



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

Deborah B. Goldberg
Treasurer and Receiver General

NOTICE OF SUSPENSION

Kim S. Gainsboro, Esq.
Chairman

April 14, 2015

NABNASSETT AMERICAN LEGION POST #437 INC.
114 DUNSTABLE RD.
WESTFORD, MA 01886
LICENSE#: 144200006
VIOLATION DATE: 12/18/2014
HEARD: 04/07/2015

After a hearing on April 7, 2015, the Commission finds the Nabnasset American Legion Post #437 Inc. 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
Christopher Temple, Investigator
Michael Teehan, Investigator
Administration
File



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

Deborah B. Goldberg
Treasurer and Receiver General

Kim J. Gainsboro, Esq.
Chairman

DECISION

NABNASSETT AMERICAN LEGION POST #437 INC.
114 DUNSTABLE RD.
WESTFORD, MA 01886
LICENSE#: 144200006
VIOLATION DATE: 12/18/2014
HEARD: 04/07/2015

Nabnasset American Legion Post #437 Inc. (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, April 7, 2015, regarding an alleged violation of M.G.L. c.138, §15A Change of Officers and Directors in the Corporation without Authorization.

The following documents are in evidence:

1. Investigator Keefe's Investigative Report dated December 18, 2014; and
2. Licensee's Stipulation of Facts.

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 2:20 p. m., Investigators Teehan and Temple investigated the business operation Nabnasset American Legion Post #437 Inc. to determine the manner in which its business was being conducted.
2. Investigators Teehan and Temple entered the licensed premises and identified themselves to the bartender on duty. Investigators explained that they were going to conduct 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: Mark Edwards
 - b. Treasurer: Leonard Hester
 - c. Secretary/Clerk: George Bruno
 - d. Vice President: Michael Sylvester
 - e. Judge Advocate: Daniel C. Haskard
 - f. Assistant Clerk: George Bruno
 - g. Director: Mark Edwards

5. The Commission file for the Licensee indicates that the Licensee has not submitted an application to change officers and directors since 1967 when the officers and directors were identified to be:
 - a. Commander: Richard C. Lagasse
 - b. Sr. Vice Commander: Herbert D. Hopkins
 - c. Jr. Vice Commander: A. Paul Silin
 - d. Financial Officer: Albert W. Cox
 - e. Adjutant: Charles J. Donnelly
 - f. Chaplain: Harold White
6. According to Commission files, the Licensee has not changed officers/directors since 1967. 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 Commission, 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 1967.

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 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. 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 Commission, 12 Mass. App. Ct. 768, 771 (1981).

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. See Number Three Lounge, Inc., 7 Mass. App. Ct. at 310-311. The approved officers and directors of a license corporation are the control group of a corporation. 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

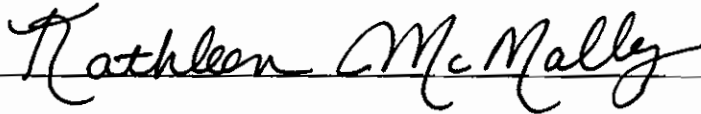
Based on the evidence, the Commission finds the Licensee violated M.G.L. c.138, §15A Change of Officers and Directors in the Corporation without Authorization. Therefore the Commission **INDEFINITELY SUSPENDS** the Licensee's license **effective forthwith**, until further written order of the Commission.

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

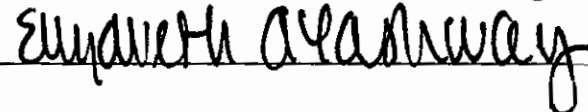
In addition the Licensee must file the appropriate annual reports pursuant to M.G.L. c. 138, §1 for the last ten (10) years from calendar year 2005 through calendar year 2015.

ALCOHOLIC BEVERAGES CONTROL COMMISSION

Kathleen McNally, Commissioner



Elizabeth A. Lashway, Commissioner



Dated: April 14, 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
Christopher Temple, Investigator
Michael Teehan, Investigator
Administration
File