

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 INDEFINITE SUSPENSION

July 27, 2012

TOLO ENTERPRISES, INC.
492 REVERE BEACH BLVD.
REVERE, MA 02151
LICENSE#: 102200010
HEARD: 06/13/2012

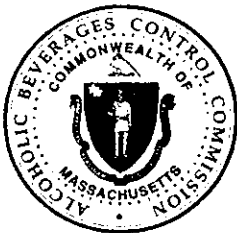
After a hearing on June 13, 2012, the Commission finds Tolo Enterprises, Inc. in violation of M.G.L. c. 138, §23-Transfer of the privilege of a license without proper approval.

The above-captioned licensee's license is **suspended indefinitely forthwith** until further 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.

Kim S. Gainsboro
Chairman

cc: Local Licensing Board
Frederick G. Mahony, Chief Investigator
Rose Bailey, Investigator
Frederick W. Riley, Esq., via facsimile
Administration
File



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DECISION

TOLO ENTERPRISES, INC.
492 REVERE BEACH BLVD.
REVERE, MA 02151
LICENSE#: 102200010
HEARD: 06/13/2012

Tolo Enterprises, Inc. (the "Licensee" or "Tolo") holds an all-alcohol beverages license issued pursuant to M.G.L. c. 138, §12. The Alcoholic Beverages Control Commission (the "Commission") held a hearing on Tuesday, June 13, 2012, regarding an alleged violation of M.G.L. c.138, §23 -Transfer of the privilege of a license without the proper approval. Prior to the commencement of the hearing, the licensee stipulated to the violation alleged in Investigator Bailey's Report.

The following documents are in evidence:

1. Investigator Bailey's Investigative Report dated November 10, 2011;
2. Tolo's Commonwealth of Massachusetts Articles of Organization;
3. Application for Alcoholic Beverages License for Retail Sale dated June 27, 1994;
4. Alcoholic Beverages Control Commission Application Approval dated August 4, 1994;
5. License Renewal Applications: 1995, 1996, and 1997;
6. Form 43 Approved Pledge of License dated July 17, 1997;
7. License Renewal Applications: 1998, 1999, 2000, 2001, 2002, 2003, 2004, and 2005;
8. Form 43 Approved Alteration of Premises dated April 1, 2005;
9. Form 43 Acknowledged Receipt of Change of dba to Antonia's at the Beach dated November 29, 2005;
10. License Renewal Application 2006 and 2007;
11. Form 43 Approved Alteration of Premises dated July 18, 2007;
12. License Renewal Application 2008;
13. Form 43 Disapproved Alteration of Premises dated August 6, 2009;
14. License Renewal Application 2009;
15. Application for Transfer/ Pledge of License/ Stock to Four Partners, Inc. dated August 4, 2009;
16. Recommendation of the Investigator dated October 5, 2009;
17. Agreement between Four Partners, Inc. and Tolo dated March 9, 2009;
18. License Renewal Application 2010;
19. License Application 2011;
20. Application for Transfer of License to Four Partners, Inc. dated July 28, 2011;
21. Recommendation of the Investigator dated September 28, 2011;
22. Restaurant Lease dated March 17, 2009;
23. Antonia's at the Beach Profit and Loss 2009 and 2010;
24. Affidavits of Wayne Cintolo, Donna Cintolo and William Cintolo dated September 23, 2009;
25. Licensee's Stipulation of Facts to M.G.L. c. 138 §23; and

26. Investigator Bailey's Letter dated April 25, 2012 Withdrawing Violation of M.G.L. c. 138 §64.
- A. History of Tolo Enterprises, Inc. Liquor License and Corresponding Medical History for Wayne Cintolo, Licensed Manager for Tolo Enterprises, Inc.;
 - B. Judgment of Divorce Nisi and Permanent Restraining Order;
 - C. Purchase and Sale Agreement between Tolo Enterprises, Inc. and Four Partners, Inc.; and
 - D. Restaurant Lease.

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

FACTS

The Commission makes the following finding of facts based on the evidence presented at the hearing:

1. Tolo Enterprises, Inc. is a Massachusetts corporation that was organized and filed under M.G.L. c. 156B on May 25, 1994. Ex. 2
2. Wayne Cintolo is the President, Director, a Stockholder, and the License Manager. Ex. 2
3. Donna Cintolo is the Treasurer, Clerk, a Director, and a Stockholder. Ex. 2
4. On August 4, 1994, the Commission approved Tolo to hold a §12 annual all-alcohol license. Ex. 4
5. On July 28, 2011, the Commission received an application from Tolo Enterprises, Inc. to transfer its license to Four Partners, Inc. Ex. 20
6. The Commission disapproved the requested transfer. Ex. 21
7. As a result of the documents in support of the transfer application, Investigator Egan-Bailey conducted a subsequent investigation. Testimony
8. The documents submitted illustrate that Mr. Cintolo and Ms. Cintolo had executed a lease for the property of the licensed premises with Four Partners, Inc., and had transferred their interest in the license to Four Partners, Inc. Exs. 22-24
9. The transfer of the license was done without the prior approvals required by M.G.L. c. 138. Testimony

DISCUSSION

M.G.L. c. 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 its 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 Mr. Cintolo began operating these premises, he and Donna Cintolo were the sole stockholders of the licensee. However, the evidence demonstrates that beginning in 2009 and continuing up through the present; Four Partners, Inc., an unapproved corporation, assumed operational control of, as well as an undisclosed interest in Tolo Enterprises, Inc.

Mr. Cintolo and Ms. Cintolo, through their affidavits admitted that the licensee entered into an agreement with Four Partners, Inc. which allowed it to operate the licensed premises for its individual account. These affidavits state that the Cintolos, "sold the liquor license and applied to the City of

Revere to transfer the liquor license to a corporation named Four Partners, Inc....[which] is still doing business under the name Antonia's. These affidavits were signed under the pains and penalties of perjury on September 23, 2009. 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.

In this case, it is clear that the ownership interest is an absolute proprietary one. Consequently, in contravention of the statute, we find that the last-approved licensee does not control and run the business for its own account, but has allowed Four Partner's Inc., an unapproved business, 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). By allowing Four Partners Inc. to assume operational control of Tolo Enterprises, Inc., Mr. Cintolo 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 he allowed Four Partners to run the business for its own account.

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 Four Partners, Inc. and suspends the license indefinitely to commence on forthwith 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. Before concluding good cause exists to issue a further order, the Commission will require documented tax compliance by both Tolo Enterprises, Inc. and Four Partners, Inc. from both the Department of Revenue and the Division of Unemployment Assistance.

Based on the evidence, the Commission finds the licensee violated M.G.L. c. 138, §23-Transfer of the privilege of a license without proper approval. Therefore, the Commission **INDEFINITELY SUSPENDS** the license of Tolo Enterprises, Inc. effective forthwith until further order from this Commission.

ALCOHOLIC BEVERAGES CONTROL COMMISSION

Kim S. Gainsboro, Chairman

Kathleen McNally, Commissioner

Dated: July 27, 2012

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
Rose Bailey, Investigator
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