

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

August 24, 2012

668 LIBERTY LIQUORS & SPIRITS, LLC. DBA STEPHEN'S LIQUORS
665 LIBERTY ST
SPRINGFIELD, MA 01104
LICENSE#: 122600183
HEARD: 08/07/2012

After a hearing on August 7, 2012 the Commission finds 668 Liberty Liquors & Spirits, LLC dba Stephen's Liquors in violation of:

1. 2.04 CMR 2.01 (8)- False Statement On An Application;
2. M.G.L. c. 138 §23- Transfer of the Privileged of a License Without Proper Approval; and
3. 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 Licensing Authorities of a Change of Officers and Directors.

Therefore, the Commission **INDEFINITELY SUSPENDS** the licensee's license **effective forthwith** until further written order of the Commission.

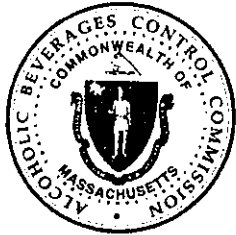
The Commission will not issue any further order without a written request from the licensee showing good cause to reconsider this indefinite suspension and a hearing before the Commission that the licensee attends.

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
Thomas Rooke, Esq. via Facsimile
Administration
Wile



The Commonwealth of Massachusetts
Department of the State Treasurer
Alcoholic Beverages Control Commission
Boston, Massachusetts 02114

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DECISION

668 LIBERTY LIQUORS & SPIRITS, LLC. DBA STEPHEN'S LIQUORS
665 LIBERTY ST
SPRINGFIELD, MA 01104
LICENSE#: 122600183
HEARD: 08/07/2012

668 Liberty Liquors & Spirits, LLC dba Stephen's Liquors (the "Licensee") holds an alcohol license issued pursuant to M.G.L. c. 138, §15. The Alcoholic Beverages Control Commission (the "Commission") held a hearing on Tuesday, August 7, 2012, regarding an alleged violation of:

1. 2.04 CMR 2.01 (8)- False Statement On An Application;
2. M.G.L. c.138 §23- Transfer of the Privileged of a License Without Proper Approval; and
3. 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 Licensing Authorities of a Change of Officers and Directors.

The above captioned occurred according to Investigator Bailey's Report.

The following documents are in evidence:

1. Investigator Bailey's Investigative Report dated December 22, 2011;
2. Articles of Organization;
3. Application dated November 6, 2003;
4. Form 43 - Application Approval dated October 20, 2004;
5. Recommendation of Investigator dated May 25, 2004;
6. Recommendation of Investigator dated October 18, 2004;
7. Tape of Commission Hearing held July 7, 2004;
8. Affidavit of Mr. Hasmukh Patel;
9. Letter from Attorney Rooke dated August 26, 2004;
10. Affidavit of Mr. Hasmukh Patel dated October 4, 2004;
11. Affidavit of Mr. Hasmukh Patel dated October 14, 2004;
12. Licensee's Renewal Applications for 2005, 2007, 2008, 2009, and 2010;
13. Form 43 filed April 20, 2010;
14. Disapproval of filed Pledge of License dated August 25, 2010;
15. Petition for Pledge of License dated January 6, 2010;
16. Written Consent in Lieu of Corporate Vote;
17. Pledge of Liquor License dated January 6, 2010;
18. Investigator's Return of Delivery and Request for Documentation dated December 3, 2010;
19. Copies of Licensee's Cancelled Checks;
20. Investigator's Return of Delivery and Request for Documentation dated April 20, 2011;

21. New York Driver's License and Vehicle Registration of Mr. Hasmukh Patel;
22. Letter from Attorney Rooke dated April 28, 2011;
23. Temporary Massachusetts Driver's License of Mr. Hasmukh Patel;
24. Secretary of the Commonwealth 2006 Annual Report for Licensee dated September 3, 2008;
25. Secretary of the Commonwealth 2007 Annual Report for Licensee dated August 2, 2008;
26. Secretary of the Commonwealth 2008 Annual Report for Licensee dated July 6, 2008; and
27. Licensee's License Renewal Application for 2011.

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

FACTS

1. 668 Liberty Liquors & Spirits, LLC dba Stephen's Liquors is a Massachusetts limited liability corporation organized and filed under M.G.L. c. 156B on October 8, 2003, with Mr. Hasmukh Patel as the sole managing member.
2. The licensee submitted an application, dated November 6, 2003, for transfer of the §15 annual wine and malt beverages license. The application listed Mr. Hasmukh Patel as the licensed manager. The Commission approved the transfer application on October 20, 2004.
3. An administrative review of the file shows that on May 24, 2004, Investigator Keady, conducted an investigation of Mr. Hasmukh Patel, listed as the sole corporation member, whose residential address was listed as West Bridgewater, Massachusetts.
4. Investigation of telephone records revealed Mr. Hasmukh Patel's true residence to be in Old Westbury, New York.
5. On July 7, 2004, the Commission held an informational hearing on this application. The applicant, Mr. Hasmukh Patel, testified to his residence and ownership:
 - o Mr. Hasmukh was the sole beneficial and financial interest holder;
 - o He shared an apartment in Springfield, Massachusetts, with Mr. Raju Patel.
6. An affidavit dated October 4, 2004, subscribed and sworn to by Mr. Hasmukh Patel stated:
 - o Mr. Raju Patel is the brother-in-law of Hasmukh and Bharat Patel;
 - o Mr. Raju resides at 85 Farnsworth Street, Springfield, Massachusetts;
 - o The lease agreement would be amended to add Mr. Hasmukh as a co-lessee, if the liquor license transfer is approved;
 - o Presently, Mr. Hasmukh Patel resides in Old Westbury, New York, pending approval of the alcoholic beverages transfer to his LLC, and his relocation to Springfield, Massachusetts;
 - o Mr. Hasmukh is in absolute and complete compliance with M.G.L. c. 138, §15, as amended by Acts 2004, c. 149, §178;

- Mr. Hasmukh is the only person who has any direct or indirect beneficial interest in the liquor license.
7. The lease agreement signed by Mr. Hasmukh Patel on January 14, 2004 indicated the lease term of January 15, 2004 to June 15, 2005.
 8. An affidavit dated October 13, 2004, subscribed and sworn to by Mr. Hasmukh Patel stated that no investor listed in the purchase of real estate located at 668 Liberty Street, Springfield, Massachusetts, had any direct or indirect beneficial interest in any all alcoholic beverage license within the Commonwealth of Massachusetts.
 9. The license was renewed for calendar years 2005, 2007, 2008, 2009, and 2010.
 10. An application dated April 20, 2010, for a pledge of §15 license was disapproved by the Commission on August 26, 2010, based upon investigator's findings upon review of the submitted application.
 11. The submitted documentation reveals an entity, other than the sole managing member, signed the following documents:
 - Petition for License Transaction dated January 6, 2010, signed by Mr. Raju R. Patel, manager;
 - Written Consent in Lieu of a Corporate Vote signed by Mr. Hasmukh Patel, Director and Manager, and Mr. Raju R. Patel, Director and Manager;
 - Pledge of Liquor License, dated January 6, 2010, signed by Mr. Raju R. Patel, Pledgee.
 12. On Saturday, December 3, 2010, Investigators Kujawski, Keefe, Doyle, and Bailey conducted an investigation of the business operation of 668 Liberty Liquors & Spirits, LLC dba Stephen's Liquors to determine the manner in which their business was conducted.
 13. Investigators themselves to the manager on duty, Mr. Raju Patel, whose identity was verified by his valid Massachusetts Driver's License.
 14. Investigators interviewed Mr. Raju Patel regarding the business operation. Mr. Raju Patel stated that:
 - He has been the manager of the licensed premises for six (6) years;
 - He is a member of the LLC;
 - He hires and fires all the employees;
 - He orders and pays for the alcoholic beverages;
 - He pays the employees through a payroll company;
 - He writes and signs all checks for the business;
 - He is not a United States Citizen;

- He is the brother-in-law of Mr. Hasmukh Patel;
 - Mr. Hasmukh Patel comes by the licensed premises once a week for about two (2) hours;
 - Mr. Hasmukh Patel lives in New York, not in Massachusetts.
15. Investigator Bailey hand delivered a written request for specific documentation which was signed for by Mr. Raju Patel. Investigator Bailey advised him the licensee of record had to respond on or before December 20, 2010. (Ex. 8)
 16. On December 20, 2010 Investigator Bailey received and reviewed the requested documentation.
 17. The licensee failed to provide copies of all original signature cards for all checking and savings bank accounts associated with the business.
 18. A review of the provided cancelled checks from January 2010 to October 31, 2010 reveal Mr. Raju Patel's signature on all checks, including check payments made to wholesalers for the purchase of alcoholic beverages. (Ex. 9)
 19. On April 20, 2011, Investigator Kujawski, Doyle, and Bailey conducted another inspection of the business operation of the licensee.
 20. Investigators spoke to a male, identified as Mr. Hasmukh Patel, the owner. Mr. Hasmukh Patel provided a copy of his current New York Driver's License and vehicle registration.
 21. Investigator Bailey informed the owner, Mr. Hasmukh Patel, that he must submit proof of residency from 2007 to 2011, on or before April 26, 2011.
 22. Investigators asked to speak with the manager, Mr. Raju Patel.
 23. Mr. Hasmukh stated Mr. Raju was very ill and in the hospital
 24. Investigators asked if Mr. Raju was the manager, and a member of the LLC.
 25. Mr. Hasmukh stated no, Mr. Raju was neither.
 26. Investigators thanked Mr. Hasmukh Patel for his cooperation, and exited the premises.
 27. A review of the documentation supplied by Mr. Hasmukh Patel revealed that:
 - He has a New York Driver's License issued May 23, 2003 with an expiration of June 1, 2011;
 - He has a New York Vehicle Registration issued August 17, 2010 with an expiration of September 27, 2012, listing his residential address of Old Westbury, NY;
 28. Attorney Thomas Rooke, attorney for Mr. Hasmukh Patel stated in a letter dated April 28, 2011, that "both (Mr. Hasmukh Patel) and his landlord are unable to locate the lease agreement for the property at 85 Farnsworth Street, Springfield, Massachusetts. However, it is my specific recollection that at the time this license was under review by the Commission (in 2003) that the Commission investigator was given a copy of the lease from my office." (Ex. 10)

29. Attorney Rooke's correspondence also included a Temporary Massachusetts Driver's License issued on April 25, 2011.
30. A review of the Secretary of the State, Corporation Division website, shows the following filings, which were not submitted for approval to the Local Board or the Commission:
- o 2006 Annual Report, filed and signed September 3, 2008 under penalties of perjury, listed both Mr. Hasmukh Patel and Mr. Raju R. Patel as managers;
 - o 2007 Annual Report, filed and signed August 2, 2008 under penalties of perjury, listed both Mr. Hasmukh Patel and Mr. Raju R. Patel as managers; and
 - o 2008 Annual Report, filed and signed July 6, 2009 under penalties of perjury, listed both Mr. Hasmukh Patel and Mr. Raju R. Patel as managers.
31. The license was renewed for calendar year 2011.

DISCUSSION

I. General Laws c. 138, § 23, Transferring Privilege of license without approval. 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 Comm., 7 Mass.App. 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.

The Commission is convinced by satisfactory proof and finds that there was, at least twice, a transfer of license without first obtaining permission from both the local board and the ABCC as required by statute, M.G.L. c.138, §23. The pattern of unlawfully transferring the license and interests in the license persuades the Commission that this is a pattern of conduct that appears to be the usual method of doing business and not any bona fide error or oversight. The Commission will thus impose the sanction specified below in the Conclusion portion of this decision.

II. 204 CMR 2.01 (8) – False statement in an application. By regulation promulgated at 204 C.M.R. 2.01(8), false statements in an application "shall be a cause or ground for refusing to grant the license or permit or for suspending, cancelling or revoking a license or permit already granted." In this case, the Commission is persuaded there was one (1) false statement within the meaning of this regulation.

Mr. Hasmukh Patel signed each application for renewal for each relevant license period in question. The Commission approved him as the license manager.

The Commission has previously adjudicated that "the Commission's longstanding past administrative practice is not only to acknowledge the last-approved licensee's standing to sign the renewal application but also under M.G.L. c.138 §15A but also to allow 'all persons who have direct or indirect beneficial interest on said license' to sign the application for renewal." In Re: Jazzy Joe's, Inc. and Irv's Place, Inc.,

The Commission has previously adjudicated that "the Commission's longstanding past administrative practice is not only to acknowledge the last-approved licensee's standing to sign the renewal application but also under M.G.L. c.138 §15A but also to allow 'all persons who have direct or indirect beneficial interest on said license' to sign the application for renewal." In Re: Jazzy Joe's, Inc. and Irv's Place, Inc., Gloucester (ABCC Decision dated July 8, 2009); In Re: Mambo Nightclub, Inc. Lawrence (ABCC Decision dated August 10, 2010) ("[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."); In Re: Jin Restaurant Group, LLC, Saugus (ABCC decision dated November 24, 2009)("the Commission allows the holder of the license standing to sign the renewal application as well as "all persons who have a direct or indirect beneficial interest in said license." M.G.L. c.138, §15A In re: Pop's Cafe, Inc. and ATP. Inc., Holyoke (ABCC Decision dated March 12, 2008).")

CONCLUSION

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

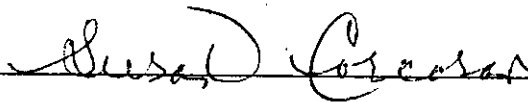
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The Commission **INDEFINITELY SUSPENDS** the license of 668 Liberty Liquors & Spirits, LLC dba Stephen's Liquors **effective forthwith** until further written order of the Commission.

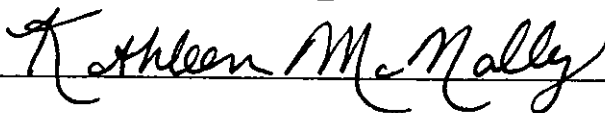
The Commission will not issue any further order without a written request from the licensee showing good cause to reconsider this indefinite suspension and a hearing before the Commission that the licensee attends.

ALCOHOLIC BEVERAGES CONTROL COMMISSION

Susan Corcoran, Commissioner



Kathleen McNally, Commissioner



DATE: August 24, 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
Thomas Rooke, Esq. via Facsimile
Administration
File