



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

February 28, 2013

GIUSEPPE MAZZINI LODGE INC. DBA SONS OF ITALY
8 REVERE STREET
REVERE, MA 02151
VIOLATION DATE: 11/12/2012
HEARD: 02/05/2013

After a hearing on February 5, 2012, the Commission finds Giuseppe Mazzini Lodge Inc. dba Sons of Italy in violation of:

- 1) 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;
- 2) M.G.L. Ch. 138, §23 - Transfer of the privilege of a license without proper approval;
- 3) 204 CMR 2.01 (8) – Applications shall be made under the penalties of perjury and any false statement contained in any application shall be a cause or ground for refusing to grant the license or permit or for suspending, canceling or revoking a license or permit already granted.

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. Ch. 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
Administration
File



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DECISION

GIUSEPPE MAZZINI LODGE INC. DBA SONS OF ITALY
8 REVERE STREET
REVERE, MA 02151
VIOLATION DATE: 11/16/2012
HEARD: 02/05 /2013

Giuseppe Mazzini Lodge Inc. dba Sons of Italy (the "Licensee") holds an annual, all alcoholic beverages club-type license issued pursuant to M.G.L. Ch. 138, §12. The Alcoholic Beverages Control Commission (the "Commission") held a hearing on Tuesday, February 5, 2013, regarding an alleged violation of:

- 1) 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;
- 2) M.G.L. Ch. 138, §23 - Transfer of the privilege of a license without proper approval;
- 3) 204 CMR 2.01 (8) – Applications shall be made under the penalties of perjury and any false statement contained in any application shall be a cause or ground for refusing to grant the license or permit or for suspending, canceling or revoking a license or permit already granted.

The above captioned occurred on November 16, 2012, according to Investigator Bailey's and Investigator Velez's joint Report.

The following documents are in evidence:

1. Investigator Bailey's and Investigator Velez's joint Investigative Report dated November 16, 2012; and
2. Licensee's 2013 Renewal Application.

There is one (1) audio recording of this hearing, and two (2) witnesses testified.

FACTS

1. Giuseppe Mazzini Lodge Inc., dba Sons of Italy is a Massachusetts non-profit corporation organized and filed under M.G.L. Ch. 180 on June 23, 2009.
2. On July 7, 2009, the Licensee submitted an application for an all alcohol annual club license pursuant to M.G.L. Ch. 138, §12, which was approved by the Commission on August 14, 2009.
3. The corporation approved to hold this license is comprised of the following officers and directors last-approved by both the local licensing authorities (the "LLA") and the Commission: Giovanna Fiore – President, Director; Joseph Lake – Vice President, Treasurer, Clerk and Director.
4. Giovanna Fiore was approved as the license manager.

5. The Licensee submitted an undated renewal application for calendar year 2010.
6. An unapproved individual signed the renewal applications to renew the license for calendar years 2011 and 2012.
7. On June 11, 2012, the Commission received a change of manager application, to change the manager from Giovanna Fiore to David Lightbody.
8. Within the application documents was a document prepared and presented in the name of David Lightbody purporting to authorize a vote appointing David Lightbody as the new license manager. (Exhibit I, Attachment G).
9. Investigator Nicholas Velez conducted a review of the submitted documentation as well as the administrative file.
10. The review indicated that David Lightbody was not an authorized corporate officer or director approved by both the LLA and the Commission as indicated on the submitted Petition for Change of License form. (Exhibit I, Attachment H)
11. A review of the Secretary of State's website revealed that on May 14, 2012, David Lightbody filed a certificate of organization for the Sons of Italy – Revere Lodge LLC, 8 Revere Street, Revere, MA as the sole manager.
12. He indicated that the purpose of the limited liability company is to manage, operate and conduct the standard and ancillary business of a customary fraternal lodge chartered under the Sons of Italy.
13. On June 19, 2012, at approximately 3:10 p.m., Investigator Velez spoke with Mr. Lightbody by telephone, relative to the filed application for Change of Manager.
14. Mr. Lightbody admitted during the conversation with the investigator that:
 - He bought the property from Joseph Lake three months ago from him;
 - He is running it now;
 - He is responsible for the hiring and firing of employees;
 - The licensee's prior owners were trying to put the business in his name;
 - He bought the business and it so happens that it had a liquor license.
 - The Local Board said it would be easier to apply for a change of manager than to transfer the license;
 - Joseph Lake is nowhere to be found, and he owes people money;
 - He did not know the whereabouts of Giovanna Fiore. She might be dead; and
 - Once everyone got their money everyone scattered.
15. As a result of the conversation, Investigator Velez contacted wholesalers Martignetti Companies and Anheuser-Busch, and requested copies of credit applications and/or cancelled checks for the sale of alcoholic beverages to the Licensee, or to any business located at 8 Revere Street, Revere, MA.
16. Martignetti Companies produced a credit application for Giuseppe Mazzini Lodge, Inc. 8 Revere Street, Revere, MA dated May 1, 2012 with David Lightbody listed as the Officer or Principal and the guarantor. The application was signed by Mr. Lightbody.
17. Anheuser-Busch, produced checks from the account of Sons of Italy, 8 Revere Street, Revere, MA (Attachment L) from Citizen Banks bank. The Account Holder is David Lightbody, 48 Charger Street, Revere, MA. The checks are dated June 6, 2012, and run through October 8, 2012.
18. On Monday October 22, 2012, at approximately 11:45 a.m., Investigators Doyle and Bailey met with Mr. Lightbody to conduct an interview and inspection of the licensed premises.
19. Mr. Lightbody stated that he, his brother Charles Lightbody, and Jamie Russo bought the property and business in December 2011, under an LLC – 8 Revere Street, LLC.
20. Charles Lightbody and Jamie Russo invest in property under different LLCs. They had initially planned to buy the property to develop it, but that was denied by the city.
21. He stated that Joseph Lake owned the property and the club, and they purchased the business from him.

22. The purchase price was approximately \$300,000. He hasn't seen Mr. Lake since Mr. Lake received his money.
23. Mr. Lightbody stated that he orders and pays for all of the alcohol.
24. He interviewed all of the employees, and is responsible for hiring and firing employees.
25. He has been paying the employees by cash, but is in the process of setting up a payroll company.
26. Prior to leaving the premises Investigator Bailey requested that Mr. Lightbody forward to her the following documentation:
 - Copy of the Purchase and Sale Agreement; and
 - Copy of the Bank Authorization Card for the business located at 8 Revere Street, Revere, MA.
27. On October 26, 2012, Investigator Bailey received the requested documentation, which revealed the following:
 - Purchase and Sale Agreement and Buyer's Rider:
 - §1 Parties: Joseph Lake, Trustee of the Giuseppe Mazzini Lodge Building Trust II of 8 Revere Street, Revere, MA hereinafter called the SELLER, agree to sell, and Jamie Russo and Charles Lightbody, or their nominee, of Revere, MA hereinafter called the BUYER
 - §2 Description: 8 Revere Street, Revere, MA
 - §7 Purchase Price: The agreed purchase price for said Premises is: Three Hundred and Twenty Thousand and 00/100 Dollars (\$320,000.00), of which: \$32,000.00 is to be paid to the Escrow Agent upon the execution of this Purchase and Sale Agreement;
 - Memo note of check #822 drawn on the account holder of Jamie Russo, Refundable deposit made payable to Giuseppe Mazzini Lodge Building Trust II, dated 12/23/11, \$32,000.00;
 - §30 Additional Provisions (4): Transfer from the license holder to BUYER, or its nominee, of all licenses pertaining to the Premises, including but not limited to the Club Alcohol Beverages License.
 - Signatures Indicated: Seller: Giuseppe Mazzini Lodge Building Trust II, By its Trustee, Joseph Lake, Trustee; Buyer: Jamie Russo and Charles Lightbody.
 - Copy of Bank Authorization Card: Citizens Bank, Account Information / Title and Address: Sons of Italy LLC, 8 Revere Street, Revere, MA; account # 1324791850; Signature of Authorized Signer – David Lightbody, dated 8/13/12.
28. No transfer application disclosing this sale was ever filed with, or approved by the LLA or the Commission. (Testimony, Commission Records)
29. During the hearing, Mr. Lightbody admitted that all of Investigator Bailey's statements were accurate.
30. He also admitted that he signed the renewal application for 2013, although he was not authorized to do so. (Testimony)

DISCUSSION

License issued under this chapter by the Local Licensing Authorities in violation of §16A or any other provision of this chapter

Under the pertinent provisions of M.G.L. Ch.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." The Commission also has a longstanding administrative practice under M.G.L. Ch. 138, §15A to allow "all persons who have a direct or indirect beneficial interest in said license" to sign the application for renewal. A corporate officer, a director, a shareholder, a license manager, or an individual owner, who has been previously disclosed to and approved by both the LLA and the Commission, must sign the renewal form.

Ms. Fiore is the president and license manager, and Mr. Lake is the Secretary, Treasurer, Clerk, and Director of the Licensee. Only these two individuals were authorized to sign a renewal application. Because this was a "club" type of license under M.G.L. Ch.138, §12, no individual was a shareholder or held in such a capacity a lawful direct or indirect beneficial interest. A review of the signature on the renewal application forms for these years revealed that the signature is not that of either Ms. Fiore or Mr. Lake. In fact, Mr. Lightbody admitted to signing the 2013 renewal, although he was not the license manager, or a corporate officer or director that had been disclosed and approved in writing by both the LLA and the Commission. As a result of Mr. Lightbody's action in signing this renewal application, the LLA approved the Licensee's 2011, 2012, and 2013 renewal applications although the Licensee did not comply with the renewal requirements expressly set forth in M.G.L. Ch.138, §16A. Consequently, this Licensee's license was renewed by the LLA contrary to the requirements of, and in violation of, M.G.L. Ch.138, §16A.

The applications for renewal should have been treated as applications for an original license. M.G.L. Ch. 138, §16A. They were not. Notwithstanding the fact that the LLA approved this Licensee's three 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). The Commission finds that the renewal of the license of Giuseppe Mazzini Lodge Inc., dba Sons of Italy for calendar years 2010, 2011, 2012, and 2013 violated M.G.L. Ch.138, §64.

The specific language of this chapter mandates that the Commission revoke the license of Giuseppe Mazzini Lodge Inc., dba Sons of Italy. 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. Ch.138, §16A, the Commission was obligated to revoke the license pursuant to M.G.L. Ch.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.

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.

Mr. Lightbody testified and the documentary evidence illustrates that the building and this license were both transferred in December 2011. The credit application and cancelled checks indicate that the payments for alcoholic beverages and employees’ wages were signed by an entity other than the approved corporate officers, directors, and license manager, Joseph Lake and Giovanna Fiore. The Citizens Bank checking account associated with Sons of Italy, 8 Revere Street, Revere, MA reveals that David Lightbody is the authorized signatory on the business account. Mr. Lightbody further testified that he makes all of the personnel decisions, and purchases the alcoholic beverages for the business. He has not seen either Joseph Lake or Giovanna Fiore since the purchase and sale agreement was executed and the money for sale of the licensed premises changed hands.

The Commission is convinced by satisfactory proof and finds that there was a transfer of license without first obtaining permission from both the LLA and the Commission, as required by statute. M.G.L. Ch.138, §23. The acts of handing over control of the licensed premises to David Lightbody who was not approved by the LLA and the Commission, and allowing him to run it for his own account by hiring and supervising the employees, paying all expenses, paying for alcoholic beverages, and collecting the cash receipts, is a violation of M.G.L. Ch. 138 §23.¹

Applications shall be made under the penalties of perjury

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 a false statement within the meaning of this regulation when, in Exhibit 1, Attachment G, David Lightbody presented a document that he was authorized and designated by the board of directors as the license manager. Mr. Lightbody admitted this was a not a true statement.

¹ The Commission is mindful that other issues could be present arising out of the compliance obligations created in the definition of the term “club” in M.G.L. Ch. 138, §1, viz., “no member or any officer, agent or employee of the club is paid, or directly or indirectly receives in the form of salary or other compensation, any profits from the disposition or sale of alcoholic beverages beyond the amount of such salary as may be fixed and voted annually within two months after January first in each year by the members or by its directors or other governing body and as shall in the judgment of the local licensing authorities and the commission be reasonable and proper compensation for the services of such member, officer, agent or employee. 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.”

CONCLUSION

Based on the evidence, the Commission finds Giuseppe Mazzini Lodge Inc., dba Sons of Italy violated:

- 1) 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;
- 2) M.G.L. Ch. 138, § 23 - Transfer of the privilege of a license without proper approval;
- 3) 204 CMR 2.01 (8) – Applications shall be made under the penalties of perjury and any false statement contained in any application shall be a cause or ground for refusing to grant the license or permit or for suspending, canceling or revoking a license or permit already granted.

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**² the license of Giuseppe Mazzini Lodge Inc., dba Sons of Italy, effective forthwith.

ALCOHOLIC BEVERAGES CONTROL COMMISSION

Kim S. Gainsboro, Chairman _____



Susan Corcoran, Commissioner _____



Kathleen McNally, Commissioner _____



DATE: February 28, 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
Rose Bailey, Investigator
Administration
File

² 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. Ch.138 §23 and 204 CMR 2.01 (8).