

*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

January 31, 2012

**North Street Marketplace, LLC**  
**273-297 North Street**  
**Pittsfield, MA 01201**  
**License #: 097400170**  
**Heard: 05/31/2011**

After hearing on May 31, 2011 the Commission finds violations of M.G.L. Ch.23 .The above-captioned licensee's license is **suspended indefinitely as of February 15, 2012** until further order in writing from the Commission.

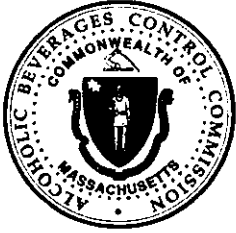
The Commission will consider issuing a further order for good cause shown and after a hearing before the Commission which shall be attended in person by Joyce Bernstein. Before concluding good cause exists to issue a further order, the Commission will require documented tax compliance by Bottom Line Management from both the Department of Revenue and the Division of Unemployment Assistance.

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.

Kim S. Gainsboro  
Chairman

cc: File  
Local Licensing Board  
Frederick Mahoney, Chief Investigator  
Jack Carey, Investigator  
Joseph P. Hanley, Esq. via Facsimile

*Admin*



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**DECISION**

**North Street Marketplace, LLC**  
**273-297 North Street**  
**Pittsfield, MA 01201**  
**License #: 097400170**  
**Heard: 05/31/2011**

North Street Marketplace, LLC (the "Licensee") holds an all alcohol license issued pursuant to M.G.L. c. 138, §12. The Alcoholic Beverages Control Commission (the "Commission") held a hearing on Tuesday, May 31, 2011, regarding an alleged violation of M.G.L. c. 138 §23. Prior to the commencement of the hearing, the Licensee stipulated to the violations alleged in Investigator Guarino's report.

The following documents are in evidence:

Commission Exhibits

1. Stipulation;
2. Investigator Guarino's Violation Report;
3. Secretary of State Office's Record of Jae's Spice, Incorporated Annual Report;
4. Check made payable to Girardi Distributors and Invoice;
5. Check made payable to United Liquors and Invoices; and
6. Check made payable to Martignetti Liquors and Invoices.

Licensee Exhibits

- A. Affidavit of Joyce Bernstein with Attachments.

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

FACTS

1. On September 29, 2010 the ABCC Investigation & Enforcement Division received a complaint regarding undisclosed ownership and unpaid taxes for this Licensee. Ex. 2
2. The ABCC records for this licensee show that the Sole Member/Manager approved to hold an interest in this license is Joyce S. Bernstein. Ex. 2
3. On December 15, 2010 Investigators Guarino and Doyle and investigated the business operations of the licensee. When the investigators entered the premises, they identified themselves and asked to speak with the owner. They were told that the owner was on his way. Ex. 2

4. While waiting for the owner, Investigator Guarino spoke with the two employees, identified as Mike Mulligan and Dan Doherty. Both individuals identified Jae Chung as the owner. Ex. 2
5. A short time later a gentleman who identified himself as Jae Hoon Chung with a DOB of 7-3-1963 arrived and stated he was the owner of the business. Ex. 2
6. When Investigator Guarino asked Mr. Chung how long he had operated the business, he stated, "about 2 1/2 years". He told Investigator Guarino that he is in charge of hiring personnel and payroll. He also told Investigator Guarino that he pays for the alcoholic beverages, and pays for them from his checking account. Ex. 2
7. Mr. Chung went on to say, that the account used to purchase the alcoholic beverages is under the name of Jae's Spice Incorporated, and he is the only person who can sign checks. He also pays the rent to 293 Market Place. Ex. 2
8. Mr. Chung told Investigator Guarino that Joyce Bernstein did not have much involvement in the business. He stated that, "she comes by a couple times a week and the Liquor License is in her name."
9. Records obtained from the Massachusetts Secretary of State Corporation Division show a business known as Jae's Spice, Incorporated with a principal place of business of 297 North Street, Pittsfield and the sole officer/director Jae Hoon Chung. The description of the business is a restaurant. Ex. 3
10. A review of the alcoholic beverages account from Girardi Distributors for this licensee show that a check dated November 30, 2010 from Jae's Spice Incorporated, 297 North Street, Pittsfield was used as payment on invoices 287940 & 289228 for alcoholic beverages sold to the licensee. The licensee's name was on those invoices. Ex. 4
11. A review of the alcoholic beverages account from United Liquors for this licensee show that a check from Jae's Spice Incorporated, 297 North Street, Pittsfield was used as payment for invoice #091271112, account # 25674822 for alcoholic beverages sold to the licensee for the amount of \$1083.04. The licensee's name was on that invoice. Ex. 5
12. A review of the alcoholic beverages account from Martignetti Companies for this licensee show that a check from Jae's Spice Incorporated, 297 North Street, Pittsfield was used as payment for invoice #010125727, account #25674822 for alcoholic beverages sold to the licensee for the amount of \$237.80. The licensee's name was on that invoice. Ex. 6
13. The licensee submitted the affidavit of Joyce Bernstein in defense and mitigation of its conduct.
14. From this affidavit, the Commission finds:
  - a. in or about 2008, the Licensee began communicating with Jae's Spice, Incorporated, a Massachusetts corporation ("Jae's"), regarding a possible sale of an interest in the licensee's restaurant business to Jae's.
  - b. Jae's was interested in purchasing a percentage interest in the license and becoming a member of the licensee.

- c. in or about 2008, Jae's filed an application with the City of Pittsfield Licensing Board (the "Local Board") for a new officer/director, change of corporate name and change of d/b/a for the license.
- d. upon information and belief, in or about December of 2008, the application was approved by the Local Board.
- e. however, in or about January of 2009, the application was disapproved by the Commission due to failure to comply with Massachusetts tax laws.
- f. although Jae's had not yet obtained approval of the application, the licensee nevertheless allowed Jae's to operate a restaurant business called "Jae's Spices" at the premises.
- g. by the spring of 2011, Jae's had still not obtained approval of the application.
- h. in or about April of 2011, the licensee and the landlord notified Jae's that it could no longer work with the licensee to operate a restaurant business at the premises.
- i. on or about May 3, 2011, Jae's notified its employees of its intention to cease involvement with the operation of "Jae's Spices" and to leave sole ownership and management of the restaurant business with the licensee.
- j. on or about May 3, 2011, the licensee terminated its business relationship with Jae's and began making preparations to being operating a new restaurant business called "Spice Dragon" at the premises.
- k. the licensee interviewed over sixty (60) persons seeking employment with the licensee's new restaurant, eventually hiring a full restaurant staff.
- l. the licensee pail all of its outstanding liquor invoices.
- m. the licensee also arranged for new insurance policies to cover restaurant operations and retained Bottom Line Management ("BLM") of Williamstown, Massachusetts to advise and assist with the transition.
- n. among other things, BLM arranged for new payroll and tax account for the licensee with Paychex, Inc., and for a new health insurance policy with Health New England for the licensee's employees
- o. the Licensee also met with the principal of Brazilian leaning Solutions, Inc of Pittsfield, Massachusetts to arrange for cleaning of the premises prior to opening.
- p. a new menu was prepared for "Dragon Spice" and a true and accurate copy of said menu was admitted into evidence.
- q. on or about May 12, 2011, the licensee obtained a Business Certificate from the City of Pittsfield authorizing use of the name "Spice Dragon".
- r. on or about May 20, 2011, the licensee obtained a Certificate of Good Standing from the office of the Secretary of the Commonwealth of Massachusetts certifying that the licensee was in good standing with said office.
- s. the licensee has now assumed full and sole control of the premises and has commenced restaurant operations under its existing license.
- t. Jae's no longer has any direct or indirect beneficial or financial interest in the license.

#### DISCUSSION

I. Did Ms. Bernstein violate Massachusetts General Laws Chapter 138, §23 by transferring the privilege of her license without prior approval?

Massachusetts General Laws chapter 138, §23 authorizes a license issued under the chapter to be transferred to someone who is qualified if, in the opinion of the licensing authorities, it is in the public interest. A licensee who wishes to transfer their interest in an alcoholic beverages license is required to obtain prior approval from the licensing authorities. This allows the licensing authorities to determine if the transfer is in the public interest and if the proposed transferee is someone who qualifies.

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 (1981). When Ms. Bernstein began operating her premises, she was the sole manager/member of the licensee. However, the evidence demonstrates that beginning in 2008 and continuing up through the present; Mr. Chung assumed operational control of, as well as an undisclosed interest in, the North Street Market Place.

Ms. Bernstein admitted that the licensee (of which she is the sole member/manager) entered into an agreement with Jae's, which allowed it to operate the licensed premises for its individual account respectively. When the licensee was itself operating it hired Joyce Bernstein as license manager. Ms. Bernstein was approved by both the local licensing authorities and the A.B.C.C.

Records obtained from the Massachusetts Secretary of State Corporation Division show a business known as Jae's with a principal place of business of 297 North Street, Pittsfield and the sole officer/director Jae Hoon Chung. The description of the business is a restaurant. Furthermore, Mr. Chung corroborated Ms. Bernstein's statements when he admitted that he had been operating the business for approximately 2 1/2 years, and was solely responsible for all the personnel decisions. He also admitted that he was responsible for purchasing the alcohol inventory and paying the invoices, including the costs associated with the lease. These expenses were paid out of an account under the name of Jae's, and Mr. Chung is the only signatory on the account. The Appeals Court held in Number Three Lounge, Inc. v. Alcoholic Beverages Control Commission, 7 Mass. App. Ct. 301 (1979), the concept of an ownership interest can vary from an absolute proprietary interest to a mere possessory right. Mr. Chung's establishment of bank accounts, purchase of alcohol inventory, making of personnel decisions, and payment of bills is, at the least, evidence of a direct or indirect interest in the license, which was transferred to Mr. Chung without the required approval.

Mr. Chung told Investigator Guarino that Joyce Bernstein did not have much involvement in the business. He stated that, "she comes by a couple times a week and the Liquor License is in her name." As a result, we find that the last-approved licensee did not control and run the business for its own account, but allowed Jae's to receive the receipts and pay the bills in this substantial period of time. The establishment of bank accounts, collection of sales revenue, payment of bills and the payment to the last-approved licensee of a set amount of money each month is, at the least, a direct or indirect interest in the license which was transferred to Jae's without the required approval.

The Commission approved Ms. Bernstein's application for an alcoholic beverages license as the sole member/manager of the North Street Marketplace, LLC. Ms. Bernstein has never disclosed to the licensing authorities that Jae Hoon Chung, or any other individual held an interest in the North Street Marketplace. Consequently, in contravention of the statute, no other individual has been investigated or approved to have control of or benefit from this licensed business. See Griffin's Brant Rock Package Store, Inc. v. Alcoholic Beverages Control Commission, 12 Mass. App. Ct. 768, 771 (1981).

Ms. Bernstein's acts resulted in her handing over operational control of the North Street Marketplace to Mr. Chung, who was not approved by the Commission. By allowing Mr. Chung to assume operational control of the North Street Marketplace, Ms. Bernstein violated M.G.L. c. 138, §23, See In re: Napoli Beverage, Inc., Boston (ABCC Decision dated April 28, 2009). Thus,

the Commission is persuaded and concludes that the licensee violated M.G.L. c. 138, §23 by transferring the license without proper approval when she allowed Jae Chung to run the business for his own account. The Commission is furthermore persuaded to this conclusion by the aforementioned documents and Mr. Jae Chung's statements and admissions to the investigator and testimony before the Commission. Further Joyce Bernstein's affidavit confesses to the violation committed by the licensee.

Moreover, the affidavit from Joyce Bernstein suggests that the licensee is currently engaged in a second unlawful transfer of the license to Bottom Line Management. This matter is referred to the Investigative Unit for to investigate whether there may be other violations of chapter 138.

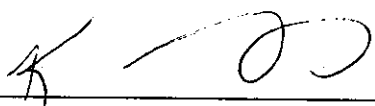
#### CONCLUSION

The Alcoholic Beverages Control Commission finds the licensee violated M.G.L. Ch. 138, §23 – Transfer of the privilege of a license without proper approval to Jae's Spice, Incorporated and suspends the license indefinitely to commence on February 15, 2012 until further order in writing from the Commission.

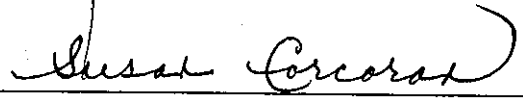
The Commission will consider issuing a further order for good cause shown and after a hearing before the Commission which shall be attended in person by Joyce Bernstein. Before concluding good cause exists to issue a further order, the Commission will require documented tax compliance by Bottom Line Management from both the Department of Revenue and the Division of Unemployment Assistance.

#### **ALCOHOLIC BEVERAGES CONTROL COMMISSION**

Kim S. Gainsboro, Chairman



Susan Corcoran, Commissioner



Dated in Boston: January 31, 2012

You have the right to appeal this decision to the Superior Court under the provisions of Chapter 30A of the Massachusetts General Laws within thirty days of receipt of this decision.

cc: Joseph P. Hanley, Esq.  
Frederick G. Mahony, Chief Investigator  
Local Licensing Board  
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