



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

NOTICE OF SUSPENSION

December 22, 2015

YOUNG AMERICA CLUB INC.
4 OCEAN VIEW AVE.
PLYMOUTH, MA 02360
LICENSE#: 098400023
VIOLATION DATE: 09/22/2015
HEARD: 12/16/2015

After a hearing on December 16, 2015, the Commission finds Young America Club Inc. violated:

- 1) M.G.L. c. 138, § 15A – Change of Officers and Directors in the non-profit corporation without authorization.
- 2) M.G.L. c. 138, § 1 – Failure to file annually with the local licensing authority and the commission 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 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

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cc: Local Licensing Board
Frederick G. Mahony, Chief Investigator
Nick Velez, Investigator
Brett Pimental via email
Administration, File



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DECISION

YOUNG AMERICA CLUB INC.
4 OCEAN VIEW AVE.
PLYMOUTH, MA 02360
LICENSE#: 098400023
VIOLATION DATE: 09/22/2015
HEARD: 12/16/2015

Young America Club Inc. (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 Wednesday, December 16, 2015, regarding alleged violations of:

- 1) M.G.L. c. 138, § 15A – Change of Officers and Directors in the non-profit corporation without authorization.
- 2) M.G.L. c. 138, § 1 – Failure to file annually with the local licensing authority and the commission 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 following documents are in evidence:

1. Investigator Velez's Investigative Report dated September 22, 2015;
2. Licensee's Stipulation of Facts;
3. Secretary of the Commonwealth, Corporations Division Business Summary;
4. Photocopy of Question 10 of Licensee's Change of Officers/Directors Application, with attached Business Summary.

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

The Commission took Administrative Notice of the Licensee's record.

FACTS

1. On Tuesday, September 22, 2015, Investigator Velez conducted an administrative review of the file for Young America Club Inc., in order to prepare for the hearing on a separate alleged violation by the Licensee.
2. The Commission file for the Licensee indicates that, as of April 2011, the last approved officers and directors for the Licensee are:

- a. President: Bob McKenna
 - b. Vice President: Frank McKenna
 - c. Treasurer: Paul Pimental
 - d. Clerk: Richard Curtis
 - e. Directors: Scott Floeck, Kenneth Pimental, Dennis Borsari, Thomas Pinto, and Christopher Gascoyne.
3. The Secretary of the Commonwealth Corporation Division website, as of 09/04/2015, indicates the Licensee's officers and directors to be:
 - a. President: Thomas Pinto
 - b. Vice President: Douglas Borsari
 - c. Treasurer: Ben Jesse
 - d. Clerk: Brian Santos
 - e. Directors: David Loring, Steve Thomas, Brett Pimental, and Sean McKenna.
4. The Secretary of the Commonwealth Corporation Division website indicates there have been several changes of Officers/Directors for the corporation, but no application for Change of Officers/Directors has been filed with this Commission since 2011.
5. Prior to the September 22, 2015 hearing, Investigator Velez spoke to Scott Floeck, who attended the hearing to represent the Licensee regarding the alleged violation. Mr. Floeck identified himself as the Treasurer of the corporation.
6. Mr. Floeck stated to Investigator Velez that the Licensee updated the Secretary of the Commonwealth Corporation Division every year for the change in Officers/Directors and admitted he did not know that the Licensee was also required to update the Commission each year as well.
7. During the hearing on 12/16/15, the Commission noted the Licensee has also failed to file its annual reports as required pursuant to M.G.L. c. 138, §1.

DISCUSSION

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

In reviewing the authority of the Commission, the Supreme Judicial Court ("SJC") 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." See Connolly, 334 Mass. at 619. 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. See id.

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. See id. at 617. A licensee who wishes to transfer its license or an interest in its alcoholic beverages license, is required to obtain prior written 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 to hold a license. Implicit in the transfer of a license is the surrender of control.

An Administrative review of the Commission's files for the Licensee indicates that the Licensee has not submitted any change of officers/directors for this license since 2011.

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 possessory right, and includes the right of control. See Number Three Lounge, Inc., 7 Mass. App. Ct. at 310-311. The approved officers and directors of a license corporation are the control group of a corporation. A licensee must receive prior approval from both the local licensing authority and the Commission before transferring the privilege of its license or transferring any type of interest in its license.

The Licensee did not receive the statutorily required prior approval for the current officers and directors to have any direct or indirect beneficial interest in this license. In contravention of the statute, no other individual has been investigated or approved to have control of, and interest in, 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). The failure to disclose all individuals who have a direct or indirect beneficial interest in this license is a violation of M.G.L. Ch. 138 §15A.

CONCLUSION

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

- 1) M.G.L. c. 138, § 15A – Change of Officers and Directors in the non-profit corporation without authorization.
- 2) M.G.L. c. 138, § 1 – Failure to file annually with the local licensing authority and the commission 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.

Therefore, with regard to both violations, the Commission **INDEFINITELY SUSPENDS** the Licensee's license **effective forthwith**, until further written order of the Commission.¹

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

¹ By decision dated October 8, 2015, the Commission suspended the license of Young America Club, Inc. for a total of five (5) days to be served with the balance of five (5) days to be held in abeyance for 2 years provided no further violations of Chapter 138 or Commission Regulations occur. The five (5) days held in abeyance are not impacted by the current Indefinite Suspension and therefore will remain in effect following a lifting of the Indefinite Suspension.

appropriate application for approval of the current officers and directors of the Licensee.

In addition the Licensee must file the appropriate annual reports pursuant to M.G.L. c. 138, §1 for the last ten (10) years from calendar year 2005 through calendar year 2015.

ALCOHOLIC BEVERAGES CONTROL COMMISSION

Elizabeth A. Lashway, Commissioner *Elizabeth A. Lashway*

Kathleen McNally, Commissioner *Kathleen McNally*

Dated: December 22, 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.

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