



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 SUSPENSION

July 30, 2013

POLISH AMERICAN CITIZENS CLUB, INC. OF WEBSTER, MA
37 HARRIS ST.
WEBSTER, MA 01570
LICENSE#: 134200010
VIOLATION DATE: 04/09/2013
HEARD: 07/09/2013

After a hearing on July 9, 2013, the Commission finds Polish American Citizens Club, Inc. of Webster, MA violated:

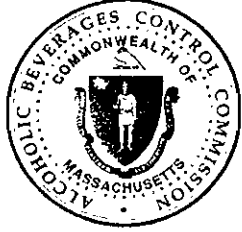
- 1) M.G.L. c.138, §15A Change of Officers and Directors in the non-profit corporation without authorization;
- 2) M.G.L. c. 138, §1 Failure to file annually with the Local Licensing Authority and the Commission a list of the names and residences of its officers, together with the amount of salary or compensation received by each employee engaged in the handling or selling of alcoholic beverages.

The above-captioned licensee's license is **SUSPENDED INDEFINITELY effective forthwith** until further written order of the 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
Nicholas Velez, Investigator
Administration
File



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, Esq.
Chairman

DECISION

POLISH AMERICAN CITIZENS CLUB, INC. OF WEBSTER, MA
37 HARRIS ST.
WEBSTER, MA 01570
LICENSE#: 134200010
VIOLATION DATE: 04/09/2013
HEARD: 07/09/2013

Polish American Citizens Club, Inc. of Webster, MA (the "Licensee") holds an all alcoholic beverages club-type license issued pursuant to M.G.L. c. 138, §12. The Alcoholic Beverages Control Commission (the "Commission") held a hearing on Tuesday, July 9, 2013, regarding an alleged violation of:

- 1) M.G.L. c.138 §15A Change of Officers and Directors in the non-profit corporation without authorization;
- 2) M.G.L. c. 138, §1 Failure to file annually with the Local Licensing Authority and the Commission a list of the names and residences of its officers, together with the amount of salary or compensation received by each employee engaged in the handling or selling of alcoholic beverages.

Prior to the commencement of the hearing, the licensee stipulated to the violation alleged in Investigator Velez's Report.

The following documents are in evidence:

1. Licensee's Stipulation of Facts;
2. Investigator Velez's Investigative Report dated April 9, 2013;
3. Copy of ABCC Original License Application dated February 4, 1964;
4. Letter dated April 6, 1971 from Licensee to Town of Webster Board of Selectmen; and
5. Secretary of the Commonwealth, Corporations Division, Listing for Licensee as of May 6, 2013.

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

FACTS

1. On Tuesday, April 9, 2013, the Polish American Citizens Club, Inc. of Webster, MA attended a violation hearing regarding an alleged violation of 204 CMR 2.05 (2) Permitting an Illegality on the Licensed Premises, to wit: c. 138 §34C-Possession of an alcoholic beverage by a person under twenty-one (21) years of age (2 Counts).
2. The Commission records indicated, and the licensee admitted during the hearing, that this licensee had not filed the required annual filing of officers since 1964, as required by statute.

3. By decision dated April 29, 2013, the Commission found the licensee violated 204 CMR 2.05 (2) Permitting an Illegality on the Licensed Premises, to wit: c. 138 §34C-Possession of an alcoholic beverage by a person under twenty-one (21) years of age (2 Counts). As the licensee had been in existence since 1957 and had not had a violation since 1977, the Commission issued a **WARNING**.
4. As part of the decision dated April 29, 2013, the Commission referred the matter of potential violations of the Liquor Control Act by the Licensee to the Investigation and Enforcement Division for further investigation.
5. Investigator Velez conducted an administrative review of the licensee's file which indicated that the last approved Officers/Directors for were.
 - President: Edward J. Motyka
 - Vice President: Edward Zdrok
 - Vice President: Joseph F. Socha
 - Treasurer: Richard B. Zawislak
 - Auditor: Joseph A. Wojcik
 - Auditor: Paul Dowgiewicz
 - Auditor: Anthony J. Eczakowski
 - Trustee: Stanley J. Motyka
 - Trustee: Charles J. Starosta
 - Directors: Stanley Horangy; Stanley Nawrocki; Joseph Zdrok; Henry Slota and Victor Biadasf.
6. These Officers/Directors were listed in the transfer of an all-alcohol license application dated February 26, 1964.
7. Since that time, the Secretary of the Commonwealth, Corporations Division website indicated that there have been several changes in Officers/Directors, but no application for Change in Officers/Directors has been filed with this Commission since 1964.
8. On April 6, 1971, the Town of Webster Board of Selectmen sent to the Commission notice of the Licensee's annual meeting with Officers/Directors that were elected.
9. As of May 6, 2013, the Secretary of the Commonwealth, Corporations Division website lists the following Officers/Directors:
 - President: Joseph Kovalski
 - Treasurer: Edmond Morgan
 - Clerk: Keri Williams
 - Directors: Edward Deluca, David Tupaj, Mark Giangregorio.
10. Prior to the hearing on April 9, 2013, Investigator Velez spoke to Edward Deluca and Mark Giangregorio, who were representing the licensee.
11. Investigator Velez noted that neither of these individuals was listed as Officers/Directors in the Commission records.
12. Mr. Deluca stated to Investigator Velez that they update the Secretary of the Commonwealth, Corporations Division every year for the change in Officers/Directors.
13. Mr. Deluca also stated that he did not know they were also required to update the Commission for changes in Officers/Directors.
14. The Licensee stipulated that they violated M.G.L. c. 138, §1 - Failure to file annually with the Local Licensing Authority and the Commission a list of the names and residences of its officers, together with the amount of salary or compensation received by each employee engaged in the handling or selling of alcoholic beverages.

DISCUSSION

Licenses to sell alcoholic beverages are a special privilege subject to public regulation and control, Connolly v. Alcoholic Beverages Control Commn., 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).

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. Connolly v. Alcoholic Beverages Control Commission, 334 Mass. 613, 619 (1956).

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 Commission records show that the Licensee did not seek the statutorily required prior approval to change the officer and directors to the individuals who are the current directors and officers of the Licensee who have a direct or indirect beneficial interest in this license.

M.G.L. c. 138, §15A requires that a licensee or applicant for an alcoholic beverages license disclose all individuals who have a direct or indirect beneficial interest in the license. The Appeals Court held in Number Three Lounge, Inc. v. Alcoholic Beverages Control Commission, 7 Mass. App. Ct. 301 (1979), the concept of a “direct or indirect beneficial interest” in a license can range from an ownership interest to an absolute proprietary interest to a mere possessory right and includes the right of control. The officers and directors of a corporation are the control group of that corporation.

In this case, the Licensee changed the officers and directors without the statutorily required prior approval from both the Local Board and the Commission. The Licensee neither sought nor received the statutorily required approvals of this change. This is a violation of M.G.L. c. 138 §15A.

The Commission is convinced by satisfactory proof and finds that there was a change of officers and directors resulting in a transfer of a direct or indirect beneficial interest in the license, without first obtaining written approval and permission from both the Local Board and the Commission, as required by statute. M.G.L. c. 138, §15A.

The Commission records indicated, and the licensee admitted during the hearing, that this licensee had not filed the required annual filing of officers since 1964, as required by statute.

M.G.L. c. 138, §1- Failure to file with the Commission annually a list of the names and residences of its Officers, together with the amount of the salary or compensation received by each employee engaged in the handling or selling of alcoholic beverages:

M.G.L. c. 138, §1 states, in pertinent part, that the holder of a club-type §12 license, like the Post, “Such club shall file with the local licensing authorities and the commission annually within three months after January first in each year a list of the names and residences of its officers, together with the amount of salary or compensation received by each employee engaged in the handling or selling of alcoholic beverages.” The Licensee has not filed any of these statutorily required annual reports.

The Commission finds that the Licensee committed a violation of M.G.L. c. 138, §1. The Commission is requiring the Licensee to file the required annual reports for the last ten (10) years, from calendar year 2003 through calendar year 2012.

CONCLUSION

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

- 1) M.G.L. c.138 §15A Transfer of a direct or indirect beneficial interest in the license through a Change of Officers and Directors in the non-profit corporation without authorization;
- 2) M.G.L. c. 138, §1 Failure to file with the Commission annually a list of the names and residences of its officers, together with the amount of salary or compensation received by each employee engaged in the handling or selling of alcoholic beverages;


Therefore, for violation of M.G.L. c.138 §15A Change of Officers and Directors in the non-profit corporation without authorization; the Commission **INDEFINITELY SUSPENDS** the license of Polish American Citizens Club, Inc. of Webster, MA **effective forthwith**, until further written order of the Commission.

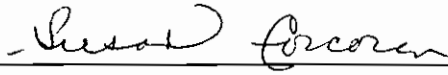
Therefore, for violation of M.G.L. C. 138, §1 the Commission **INDEFINITELY SUSPENDS** the license of Polish American Citizens Club, Inc. of Webster, MA **effective forthwith**, until further written order of the Commission.

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.

Good cause for the Commission to consider issuing a further written order revising the order of indefinite suspensions will include, but not be limited to, the Licensee filing with both the Commission and the local licensing authorities the appropriate annual reports pursuant to M.G.L. c. 138, section 1, for the years 2003 through 2012; and the Licensee filing the appropriate application for approval of the current officers and directors of the Polish Citizen’s Club and that appropriate application is granted by the local licensing authorities and approved by the Commission.

ALCOHOLIC BEVERAGES CONTROL COMMISSION

Kathleen McNally, Commissioner 

Susan Corcoran, Commissioner 

DATE: July 30, 2013

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
Nicholas Velez, Investigator
Administration
File