CMR 10.13 (D) Emergency Planning and Preparedness, Designation of a Crowd Manager (2 Counts); and
- 5) M. G. L. c. 138 §63A Hindering/Delaying Investigator for the Commission (2 Counts).

For these violations, the Commission **INDEFINITELY SUSPENDS** the license of North End Boat Club **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. 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 the appropriate application to secure the required approvals for at least two (2) transactions. i.e. approval of the officers and directors of the license holder corporation as required by M.G.L. c. 138, §15A and the Licensee must become current on the annual report required by M.G.L. c. 138, §1 and any filing(s) with the Office of the Secretary of the Commonwealth required to comply with the corporation laws of the Commonwealth. In addition, the Licensee must have an active/valid Fire & Building Safety Checklist and Emergency Planning and Preparedness, Designation of a Crowd Manager, and the Licensee must provide all the documents requested in the Demand Notice.

ALCOHOLIC BEVERAGES CONTROL COMMISSION

Kim S. Gainsboro, Chairman _____

Susan Corcoran, Commissioner _____

Kathleen McNally, Commissioner _____

DATE: February 14, 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: Local Licensing Board
Frederick G. Mahony, Chief Investigator
Caroline Guarino-Wilichoski, Investigator
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