



*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, E*  
*Chairman*

MEMORANDUM AND ORDER ON  
LICENSEE'S SECOND REQUEST FOR RECONSIDERATION  
OF INDEFINITE SUSPENSION

**HILLSIDE COUNTRY CLUB BY LOMBARDI'S, INC.**  
**DBA HILLSIDE COUNTRY CLUB BY LOMBARDI'S**  
**82 HILLSIDE AVE.**  
**REHOBOTH, MA 02769**  
**LICENSE#: 102000002**  
**HEARING: 01/17/2013**

1. On March 6, 2013, the Alcoholic Beverages Control Commission (the "Commission") received a facsimile transmission of a letter from Attorney Christopher M. Mulhearn.
2. The header of this facsimile transmission indicates that it was sent at 5:56 PM.
3. This facsimile transmission was apparently sent from Attorney Mulhearn's office located outside Massachusetts to the offices of the Commission located inside Massachusetts.
4. Attorney Mulhearn again notified the Commission that he is representing Hillside Country Club By Lombardi's, Inc. dba Hillside Country Club By Lombardi's ("the Licensee" or "Lombardi's") regarding this matter as well as a specifically referenced "relationship proceeding."
5. The facsimile transmission included a cover letter signed by Attorney Mulhearn containing factual representations to the Commission.
6. Among these factual representations was the statement that a receivership action had been filed in the Rhode Island Superior Court by Steven R. Lombardi and David F. Lombardi against the Licensee.
7. The facsimile transmission also represented that in that Rhode Island receivership action, an order had issued from the Rhode Island Superior Court appointing a temporary receiver of the Licensee.
8. A copy of that order was included in Attorney Mulhearn's facsimile transmission.
9. Attorney Mulhearn did not disclose who represents the plaintiffs in the Rhode Island receivership action.
10. Attorney Mulhearn did not disclose who the legal counsel for the temporary receiver in the Rhode Island action is, if anyone.
11. Attorney Mulhearn did not represent to the Commission that in fact he is the legal counsel for the temporary receiver.
12. Notwithstanding the absence of this legal representation, Attorney Mulhearn purports to

request this Commission “on behalf of the Temporary Receiver” to reconsider the indefinite suspension of this license ordered in the Commission Decision dated January 17, 2013 so that “a scheduled event may go forward as planned” on March 10.

13. Attorney Mulhearn’s request does not contain any facts about the nature of the event that is represented to be scheduled for March 10, when this event was planned and how much money is involved in this event.
14. The records of this Commission for this Licensee show the following:
  - a) the Commission approved the transfer of ownership of this license to the Licensee on January 10, 2007;
  - b) the application for this license dated November 14, 2006 was signed under the pains and penalties of perjury by both Steven R. Lombardi and David F. Lombardi;
  - c) the application disclosed under oath that Steven R. Lombardi is a 50% shareholder, the president, the treasurer and the license manager of the Licensee;
  - d) the application further disclosed under oath that David F. Lombardi is a 50% shareholder, the vice-president and secretary of the Licensee;
  - e) an affidavit signed on December 21, 2006 by Steven R. Lombardi and notarized by Paul DeMarco details the financing of this \$3.1 million dollar transaction, the details of which included BankNewport financing \$2.125 million dollars and “\$375,000.00 ... of a cash injection from my personal funds and those of my brother David F. Lombardi”;
  - f) the Licensee requested and received the statutorily required approval to pledge its license to BankNewport to secure the re-payment of the loan of \$2.125 million dollars;
  - g) On January 17, 2013, the Commission issued its decision and order of indefinite suspension;
  - h) On January 22, 2013, the Massachusetts Department of Revenue levied on the Licensee’s license for non-payment of \$25,291.70 in taxes;
  - i) the Licensee is a corporation organized under the laws of Rhode Island on August 8, 2006; Paul DeMarco was the only incorporator; the initial registered agent of the corporation is Paul DeMarco, Esq. at the address of 1350 Division Road, Suite 102, West Warwick, RI;
  - j) the Licensee was registered to do business in Massachusetts as a foreign corporation on November 17, 2006;
  - k) the Licensee signed and filed an application for renewal of its license for calendar year 2013, with an application signed under the pains and penalties of perjury in November, 2012.
15. The records of the Corporations Division of the Secretary of the Commonwealth, available online, state that:
  - a) the Licensee’s foreign corporation certificate of registration was signed by Paul DeMarco;
  - b) the Licensee’s foreign corporation certificate of registration was revoked on June 18, 2012;

16. The Commission takes administrative notice of the historical facts contained in the online records of the Corporations Division of the Secretary of the Commonwealth.
17. The records of the Division of Business Services of the Office of the Secretary of State for the State of Rhode Island and Providence Plantations, also available online, state that:
  - a) On September 13, 2011, the Rhode Island Secretary of State issued a notice that the Licensee's certificate of incorporation would be revoked after 60 days for failure to file a required annual report;
  - b) On December 12, 2011, the Rhode Island Secretary of State revoked the Licensee's certificate of incorporation.
18. The Commission takes administrative notice of the historical facts contained in the online records of the Division of Business Services of the Office of the Secretary of State for the State of Rhode Island and Providence Plantations.
19. The Licensee does not legally exist and has not legally existed for over 15 months.

Massachusetts General Laws chapter 138, §23 provides, in pertinent part, that “[i]n case of the appointment of a receiver ... of a licensee under this chapter, such license, unless earlier surrendered, revoked or cancelled, shall authorize such receiver ... to exercise all authority conferred on such licensee until the termination thereof.” However, here, the Licensee does not legally exist and has not legally existed for over fifteen (15) months. The Licensee is not legally registered to conduct business in Massachusetts and has not been legally registered to do business in Massachusetts for almost ten (10) months. The Licensee cannot legally register to conduct business in Massachusetts because it does not legally exist and has not legally existed for over fifteen (15) months.

Moreover, the Licensee's license was levied upon by the Massachusetts Department of Revenue on January 17, 2013. Since that date, the Massachusetts Department of Revenue was vested with lawful control over the Licensee's license. See *Arrowhead Estates, Inc. v. Boston Licensing Bd.*, 15 Mass. App. Ct. 629 (1983) (liquor license attachable by Internal Revenue Service) cited in *Caposella v. Commissioner of Revenue*, 26 Mass. App. Ct. 359 (1988).


In addition, no legal proceeding was identified to be pending in any Massachusetts state court or other court of competent jurisdiction that would affect the Department of Revenue's levy and control of the Licensee's license. No binding legal authority was cited or argued that would affect the Department of Revenue's levy and control of the Licensee's license.


Lastly, there is no documentation that Attorney Mulhearn was authorized to act as the legal counsel for the Temporary Receiver.

Therefore, based on the facts and for the reasons cited above, the March 6, 2013 Request for Reconsideration of the Order of Indefinite Suspension ordered in the Alcoholic Beverages Control Commission Decision dated January 17, 2013 is in all respects DENIED for lack of standing.

The Commission hereby refers this matter to the Chief Investigator for a needful and appropriate investigation into the activities regarding this Licensee to enforce or cause to be enforced the penalties provided by law against every person who is guilty of a violation of chapter 138.

**ALCOHOLIC BEVERAGES CONTROL COMMISSION**

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

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

Dated: March 8, 2013

cc: File  
Christopher Mulhearn, Esq.  
Local Licensing Board  
Frederick Mahoney, Chief Investigator  
Brad Doyle, Investigator  
Meaghan Caccavelli, DUA  
Katie Dishnica, FSC