



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 REVOCATION

March 18, 2015

SPEAKEASY INC. DBA SPEAKEASY
118-120 BROADWAY
REVERE, MA 02151
LICENSE#: 102200019
VIOLATION DATES: 2005 TO 10/19/2014
HEARD: 2/24/2015

After a hearing on February 24, 2015, the Commission finds Speakeasy Inc. dba Speakeasy violated:

- 1) M.G.L. c. 138, §23 – Transfer of operational control of the license without approval;
- 2) M.G.L. c. 138, §64, To Wit: M.G.L. c. 138, §16A – Annual Renewal signed by a person other than those authorized by the Commission (2 counts);
- 3) 204 CMR 2.01 (8) – Making a false statement in an application made under the penalties of perjury; and
- 4) M.G.L. c. 138, §63A – Hindering and/or Delaying an Investigator of the Commission.

The above-captioned licensee's license is **REVOKED EFFECTIVE FORTHWITH**.

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
Robert Allen, Esq. via facsimile 617-383-6001
Administration, File



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DECISION

SPEAKEASY INC. DBA SPEAKEASY
118-120 BROADWAY
REVERE, MA 02151
LICENSE#: 102200019
VIOLATION DATES: 2005 TO 10/19/2014
HEARD: 2/24/2015

Speakeasy Inc. dba Speakeasy (the "Licensee" or "Speakeasy") holds an all alcoholic beverages license issued pursuant to M.G.L. c. 138, §12. The Alcoholic Beverages Control Commission (the "Commission") held a hearing on Tuesday, February 24, 2015, regarding the alleged violations of:

- 1) M.G.L. c. 138, §23 – Transfer of operational control of the license without approval;
- 2) M.G.L. c. 138, §64, To Wit: M.G.L. c. 138, §16A – Annual Renewal signed by a person other than those authorized by the Commission (2 counts);
- 3) 204 CMR 2.01 (8) – Making a false statement in an application made under the penalties of perjury; and
- 4) M.G.L. c. 138, §63A – Hindering and/or Delaying an Investigator of the Commission.

The above captioned occurred from 2005 to October 9, 2014, according to Investigator Wilichoski's Report.

The following documents are in evidence as exhibits:

1. Investigator Guarino-Wilichoski's Report dated October 9, 2014;
2. Death Certificate for Joseph Ristino;
3. Suffolk Probate Court Docket Report SU09P1733EA;
4. Suffolk Superior Court 200714CV001102 Complaint of Harold Brown v. Joseph A. Ristino, dated October 22, 2007;
5. Suffolk Probate Court Docket # 09P1733, Brown v. Estate of J.A. Ristino, Motion to Intervene and Notice of Claim;
6. Vote of Licensee's Corporate Board;
7. ABCC Renewal Applications for 2006 and 2007;
8. Secretary of the Commonwealth's Annual Reports of Licensee, for 2001 to 2013;
9. ABCC Demand for Documents and the signed Investigator's Return of Delivery.

A. Quitclaim Deed of Charles Lightbody dated December 23, 2011.

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

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

FACTS

1. Speakeasy Inc. d/b/a Speakeasy, located at 118-120 Broadway, Revere, MA holds a M.G.L. c. 138, §12 license approved in February 1994. Its license transfer application listed Joseph Ristino, 112 Florence Street, Everett, MA as the President, Treasurer, Clerk, and Director of the corporation. Mr. Ristino was also the sole shareholder. Since February 1994, no other individual or entity has been approved by this Commission to hold the position of President, Treasurer, Clerk, Director or Shareholder. (Testimony, Commission Records)
2. Administrative review of Commission records indicated that Joseph Ristino died on September 24, 2005. Mr. Joseph Ristino's surviving spouse, Janet S. Allen, filed a petition for Administration of decedent's (her husband Joseph Ristino) estate on August 11, 2009. (Testimony, Exhibits 2, 3)
3. Janet Allen [Ristino] was subsequently appointed as Administrator of the Estate by the Suffolk Probate Court on March 9, 2010. (Testimony, Exhibit 3)
4. In a motion filed in a separate civil action by Harold Brown, who claimed to have been injured on the licensed premises, Janet Allen [Ristino] stated that she had no knowledge of her late husband's ownership of the shares of Speakeasy Inc., and that she did not intend to assert any such ownership on behalf of the estate. (Testimony, Exhibits 4, 5)
5. In the motion, Ms. Allen stated that neither she, or any member of the Ristino family, have any involvement in the Speakeasy business; do not have any connection to its operation; and do not have any ownership of the Speakeasy Inc. business. (Testimony, Exhibit 5)
6. In 2007, Speakeasy Inc. filed an application with the Revere Licensing Board and this Commission to change the Manager of Speakeasy Inc. from Joseph Ristino to Erich L. Sbraccia. (Testimony, Commission Records, Exhibit 6)
7. The Vote of the Board of Directors, stamped received by the City of Revere Licensing Board, ("Local Board") with the date of April 3, 2007, states "hereby accepting the resignation of Joseph Ristino and appointing Eric Sbraccia as manager on the liquor license for Speakeasy Inc." Mr. Joseph Ristino died on September 24, 2005. (Testimony, Exhibits 2, 6)
8. With this application, Speakeasy Inc. provided a Vote of the Corporate Board authorizing the appointment of Mr. Sbraccia as the license manager. The corporate vote was signed by Charles Lightbody, who was listed as the President, Treasurer, Clerk, and Director of Speakeasy Inc. (Testimony, Exhibit 6)
9. Charles Lightbody has not applied, nor been approved by the Commission to be the President, Treasurer, Clerk, and/or Director of Speakeasy Inc. (Testimony, Commission Records)
10. The annual license renewal forms filed by the Licensee with the Commission in 2006 and 2007 appear to bear the signature of Charles Lightbody. (Testimony, Exhibit 7)
11. The records of the Massachusetts Secretary of the Commonwealth Corporations Division identify Charles Lightbody as the President, Treasurer, Secretary, and Director of Speakeasy Inc. (Testimony, Exhibit 8)
12. Administrative review of the Secretary of the Commonwealth's records indicates that this change in corporate structure took place on approximately March 9, 2006. (Testimony, Exhibit 8)

13. On October 2, 2014, Investigator Guarino-Wilichoski hand delivered a Demand Notice for documents pursuant to M.G.L. c. 138, §§ 56, 63, and 63A, relative to the business operation of Speakeasy Inc. (Testimony, Exhibit 9)
14. The Demand Notice stated that the requested documents must be delivered to the Commission's office at 239 Causeway Street, Boston, MA by Wednesday, October 8, 2014 at 12:00 p.m. As of October 9, 2014, no documents had been received by the Commission. (Testimony, Commission Records, Exhibit 9)
15. Mr. Charles Lightbody is the Trustee of the 118 Broadway Realty Trust, for the property located at 118 Broadway, Revere, Massachusetts. (Exhibit A)
16. There is no existing lease between the owner of the property located at 118 Broadway, Revere, Massachusetts and the licensee. (Testimony, Commission Records)

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). The procedure for the issuance of licenses to sell alcoholic beverages is set out in M.G.L. c. 138. Licenses must be approved by both local licensing authorities and the ABCC. M.G.L. c. 138, §§12, 67. See Beacon Hill Civic Assn. v. Ristorante Toscano, Inc., 422 Mass. 318, 321 (1996). Section 23 of c. 138 provides, in pertinent part: "Any license under this chapter held by an individual, partnership, or corporation may be transferred to any individual, partnership or corporation qualified to receive such a license in the first instance, if, in the opinion of the licensing authorities, such transfer is in the public interest." Section 2 of c. 138 provides, in pertinent part: "No person shall ... sell ... alcoholic beverages or alcohol, except as authorized by this chapter [.] Violation of any provision of this section shall be punished except as provided in section twenty-two [for unlawful transportation of alcoholic beverages] by a fine of not less than one hundred nor more than one thousand dollars or by imprisonment for not more than one year, or both."

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, have been specified, as already indicated, there is no invalid delegation of authority to the commission in leaving to it, as was done in § [12], the power to approve or disapprove applicants for licenses. See Butler v. East Bridgewater, 330 Mass. 33, 36-37. Connolly v. ABCC, 334 Mass. 613, 619, (1956).

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. In the very respect here in issue, the approval or disapproval of the action of local licensing authorities, that history indicates that the Commission was charged with important responsibilities and that it was not to be narrowly restricted in performing them." Connolly v. ABCC, 334 Mass. 613, 617 (1956).

The Appeals Court has discussed the statutory standard to grant a license and the factors that a licensing authority may properly consider in its decision whether to grant or deny a license application. In Ballarin Inc. v. Licensing Board of Boston, 49 Mass. App. Ct. 506 (2000), the Appeals Court held that:

The statute authorizing the issuance of liquor licenses speaks in terms of serving "the public need and in such a manner as to protect the common good and, to that end, to provide, in the opinion of the licensing authorities, an adequate number of places at which the public may obtain, in the manner and for the kind of use indicated, the different sorts of beverages for the sale of which provision is made."

M.G.L. c. 138, § 23, as amended by St. 1965, c. 399.

In making its discretionary determination, a licensing authority may take into account a wide range of factors -- such as traffic, noise, size, the sort of operation that carries the license, and the reputation of applicant. See Connolly v. ABCC, 334 Mass. at 617-618; Great Atlantic & Pacific Tea Co. v. Board of License Commrs. of Springfield, 387 Mass. 833, 837 (1983); Beacon Hill Civic Assn. v. Ristorante Toscano, Inc., 422 Mass. at 322 n. 4; Hub Nautical Supply Co. v. Alcoholic Beverages Control Commission, 11 Mass. App. Ct. 770, 772-774 (1981). Ballarin Inc. v. Licensing Board of Boston, 49 Mass. App. Ct. 506, 510-512 (2000).

M.G.L. c. 138, § 23 – Transfer of Operational Control of the License Without Approval (1 Count):

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, 771, 429 N.E.2d 62, 65 (1981). The Commission is instructed by the cases of Cleary v. Cardullo's, Inc., 347 Mass. 337, 346-350, 198 N.E.2d 281 (1964) and Number Three Lounge, Inc. v. Alcoholic Beverages Control Commission, 7 Mass. App. Ct. 301, 304-308, 387 N.E.2d 181 (1979). As characterized by the Appeals Court in the Griffin's Brant Rock case, "[i]n Cleary, the purported principal contributed no financial resources and was wholly dependent on his father and corporations controlled by his father." Griffin's Brant Rock Package Store, Inc., 12 Mass. App. Ct. at 773, 429 N.E.2d at 65, and "[i]n Number Three Lounge, there was evidence that a son-in-law of a person who had been refused a license was substituted as an applicant, but the substitution lacked all economic substance. Griffin's Brant Rock Package Store, Inc., 12 Mass.App.Ct. at 773-774, 429 N.E.2d at 66.

Chief Investigator Mahony testified at the hearing that Speakeasy Inc. d/b/a Speakeasy, located at 118-120 Broadway, Revere, MA holds a M.G.L. c. 138, §12 license approved in February 1994. Its license transfer application listed Joseph Ristino, 112 Florence Street, Everett, MA as the President, Treasurer, Clerk, and Director of the corporation. Mr. Ristino was also the sole shareholder. Since February 1994, no other individual or entity has been approved by this Commission to hold the position of President, Treasurer, Clerk, Director or Shareholder. Mr. Ristino died on September 24, 2005.

In 2007, Speakeasy Inc. filed an application with the Revere Licensing Board and the Alcoholic Beverages Control Commission to change the Manager of Speakeasy Inc. from Joseph Ristino to Erich L. Sbraccia. The Vote of the Board of Directors, stamped received by the City of Revere Licensing Board, with the date of April 3, 2007, states "hereby accepting the resignation of Joseph Ristino and appointing Eric Sbraccia as manager on the liquor license for Speakeasy Inc. Mr. Joseph Ristino died on September 24, 2005. With this application, Speakeasy Inc. provided a Vote of the Corporate Board authorizing the appointment of Mr. Sbraccia as the license manager. The corporate vote was signed by Charles Lightbody, who was listed as the President, Treasurer, Clerk, and Director of Speakeasy Inc.

Charles Lightbody has not applied, nor been approved, by the Commission to be the President, Treasurer, Clerk, and/or Director of Speakeasy Inc.

Chief Investigator Mahony also testified that Administrative review of Commission Records indicated that Joseph Ristino died on September 24, 2005. Mr. Joseph Ristino's surviving spouse, Janet S. Allen, filed a petition for Administration of decedent's (her husband Joseph Ristino) estate on August 11, 2009.

Janet Allen [Ristino] was subsequently appointed as Administrator of the Estate by the Suffolk Probate Court on March 9, 2010.

In a motion filed in a separate civil action by Harold Brown, who claimed to have been injured on the licensed premises, Janet Allen [Ristino] stated that she had no knowledge of her late husband's ownership of the shares of Speakeasy Inc., and that she did not intend to assert any such ownership on behalf of the estate. In the motion, Ms. Allen stated that neither she, nor any member of the Ristino family, have any involvement in the Speakeasy business; do not have any connection to its operation; and do not have any ownership of the Speakeasy Inc. business.

The Commission is convinced by satisfactory proof and finds that there was a transfer of license without first obtaining permission from both the Local Board and the Commission, as required by statute. M.G.L. c. 138, §23. The acts of handing over control of the licensed premises to Charles Lightbody and Erich Sbraccia who were not approved by the Local Board and the Commission, especially since the approved licensee is deceased and has been since 2005, and for Mr. Lightbody and Mr. Sbraccia to operate the premises for their own account is a violation of M.G.L. c. 138 §23. Although a quitclaim deed, admitted in evidence during the hearing, demonstrated that Mr. Charles Lightbody is the trustee of the 118 Broadway Realty Trust for the property located at 118 Broadway, Revere, Massachusetts, it is not substantial evidence that Mr. Lightbody has a direct or indirect interest in the license. Furthermore, there is no existing lease for the licensed business executed between the licensee and Mr. Lightbody, to demonstrate that Mr. Lightbody has an indirect beneficial interest in the license.

M.G.L. C. 138, §64, To Wlt: M.G.L. C. 138, §16A – Annual Renewal Signed By A Person Other Than Those Authorized By The Commission (2 Counts):

Under the pertinent provisions of M.G.L. c. 138, §16A, a license "shall be automatically renewed for the next annual license period upon application by the holder thereof during the month of November and shall be automatically renewed...provided that said license is of the same type as the expiring license and covers the same licensed premises. If the application does not meet the conditions hereunder it shall be treated as an application for a new license and all the procedures set forth under section 15A shall be applicable thereto." A corporate officer, a director, a shareholder, a license manager or an individual owner must sign the renewal form. The Commission also has a longstanding administrative practice under M.G.L. c. 138, §15A to allow "all persons who have a direct or indirect beneficial interest in said license" to sign the application for renewal.

The annual license renewal forms filed by the Licensee with the Commission in 2006 and 2007 appear to bear the signature of Charles Lightbody. Mr. Charles Lightbody was not an individual who possessed a direct or indirect interest in this license. He was not an approved officer, director, shareholder, nor the license manager of the licensee.

The Local Board approved this Licensee's 2006 and 2007 renewal applications although they did not comply with the renewal requirements expressly set forth in M.G.L. c. 138, §16A. Consequently, this Licensee's license was renewed by the Local Board contrary to the requirements of, and in violation of, M.G.L. c. 138, §16A.

The application should have been treated as an application for an original license. M.G.L. c. 138, §16A. It was not. Notwithstanding the fact that the Local Board approved two (2) of this Licensee's annual renewals with an unauthorized person's signature, the Commission cannot let stand an action of the Local Board that it could not lawfully authorize in the first place. See Hastings Associates, Inc. v. Local 369 Building Fund, Inc., 42 Mass. App. Ct. 162, 178 (1997) (there is a "strong public policy favoring enforcement of our licensing laws regarding the selling of alcoholic beverages.") See Beacon Hill Civic Assn. v. Ristorante Toscano, Inc., 422 Mass. 318, supra at 320-324, (private contract purporting to transfer control of license held to be illegal and unenforceable under public policy expressed in the Liquor Control Act, Chapter 138). See Zelman v. ABCC, 335 Mass 515(1957).

The Commission finds that the renewal of the license of Speakeasy for calendar years 2006 and 2007 violated c. 138 §64 – License issued under this chapter by the Local Licensing Authority in violation of section 16A or any other provision of this chapter.

The specific language of this chapter mandates that the Commission revoke the license of Speakeasy. Rigali v. Cahill, Hampden Superior Court C.A. No. 2008-00362, Memorandum And Order Dated July 22, 2009 (Veils, J.) (where renewal of license was “in clear violation of the plain language of M.G.L. c. 138, §16A, the ABCC was obligated to revoke the license pursuant to M.G.L. c. 138, §64.”); See In Re: Margaret’s Restaurant, Inc., d.b.a. Hokeys, Oxford MA (ABCC Decision dated July 12, 2005); In re: Pop’s Cafe, Inc., Holyoke, MA (ABCC Decision dated March 12, 2008). As the Commission acknowledged in Margaret’s, no other sanction is available for the Commission to consider given the express language of the statute. The Commission has no discretion here and must revoke the license forthwith.

204 CMR 2.01 (8) – Making A False Statement In An Application Made Under The Penalties Of Perjury:

204 CMR 2.01 (8)-states, “Applications shall be made under the pains and penalties of perjury and any false statement contained in any application shall be a cause or ground for refusing to grant the license or permit or for suspending, canceling or revoking a license or permit already granted.” The Commission finds that the Corporate Vote and the renewal forms signed by Charles Lightbody and filed in this matter constitute false statements made in an application. The Commission finds there was a violation of 204 CMR 2.01 (8).

M.G.L. c. 138 §63A – Hindering or Delaying an Investigator of the Commission:

M.G.L. Chapter 138, Section 63A states in pertinent part: “Any person who hinders or delays any authorized investigator of the commission or any investigator, inspector or any other authorized agent of local licensing authorities in the performance of his duties, ...or who refuses to give to such investigator, inspector or agent such information as may be required for the proper enforcement of this chapter, shall be punished by a fine of not less than fifty nor more than two hundred dollars or by imprisonment for not more than two months, or both.” M.G.L. Chapter 138, Section 63A The Commission is extremely concerned with evidence presented regarding the conduct of Speakeasy for not complying with a demand notice issued by an Investigator of the Commission.

The Commission cannot and does not condone hindering and/or delaying Commission investigators, nor does it condone a lack of cooperation by the Licensee with the Investigators while in the performance of their duties in their official capacity, under any circumstances. The Commission finds the Licensee violated M.G.L. c. 138, §63A.

CONCLUSION

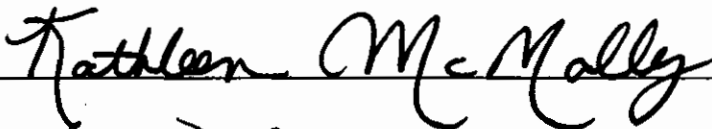
Based on the evidence, the Commission finds Speakeasy Inc. d/b/a Speakeasy violated:

- 1) M.G.L. c. 138, §23 – Transfer of operational control of the license without approval;
- 2) M.G.L. c. 138, §64, To Wit: M.G.L. c. 138, §16A – Annual Renewal signed by a person other than those authorized by the Commission (2 counts);
- 3) 204 CMR 2.01 (8) – Making a false statement in an application made under the penalties of perjury; and
- 4) M.G.L. c. 138, §63A – Hindering and/or Delaying an Investigator of the Commission.

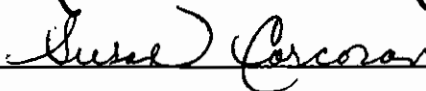
Therefore, for the violation of M.G.L. Ch.138 §64- License issued under this chapter by the Local Licensing Authorities in violation of §16A or any other provision of this chapter the Commission **REVOKES¹** the license of Speakeasy Inc. d/b/a Speakeasy, **EFFECTIVE FORTHWITH.**

ALCOHOLIC BEVERAGES CONTROL COMMISSION

Kathleen McNally, Commissioner



Susan Corcoran, Commissioner



Dated: March 18, 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.

cc: Local Licensing Board
Frederick G. Mahony, Chief Investigator
Caroline Guarino Wilichoski, Investigator
Robert L. Allen, Jr., Esq. via facsimile (617) 383-6001
Administration
File

¹As the Commission is revoking the license based on the statutory requirements pursuant to M.G.L. c. 138, §64, it need not impose penalties for violations of M.G.L. c.138 §§23, 63A, and 204 CMR 2.01 (8).