



*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 REVOCATION

September 29, 2014

**HERITAGE PARK RESTAURANT, INC. DBA TOMATOES**  
**280C ROUTE 130 HERITAGE PARK PLAZA**  
**SANDWICH, MA 02563**  
**LICENSE#: 107400052**  
**VIOLATION DATE: 11/25/2013**  
**HEARD: 09/09/2014**

After a hearing on September 9, 2014, the Commission finds Heritage Park Restaurant, Inc. dba Tomatoes violated:

- 1) M.G.L. c. 138 §15A Failure to disclose all persons who have a direct or indirect beneficial or financial interest in said license, to wit: Failure to notify the Local Licensing Authorities of a change of officers and directors;
- 2) M.G.L. c. 138 §26 Operating without an approved License Manger;
- 3) M.G.L. c. 138 §64 License issued under this chapter by the Local Licensing Authorities in violation of §16A or any other provision of this chapter (6 Counts);
- 4) M.G.L. c. 156D, §16.22; 950 CMR 113.57 Failure to file Annual Reports with the Secretary of the Commonwealth, Corporations Division.

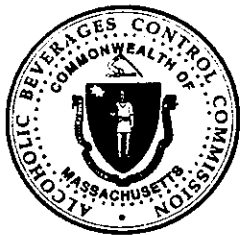
The above-captioned licensee's license is **REVOKED FORTHWITH**.

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  
Rose Bailey, Investigator  
Carolyn Conway, Esq. via facsimile 617-269-5923  
John McAuliffe, Esq. via facsimile 617-558-6882  
Administration  
File



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**DECISION**

**HERITAGE PARK RESTAURANT, INC. DBA TOMATOES**  
**280C ROUTE 130 HERITAGE PARK PLAZA**  
**SANDWICH, MA 02563**  
**LICENSE#: 107400052**  
**VIOLATION DATE: 11/25/2013**  
**HEARD: 09/09/2014**

Heritage Park Restaurant, Inc. dba Tomatoes (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, September 9, 2014, regarding an alleged violation of:

- 1) M.G.L. c. 138 §15A Failure to disclose all persons who have a direct or indirect beneficial or financial interest in said license, to wit: Failure to notify the Local Licensing Authorities of a change of officers and directors;
- 2) M.G.L. c. 138 §26 Operating without an approved License Manger;
- 3) M.G.L. c. 138 §64 License issued under this chapter by the Local Licensing Authorities in violation of §16A or any other provision of this chapter (6 Counts);
- 4) M.G.L. c. 156D, §16.22; 950 CMR 113.57 Failure to file Annual Reports with the Secretary of the Commonwealth, Corporations Division.

The above captioned occurred on November 25, 2013, according to Investigator Bailey's Violation Report.

The following documents are in evidence:

1. Investigator Bailey's Investigative Report dated November 25, 2013;
2. Licensee's Articles of Organization dated 5/30/2002;
3. Certificate for Change of Directors or Officers dated 1/7/2003;
4. Licensee's Application for New License dated 1/13/2003;
5. Form 43 Approval New License dated 6/4/2003;
6. Licensee's 2004 Renewal Application;
7. Form 43 Approval to Alter Premises dated 6/21/2004;
8. Licensee's 2005 Renewal Application;
9. Licensee's 2007 - 2012 Renewal Applications;
10. Licensee's 2013 Renewal Application;
11. Licensee's Annual Reports 2002 - 2009, for the Secretary of Commonwealth, Corporations Division dated 2/22/2012;
12. Correspondence dated 1/23/2013 from Attorney McAuliffe;

13. Commission's Request dated 4/4/2013 for Documentation;
14. Investigator's Return of Delivery dated 4/4/2013;
15. Licensee's Cancelled Checks from United Liquors;
16. Licensee's Credit Application dated 2/25/2005 for Martignetti Companies;
17. Attorney McAuliffe's Letter dated 7/10/2013 re: U.S. Bankruptcy Court Complaint.

A. U.S. Bankruptcy Court Petition # 12-18190 Docket Sheet dated 10/9/2012.

There is one (1) audio recording of this hearing and four (4) witnesses testified.

The Commission took administrative notice of the Licensee's records.

### FACTS

1. The Alcoholic Beverages Control Commission (the "Commission") received a complaint on Tuesday, January 29, 2013, assigned to Investigator Bailey who conducted an investigation of Heritage Park Restaurant, Inc. dba Tomatoes.
2. Heritage Park Restaurant, Inc. is a Massachusetts corporation organized and filed under M.G.L. Ch. 156B on May 30, 2002, comprised of the following corporate officers:
  - o Darren J. Levorce – President, Clerk, Director;
  - o Janine Petralia – Treasurer, Director.
3. The Corporation submitted a §12 renewal application dated 1/25/2003 with the following officers/stockholders, which the Commission approved on June 4, 2003:
  - o Anthony Levorce – President, License Manager, Stockholder (150 shares),
  - o Janine Petralia – Treasurer, Clerk, Stockholder (300 shares)
  - o Debbie Levorce – Stockholder (250 shares)
  - o Dorothy Oosterman – Stockholder (300 shares).
4. The §12 renewal application for 2004 was signed by corporate officer Anthony Levorce.
5. On March 30, 2004, the Licensee filed an application for an alteration of premises, which the Commission approved on June 21, 2004.
6. The §12 renewal application for 2005 was signed by corporate officer Anthony Levorce.
7. The §12 renewal applications for 2006 through 2012 were signed by William Petralia, a person who was not an approved corporate officer/director/stockholder or license manager.
8. The §12 renewal application for 2013 was signed by corporate officer Janine Petralia.
9. An administrative review of the Secretary of the Commonwealth, Corporations Division reveals that the corporation filed annual reports for 2002 through 2009, and has failed to file annual reports for 2010 through 2012.
10. On March 26, 2013, Attorney John McAuliffe, representing the Licensee, contacted Investigator Bailey relative to the Licensee's application for a change of manager. Investigator Bailey informed Attorney McAuliffe about the investigation of the complaint.
11. On Thursday, April 4, 2013, at approximately 4:00 p.m., Investigator Bailey conducted an interview and inspection of the Heritage Park Restaurant, Inc. dba Tomatoes to determine the manner in which its business was being conducted.

12. Upon arrival, Investigator Bailey observed the premises to be closed. She knocked on the front entrance door, identified herself to the male employee answering the door, and asked to speak with the owner or license manager.
13. Marc Petralia identified himself as the license manager and a director of the corporation. He stated to Investigator Bailey that he, along with his wife Janine Petralia, was also a shareholder of the corporation.
14. Investigator Bailey provided Mr. Petralia with a request in hand for documentation due on or before April 11, 2013. Mr. Petralia signed the Investigator's Return of Delivery Notice as managing director.
15. During the interview, Mr. Petralia stated to Investigator Bailey:
  - Attorney McAuliffe contacted him that a Commission investigator would be out;
  - The Corporation filed for bankruptcy reorganization on October 9, 2013;
  - The Corporation met with its attorney in September [2013] at which time Anthony and Darren Levorce agreed to resign and correct the license manager to Janine Petralia.
  - Anthony Levorce as the President, Director, License Manager, & Stockholder;
  - Darren Levorce – Chef, Director, and Stockholder
  - Debbie Levorce – Director and Stockholder;
  - Janine Petralia – Treasurer, Director, and Stockholder;
  - Marc Petralia – Director and Stockholder;
  - William Petralia – Director and Stockholder; and
  - Dorothy Oosteman – Stockholder.
16. In answer to Investigator Bailey's questions, Mr. Petralia stated that he or his wife ordered and paid for the alcoholic beverages, and that he was an authorized signature on the corporation's bank account. Mr. Petralia stated that formerly William Petralia was in charge of the books, taxes, accounting, and invoice payments, as well as being an authorized signer on the bank account but William has been gone since July 2012.
17. Investigator Bailey asked Mr. Petralia who signed the yearly liquor license renewals to which he replied that he wasn't sure but it was probably William.
18. Investigator Bailey informed Mr. Petralia that any individuals with a direct or indirect beneficial or financial interest in a liquor license must be disclosed and that he would need to discuss these matters with his attorney.
19. Investigator Bailey advised Mr. Petralia of the violation and that a report would be filed with the Chief Investigator for further action.
20. In addition, Investigator Bailey obtained copies of check payments and credit applications by the Licensee from United Liquors and Martignetti Company which showed check payments signed by a person other than an approved corporate officer.
21. On July 11, 2013, Attorney McAuliffe forwarded a copy of the Licensee's Adversary Complaint in the United States Bankruptcy Court, District of Massachusetts Eastern Division.
22. Janine Petralia testified during the Commission hearing that William Petralia took care of the "back of the house" for this business, meaning the finances and paperwork, and she took care of the "front of the house," meaning the operation of the dining room and the customers.
23. Marc Petralia testified that both he and his wife, Janine, are trying to turn this business around. The business has recently just started to make a profit and they hope to pay back their creditors.

24. Mr. and Mrs. Petralia testified that the Levorces are no longer involved with the operation of this business, and the Levorces started a restaurant across the street that directly competes with this restaurant.
25. Attorney John McAuliffe testified that he is the bankruptcy attorney for the Mr. and Mrs. Petralia regarding this business. Attorney McAuliffe tried to get the Levorces to respond and complete paperwork regarding the bankruptcy proceedings for this matter. He testified that the Levorces refused to respond, and as a result, Attorney McAuliffe had to take the unusual action of filing an Adversarial complaint in Bankruptcy Court against the Levorces.
26. Attorney McAuliffe testified that the Petralias and this business need this license as an asset for the bankruptcy proceedings.
27. Mr. and Mrs. Petralia testified that Mr. William Petralia did sign the renewal forms for the alcohol license for the seven years of 2006 through 2012.
28. William Petralia is not the license manager, nor is he an officer, director, or shareholder of the licensee, nor does he have a direct or indirect beneficial interest in the license.

### DISCUSSION

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.

William Petralia is the signature on the renewal form for the years 2006, 2007, 2008, 2009, 2010, 2011, and 2012. William Petralia was not an individual who possessed a direct or indirect interest in this license. He was not an officer, director, shareholder, nor the license manager of the licensee.

Mrs. Janine Petralia testified before the Commission that William Petralia signed the renewal forms for those years because he was taking care of the paperwork and financial matters for the restaurant. Mrs. Petralia took of the menu, food service, and the customers.

The Local Licensing Authority (“LLA”) approved this Licensee’s 2006, 2007, 2008, 2009, 2010, 2011, and 2012 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 LLA approved this Licensee’s seven (7) annual renewals with an unauthorized person’s signature, the Commission cannot let stand an action of the LLA 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).

In light of the finding that the 2006, 2007, 2008, 2009, 2010, 2011, and 2012 renewal applications do not comply with the requirements of M.G.L. c. 138, §16A, the Commission does not address, and leaves for

another day, the question whether the licensee violated: M.G.L. c. 138 §15A Failure to disclose all persons who have a direct or indirect beneficial or financial interest in said license, to wit: Failure to notify the Local Licensing Authorities of a change of officers and directors; M.G.L. c. 138 §26 Operating without an approved License Manager; and M.G.L. c. 156D, §16.22; 950 CMR 113.57 Failure to file Annual Reports with the Secretary of the Commonwealth, Corporations Division.

The Commission finds that the renewal of the license of Heritage Park Restaurant, Inc. dba Tomatoes for calendar years 2006, 2007, 2008, 2009, 2010, 2011, and 2012 violated Ch.138 §64 - License issued under this chapter by the LLA 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 Heritage Park Restaurant, Inc. dba Tomatoes. 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 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, 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. Without the mandatory language, the Commission could have considered suspension, modification, or cancellation of the license. But the Commission has no discretion here and must revoke the license forthwith. The Commission therefore **REVOKES** the license of Heritage Park Restaurant, Inc. dba Tomatoes effective forthwith.

#### CONCLUSION

Based on the evidence, the Commission finds Heritage Park Restaurant, Inc. dba Tomatoes violated:


- 1) M.G.L. c. 138 §64 License issued under this chapter by the Local Licensing Authorities in violation of §16A or any other provision of this chapter (6 Counts).

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 **REVOKES**<sup>1</sup> the license of Heritage Park Restaurant, Inc. dba Tomatoes, **EFFECTIVE FORTHWITH**.

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<sup>1</sup> As the Commission is revoking the license based on the statutory requirements under M.G.L. c. 138, §64, it need not impose a penalty for violating M.G.L. c.138 §§15A, 26, c. 156D, §16.22, and 950 CMR 113.57.

ALCOHOLIC BEVERAGES CONTROL COMMISSION

Susan Corcoran, Commissioner 

Kathleen McNally, Commissioner 

Dated: September 29, 2014

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  
Carolyn Conway, Esq. via facsimile 617-269-5923  
John McAuliffe, Esq. via facsimile 617-558-6882  
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