



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

Dorothy B. Goldberg
Treasurer and Receiver General

Kim S. Gainsboro, Esq.
Chairman

NOTICE OF SUSPENSION

July 28, 2015

FREDERICK S. HEALY POST #159 AMERICAN LEGION
2 CROSS STREET & BROADWAY
WESTFORD, MA 01886
LICENSE#: 144200005
VIOLATION DATE: 12/18/2014
HEARD: 07/28/2015

After a hearing on July 28, 2015, the Commission finds the Frederick S. Healy Post #159 American Legion in violation of M.G.L. c.138, §15A Change of Officers And Directors in the Corporation without Authorization.

The above-captioned licensee's license is **SUSPENDED INDEFINITELY EFFECTIVE FORTHWITH** until further written 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.

ALCOHOLIC BEVERAGES CONTROL COMMISSION

Kim S. Gainsboro
Chairman

cc: Local Licensing Board
Frederick G. Mahony, Chief Investigator
Dennis Keefe, Investigator
Jan Kujawski, Investigator
Administration
File



The Commonwealth of Massachusetts
Department of the State Treasurer
Alcoholic Beverages Control Commission
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Deborah B. Goldberg
Treasurer and Receiver General

DECISION

Kim J. Gainsboro, Esq.
Chairman

FREDERICK S. HEALY POST #159 AMERICAN LEGION
2 CROSS STREET & BROADWAY
WESTFORD, MA 01886
LICENSE#: 144200005
VIOLATION DATE: 12/18/2014
HEARD: 07/28/2015

Frederick S. Healy Post #159 American Legion (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, July 28, 2015, regarding an alleged violation of M.G.L. c.138, §15A Change of Officers and Directors in the Corporation without Authorization. The above captioned occurred on December 18, 2014, according to Investigator Keefe's Report.

The following documents are in evidence:

1. Investigator Keefe's Investigative Report dated December 18, 2014.

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

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

FACTS

1. On Thursday, December 18, 2014, at approximately 3:00 p. m., Investigators Teehan and Temple ("Investigators") investigated the business operation Frederick S. Healy Post #159 American Legion to determine the manner in which its business was being conducted.
2. Investigators entered the licensed premises and identified themselves to the bartender on duty and explained that they were conducting an inspection of the licensed premises.
3. Prior to the on-site inspection, Investigator Keefe reviewed the Secretary of State website, along with the Commission file, and found discrepancies.
4. The Secretary of the Commonwealth Corporation Division website indicates the Licensee's officers to be:
 - a. President: William J. Vullo
 - b. Treasurer: William Luppold
 - c. Secretary: William Rogers
 - d. Director: Arthur Pellerin

5. The Commission file for the Licensee indicates that the Licensee has not submitted an application to change officers and directors since 1974 when the officers and directors were identified to be:
 - a. President: Gordon R. Jones
 - b. Treasurer: Richard Mungovan
 - c. Manager: Raymond Croteau
6. According to Commission files, the Licensee has not changed officers/directors since 1974. The current officers and directors have not been approved by the Commission.
7. During the hearing the Commission noted the Licensee has also failed to file its annual reports as required pursuant to M.G.L. c. 138, §1.

DISCUSSION

Licenses to sell alcoholic beverages are a special privilege subject to public regulation and control, Connolly v. Alcoholic Beverages Control Comm'n, 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 ("SJC") 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." See Connolly, 334 Mass. at 619. 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. See id.

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." See id. at 617. A licensee who wishes to transfer its license, or an interest in its alcoholic beverages license, is required to obtain prior written 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 to hold a license. Implicit in the transfer of a license is the surrender of control.

An Administrative review of the Commission's files for the Licensee indicates that the Licensee has not submitted any change of officers/directors for this license since 1974.

The Licensee did not receive the statutorily required prior approval for the current officers to have any direct or indirect beneficial interest in this license. The Appeals Court held in Number Three Lounge, Inc. v. Alcoholic Beverages Control Comm'n, 7 Mass. App. Ct. 301 (1979), the concept of an ownership interest can vary from an absolute proprietary interest to a mere possessory right. The approved officers and directors of a license corporation are the control group of a corporation. A licensee must receive prior approval from both the local licensing authority and the Commission before transferring the privilege of its license or transferring any type of interest in its license. In contravention of the statute, no other individual has been investigated or approved to have control of, and interest in, or benefit from, this licensed business. See Griffin's Brant Rock Package Store, Inc. v. Alcoholic Beverages Control Comm'n, 12 Mass. App. Ct. 768, 771 (1981). The failure to disclose all individuals who have a direct or indirect beneficial interest in this license is a violation of M.G.L. Ch. 138 §15A.

CONCLUSION

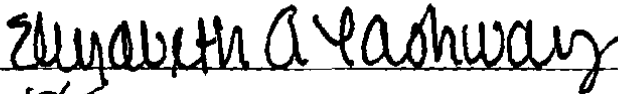
Based on the evidence, the Commission finds the Licensee violated M.G.L. c.138, §15A Change of Officers and Directors in the Corporation without Authorization. Therefore the Commission **INDEFINITELY SUSPENDS** the Licensee's license **effective forthwith**, until further written order of the Commission.

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. 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 approval by both the Commission and the local licensing authorities of the appropriate application for approval of the current officers and directors of the Licensee.

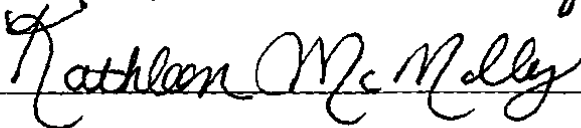
In addition, the Licensee must file the appropriate annual reports pursuant to M.G.L. c. 138, §1 for the last ten (10) years from calendar year 2005 through calendar year 2015.

ALCOHOLIC BEVERAGES CONTROL COMMISSION

Elizabeth A. Lashway, Commissioner



Kathleen McNally, Commissioner



Dated: July 28, 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
Dennis Keefe, Investigator
Michael Teehan, Investigator
Chris Temple, Investigator
Administration
File