

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

*Steven Grossman*  
*Treasurer and Receiver General*

**AMENDED**  
**NOTICE OF SUSPENSION**

*Kim S. Gainsboro, Esq.*  
*Chairman*

September 13, 2013

**PLYMOUTH PROPERTY, LLC DBA THE BRITISH BEER COMPANY**  
**6 MIDDLE STREET**  
**PLYMOUTH, MA 02360**  
**LICENSE#: 098400089**  
**VIOLATION DATE: 10/30/2012**  
**HEARD: 04/23/2013 and 08/13/2013**

After hearings on April 23, 2013 and August 13, 2013, the Commission finds Plymouth Property, LLC dba The British Beer Company in violation of 204 CMR 2.01 (8)-Submitting a false statement to the Commission.

The Commission **suspends the licensee's license for a total of twenty (20) days to be served. The suspension shall commence on Wednesday, October 16, 2013, and terminate on Monday, November 4, 2013.** The license will be delivered to the Local Licensing Board or its designee on Wednesday, October 16, 2013 at 9:00 A.M. It will be returned to the licensee Tuesday, November 5, 2013.

You are advised that pursuant to the provisions of M.G.L. c.138 §23, you may petition the Commission to accept an offer in compromise in lieu of suspension within twenty (20) calendar days following such notice of such suspension. If accepted, you may pay a fine using the enclosed form. All checks must be certified and accompanied by the enclosed form, which must be signed by a Massachusetts Licensed Accountant.

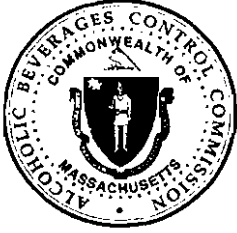
You are advised that you have the right to appeal this decision under M.G.L. c. 30A to Superior Court within thirty (30) days upon receipt of this notice.

**ALCOHOLIC BEVERAGES CONTROL COMMISSION**

Kim S. Gainsboro  
Chairman

- cc: Local Licensing Board
- Frederick G. Mahony, Chief Investigator
- Mark Kenny, Investigator
- David McCool, Esq. via Facsimile 617-625-8844
- ✓ Administration
- File

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*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

July 30, 2013

**PLYMOUTH PROPERTY, LLC DBA THE BRITISH BEER COMPANY**  
**6 MIDDLE STREET**  
**PLYMOUTH, MA 02360**  
**LICENSE#: 098400089**  
**VIOLATION DATE: 10/30/2012**  
**HEARD: 04/23/2013**

After a hearing on April 23, 2013 the Commission finds Plymouth Property, LLC dba The British Beer Company in violation of 204 CMR 2.01 (8)-Submitting a false statement to the Commission.

The Commission **suspends the licensee's license for a total of sixty (60) days to be served. The suspension shall commence on Wednesday, September 18, 2013, and terminate on Saturday, November 16, 2013.** The license will be delivered to the Local Licensing Board or its designee on Wednesday, September 18, 2013 at 9:00 A.M. It will be returned to the licensee Sunday, November 17, 2013.

You are advised that pursuant to the provisions of M.G.L. c.138 §23, you may petition the Commission to accept an offer in compromise in lieu of suspension within twenty (20) calendar days following such notice of such suspension. If accepted, you may pay a fine using the enclosed form. All checks must be certified and accompanied by the enclosed form, which must be signed by a Massachusetts Licensed Accountant.

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.

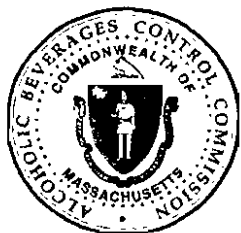
**ALCOHOLIC BEVERAGES CONTROL COMMISSION**

Kim S. Gainsboro  
Chairman

cc: Local Licensing Board  
Frederick G. Mahony, Chief Investigator  
Mark Kenny, Investigator  
David McCool, Esq. via Facsimile 617-625-8844  
Administration  
File

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

*Steven Grossman*  
*Treasurer and Receiver General*

*Kim J. Gainsboro, Esq.*  
*Chairman*

**DECISION**

**PLYMOUTH PROPERTY, LLC DBA THE BRITISH BEER COMPANY**  
**6 MIDDLE STREET**  
**PLYMOUTH, MA 02360**  
**LICENSE#: 098400089**  
**VIOLATION DATE: 10/30/2012**  
**HEARD: 04/23/2013**

Plymouth Property, LLC dba The British Beer Company (the "Licensee") holds an alcohol license issued pursuant to M.G.L. c. 138, § 12. The Alcoholic Beverages Control Commission (the "Commission") held a hearing on Tuesday, April 23, 2013, regarding an alleged violation of 204 CMR 2.01 (8)-Submitting a false statement to the Commission. Prior to the commencement of the hearing, the licensee stipulated to the violation alleged in Investigator Kenny's Report.

The following documents are in evidence:

1. Licensee's Stipulation of Facts;
2. Investigator Kenny's Investigative Report dated October 30, 2012;
3. Letter dated October 30, 2012 to Commission from license owner Gary Simon; and
4. Affidavit dated October 31, 2012, of Harry Gnong.

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

The Commission took Administrative Notice of the contents of the file for the licensee Plymouth Property, LLC dba The British Beer Company, located at 6 Middle Street, Plymouth, Massachusetts.

FACTS

1. On Tuesday, October 30, 2012, at approximately 11:00 a.m., Plymouth Property, LLC dba The British Beer Company, appeared before the Commission relative to a charge of violating 204 CMR 2.05(2) - Permitting an illegality on the licensed premises, to wit: Ch.138, §34 – Sale or Delivery of an alcoholic beverage to a person under 21 years of age.
2. An individual, Harry Gnong, appeared at the hearing as a representative of the Licensee.
3. Mr. Gnong signed the Commission's "Appearance of Licensee" form as well as the Commission's "Stipulation of Facts" form.
4. Investigator Kenny spoke with Mr. Gnong before the hearing. Mr. Gnong stated that he was part-owner of the British Beer Company.
5. Prior to the Commencement of his testimony, Mr. Gnong raised his right hand and swore an oath to tell the truth.

6. During the hearing, Mr. Gnong represented to the Commission that he was part-owner of the British Beer Company.
7. When the hearing was concluded, administrative review of the Licensee's file indicated that Mr. Gnong was not identified as having any ownership interest in the above licensee.
8. Administrative review of the file indicated that the owner is Gary Simon.
9. As a result of Mr. Gnong's statements during the hearing, Investigator Kenny conducted an investigation of this licensed premises regarding the question of hidden ownership.
10. Investigator Kenny contacted Mr. Simon regarding Mr. Gnong's testimony at the October 30, 2012 hearing.
11. Mr. Simon provided information that Mr. Gnong was the General Manager, and that he did not have any ownership interest in the above license.
12. During the hearing, both Mr. Gnong and Mr. Simon appeared and apologized to the Commission for Mr. Gnong's deception.
13. Mr. Gnong stated that he was the previous owner of the licensed premises and still considers himself as having a proprietary interest, although from a legal perspective he has none.
14. Mr. Simon stated that Mr. Gnong regularly holds himself out as the owner and because all of the customers are familiar with Mr. Gnong, Mr. Simon does not correct him.

### 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). The procedure for the issuance of licenses to sell alcoholic beverages is set out in G.L. c. 138. See Beacon Hill Civic Assn. v. Ristorante Toscano, Inc., 422 Mass. 318, 321 (1996).

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, has been specified, as already indicated, there is no invalid delegation of authority to the commission. See Butler v. East Bridgewater, 330 Mass. 33, 36-37. Connolly v. Alcoholic Beverages Control Commission, 334 Mass. 613, 619, (1956).

M.G.L. c. 138 specifically gives the Commission the authority to approve issue, revoke and suspend licenses. Chapter 138 was "enacted... to serve the public need and ... to protect the common good." M.G.L. Ch. 138, 23, as amended through St. 1977, c. 929, section 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). (Emphasis supplied). The Commission is given 'comprehensive powers of supervision over licensees,' Connolly v. Alcoholic Beverages Control Comm., 334 Mass. 613, 617 (1956).

Power to administer an oath is given to the Commission by the State Administrative Procedure Act, G. L. c. 30A, §12(1) sub-paragraph (2)<sup>1</sup>, which reads, in pertinent part, "[i]n conducting adjudicatory

<sup>1</sup> M.G.L.c. 30A, sec (1) sub par. (2) "Agency". any department, board, commission, division or authority of the state government or subdivision of any of the foregoing. or official of the state government, authorized by law to make regulations or to conduct adjudicatory proceedings.

proceedings ... (l) Agencies may administer oaths . . . , examine witnesses, and receive evidence. . . ." It follows that a witness giving false testimony in a hearing before such Commissioner may be guilty of perjury under M.G.L. c. 268, §1. Commonwealth v. Bessette, 345 Mass 358 (1963).

In this matter the Licensee is charged with giving false statements to the Commission. Mr. Gnong is the General Manager for the Licensee. With the express permission of the Licensee, he represented it before the Commission at a violation hearing. As such, he was an agent of the Licensee.

Prior to his testimony, Mr. Gnong raised his right hand and swore an oath to tell the truth. Mr. Gnong began his testimony by identifying himself as an owner of the Licensee. The Commission ascertains that Mr. Gnong felt the Commission would believe that the Licensee was taking the matter very seriously by having an owner appear and show contrition.

However, Mr. Gnong is not an owner. He appears nowhere in the Commission records. Mr. Gnong lied before this Commission and his lie triggered an investigation that required expenditure of the Commission's precious resources, which could have been used elsewhere.

One of the cornerstones of the Commission's oversight of the alcoholic beverages industry is the violation hearings. At these hearings, licenses are at risk of the various sanctions specified in chapter 138, i.e. suspension, cancellation, modification or revocation. The Commission has not hesitated to utilize its authority to sanction; however, the Commission has taken a balanced approach in terms of the sanction imposed in any one matter.

The single most important factor the Commission relies on in imposing sanctions, is its assessment of the licensee's credibility. This credibility is based on the demeanor, appearance earnestness, statements and representations made by the licensee or its representative at the hearing. As a result, the sanction imposed in a case is inextricably linked to the truthfulness and credibility of the licensee and its representative. Although these hearings are undesirable to a licensee, they are one of few opportunities that the Commission has to interact with the licensees that it oversees.

A hearing such as the one that occurred on October 30, 2012, is typically a very short hearing with a very limited scope. Often the licensee admits to the violation(s) alleged in the investigator's report and chooses to focus its presentation to the Commission on facts that mitigate the offense.

The Commission gives each Licensee an opportunity to be heard. The Commission endeavors to listen patiently, and give each Licensee unlimited time to speak, offer witnesses and present their case. The Commission strives to give each licensee the benefit of the doubt under the circumstances, thoroughly review the acts and gauge the credibility of individuals. As a result, the Commission relies on licensees and their agents who come before us and swear an oath to tell the truth to actually tell the truth. Without this truthfulness actually existing, public policy is subverted and justice cannot be administered fairly.

#### CONCLUSION

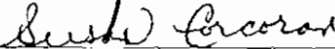
Based on the evidence, the Commission finds the licensee violated 204 CMR 2.01 (8)-Submitting a false statement to the Commission. Therefore, the Commission **suspends the license for 60 (sixty) days.**

ALCOHOLIC BEVERAGES CONTROL COMMISSION

Kim S. Gainsboro, Chairman \_\_\_\_\_



Susan Corcoran, Commissioner \_\_\_\_\_



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

Kathleen McNally, Commissioner \_\_\_\_\_



DATE: July 30, 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  
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