

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

Steven Grossman
Treasurer and Receiver General

AMENDED NOTICE OF SUSPENSION

Kim J. Gainsboro, Esq.
January 18, 2013

MELINDA INDUSTRIAL GROUP, INC. DBA ENCUESTRO RESTAURANT NIGHT CLUB
271 BROADWAY
LAWRENCE, MA 01841
LICENSE#: 059400194

By decision dated September 12, 2012, Melinda Industrial Group, Inc. d/b/a Encuentro Restaurant Night Club was found in violation of:

- 1) 204 CMR 2.05 (2), to wit: 527 CMR 10.13 (2) (d) -Failure of the owner or operator of nightclub, dance hall, discotheque or bar, with an occupant load of one hundred (100) persons or more shall designate one Crowd Manager, for every 250 occupants, or portion thereof based upon the Certificate of Inspection under 780 CMR as required since June 1, 2011;
- 2) 204 CMR 2.05 (2), to wit: 527 CMR 10.13 (2) (e)- Failure to complete the Fire and Building Safety Checklist as prescribed by the Marshall, on each day of operation prior to opening the facility to patrons as required since June 1, 2011;
- 3) M.G.L. c. 138 §23, to wit: M.G.L. c. 138 §26- Operating without an approved manager;
- 4) 204 CMR 2.05 (2), to wit: c. 138 §69-Sale or Delivery of an Alcoholic Beverage to an Intoxicated Person (1 count);
- 5) 204 CMR 4.03 (1) (a) -No licensee or employee or agent of a licensee shall (a) offer or deliver any free drinks to any person or group of persons;
- 6) 204 CMR 4.03 (1) (e) -No licensee or employee or agent of a licensee shall sell, offer to sell or deliver drinks to any person or group of persons on any one day at prices less than those charged the general public on that day, except at private functions not open to the public;
- 7) M.G.L. c. 138 §15A- Failure to notify licensing authorities of a change of officers and directors;
- 8) M.G.L. c. 156D §16.22; 950 CMR 113.57- Failure to file Annual Reports with the Secretary of the Commonwealth, Corporations Division.

Therefore the Commission:

- 1) **SUSPENDED the license for thirty (30) days** for violation of 204 CMR 2.05 (2), to wit: 527 CMR 10.13 (2) (d)-Failure of the owner or operator of nightclub, dance hall, discotheque or bar, with an occupant load of one hundred (100) persons or more shall designate one (1) Crowd Manager, for every 250 occupants, or portion thereof based upon the Certificate of Inspection under 780 CMR as required since June 1, 2011;
- 2) **SUSPENDED the license for thirty (30) days, to be served concurrently with the thirty (30) day suspension ordered for the no crowd manager violation, for violation of 204 CMR 2.05 (2), to wit: 527 CMR 10.13 (2) (e) Failure to complete the Fire and Building Safety Checklist as prescribed by the Marshall, on each day of operation prior to opening the facility to patrons as required since June 1, 2011;**

- 3) **SUSPENDED the license for thirty (30) days, to be served consecutively** to the thirty (30) days suspension ordered for the no crowd manager violation, for the violation of M.G.L. c. 138 §23, to wit: M.G.L. c. 138 §26-Operating without an approved manager;
- 4) **SUSPENDED the license for thirty (30) days, to be served consecutively** to the thirty (30) days suspension ordered for the no license manager violation, for violation of 204 CMR 2.05 (2), to wit: c. 138 §69-Sale or Delivery of an Alcoholic Beverage to an Intoxicated Person (1 count);
- 5) **INDEFINITELY SUSPENDED the license effective September 26, 2012, until further written order from the Commission**, for violation of M.G.L. c. 138 §15A, to wit: Failure to notify licensing authorities of a change of officers and directors. The Commission will not consider issuing any further written order until the licensee has pending before this Commission all applications for all transactions necessary to eliminate the violations adjudicated in this decision;
- 6) Admonished the licensee for its neglect and modifies the license by imposing a condition that it **comply with all its reporting obligations within ninety (90) days from the date of this decision**, failure to comply timely with this condition will result in further enforcement action by this Commission, for violation of M.G.L. c. 156D §16.22; 950 CMR 113.57 Failure to file Annual Reports with the Secretary of the Commonwealth, Corporations Division;
- 7) **SUSPENDED the license for ten (10) days, to be served** consecutively to the indefinite suspension ordered for the failure to obtain prior approval for change in the direct or indirect beneficial interest in violation of M.G.L. c. 138, section 15A, for violation of 204 CMR 4.03 (1) (a) No licensee or employee or agent of a license shall (a) offer or deliver any free drinks to any person or group of persons;
- 8) **SUSPENDED the license for ten (10) days, to be served concurrently** with the 10 days suspension ordered for the 4.03(a) violation, for violation 204 CMR 4.03 (1) (e) No licensee or employee or agent of a license shall sell, offer to sell or deliver drinks to any person or group of persons on any one (1) day at prices less than those charged the general public on that day, except at private functions not open to the public.

On January 18, 2013, the Commission issued a Memorandum and Order on the Licensee's Request for Reconsideration of Indefinite Suspension. The Commission reconsidered and reversed its prior order of INDEFINITE SUSPENSION of Melinda Industrial Group, Inc. d/b/a Encuentro Restaurant Night Club license **effective forthwith**.

The indefinite suspension is reconsidered and reversed to a suspension of one hundred sixty-eight (168) days. The license has been suspended since September 12, 2012 and thus has already served one hundred twenty-eight (128) days. The balance of the suspension to be served is forty (40) days. No fine in lieu of suspension will be accepted for the balance of these forty (40) days.

The Commission also reconsidered and amended the other suspensions ordered in the Commission decision dated September 12, 2012 and ordered the license suspended as follows:

- 1) **SUSPENDS the license for thirty (30) days** for violation of 204 CMR 2.05 (2), to wit: 527 CMR 10.13 (2) (d)-Failure of the owner or operator of nightclub, dance hall, discotheque or bar, with an occupant load of one hundred (100) persons or more shall designate one (1) Crowd Manager, for every 250 occupants, or portion thereof based upon the Certificate of

Inspection under 780 CMR as required since June 1, 2011; this suspension is to be served **concurrently** with the balance of the one hundred and sixty-eight (168) days suspension ordered above;

- 2) SUSPENDS the license for thirty (30) days, to be served **concurrently** with the thirty (30) day suspension ordered for the no crowd manager violation, for violation of 204 CMR 2.05 (2), to wit: 527 CMR 10.13 (2) (e) Failure to complete the Fire and Building Safety Checklist as prescribed by the Marshall, on each day of operation prior to opening the facility to patrons as required since June 1, 2011;
- 3) SUSPENDS the license for thirty (30) days, to be served **consecutively** to the thirty (30) days suspension ordered for the no crowd manager violation, M.G.L. c. 138 §23, to wit: M.G.L. c. 138 §26-Operating without an approved manager;
- 4) SUSPENDS the license for thirty (30) days, to be served **consecutively** to the thirty (30) days suspension ordered for the no license manager violation, for violation of 204 CMR 2.05 (2), to wit: c. 138 §69-Sale or Delivery of an Alcoholic Beverage to an Intoxicated Person (1 count);
- 5) SUSPENDS the license for ten (10) days, to be served **consecutively** to the suspension of thirty (30) days suspension ordered for the no crowd manager violation in sub-paragraph one (1) above, for violation of 204 CMR 4.03 (1) (a) No licensee or employee or agent of a license shall (a) offer or deliver any free drinks to any person or group of persons;
- 6) SUSPENDS the license for ten (10) days, to be served **concurrently** with the ten (10) days suspension ordered for the 204 CMR 4.03 (1) (a) violation, for violation of 204 CMR 4.03 (1) (e) No licensee or employee or agent of a license shall sell, offer to sell or deliver drinks to any person or group of persons on any one (1) day at prices less than those charged the general public on that day, except at private functions not open to the public.

No fine in lieu of suspension will be accepted for the thirty (30) days suspension ordered in sub-paragraph one (1) above. No fine in lieu of suspension will be accepted for the ten (10) days suspension ordered in sub-paragraphs five (5) and six (6) above.

The aggregate suspension is seventy (70) days, of which forty (40) days must be served. A fine in lieu of suspension will be considered only for the remaining thirty (30) days.

The suspension shall commence on Friday, January 18, 2013 and terminate on Friday, March 29, 2013. The license will be returned to the licensee Saturday March 30, 2013.

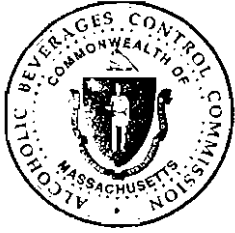
You are advised that pursuant to the provisions of M.G.L. c.138 §23, you may petition the Commission to accept an offer in compromise in lieu of suspension, only for the thirty (30) days suspension specified above, within twenty (20) calendar days following this notice of such suspension. If accepted, you may pay a fine using the enclosed form. All checks must be certified and accompanied by the enclosed form, which must be signed by a Massachusetts Licensed Accountant.

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

A handwritten signature in black ink, appearing to read 'K. S. Gainsboro', with a stylized flourish at the end.

Kim S. Gainsboro
Chairman



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

MEMORANDUM AND ORDER ON LICENSEE'S
REQUEST FOR RECONSIDERATION OF INDEFINITE SUSPENSION

MELINDA INDUSTRIAL GROUP, INC. DBA ENCUESTRO RESTAURANT NIGHT CLUB
271 BROADWAY
LAWRENCE, MA 01841
LICENSE#: 059400194
HEARD: 11/20/2012 and 12/05/2012

Melinda Industrial Group, Inc. d/b/a Encuentro Restaurant Night Club (the "Licensee") holds an alcohol license issued pursuant to M.G.L. c. 138, §12. The Alcoholic Beverages Control Commission (the "Commission") held hearings on Tuesday, April 3, 2012, and on Tuesday, April 10, 2012, regarding violations of:

- 1) 204 CMR 2.05 (2), to wit: 527 CMR 10.13 (2) (d) -Failure of the owner or operator of nightclub, dance hall, discotheque or bar, with an occupant load of one hundred (100) persons or more shall designate one Crowd Manager, for every 250 occupants, or portion thereof based upon the Certificate of Inspection under 780 CMR as required since June 1, 2011;
- 2) 204 CMR 2.05 (2), to wit: 527 CMR 10.13 (2) (e)- Failure to complete the Fire and Building Safety Checklist as prescribed by the Marshall, on each day of operation prior to opening the facility to patrons as required since June 1, 2011;
- 3) M.G.L. c. 138 §23, to wit: M.G.L. c.138 §26 -No license for the sale of alcoholic beverages shall be issued to any person or corporation a majority of whose directors are in fact aliens, and no person not a citizen shall be appointed as a manager or principal representative of any license;
- 4) M.G.L. c. 138 §23, to wit: M.G.L. c. 138 §26- Operating without an approved manager;
- 5) 204 CMR 2.05 (2), to wit: c. 138 §69-Sale or Delivery of an Alcoholic Beverage to an Intoxicated Person (1 count);
- 6) 204 CMR 4.03 (1) (a) -No licensee or employee or agent of a licensee shall (a) offer or deliver any free drinks to any person or group of persons;
- 7) 204 CMR 4.03 (1) (e) -No licensee or employee or agent of a licensee shall sell, offer to sell or deliver drinks to any person or group of persons on any one day at prices less than those charged the general public on that day, except at private functions not open to the public;
- 8) 204 CMR 2.03 (2)-No licensee shall use, or permit to be used, any advertising matter which is false or untrue in any particular. Any advertising matter, which directly, or by ambiguity or omission, tends to deceive or to create a misleading impression, shall be deemed to be false or untrue;
- 9) M.G.L. c. 138 §15A- Failure to notify licensing authorities of a change of officers and directors;
- 10) M.G.L. c. 156D §16.22; 950 CMR 113.57- Failure to file Annual Reports with the Secretary of the Commonwealth, Corporations Division.

By decision dated September 12, 2012, the Commission:

- 1) SUSPENDED the license for thirty (30) days for violation of 204 CMR 2.05 (2), to wit: 527 CMR 10.13 (2) (d)-Failure of the owner or operator of nightclub, dance hall, discotheque or bar, with an occupant load of one hundred (100) persons or more shall designate one (1) Crowd Manager, for every 250 occupants, or portion thereof based upon the Certificate of Inspection under 780 CMR as required since June 1, 2011;
- 2) SUSPENDED the license for thirty (30) days, to be served concurrently with the thirty (30) day suspension ordered for the no crowd manager violation, for violation of 204 CMR 2.05 (2), to wit: 527 CMR 10.13 (2) (e) Failure to complete the Fire and Building Safety Checklist as prescribed by the Marshall, on each day of operation prior to opening the facility to patrons as required since June 1, 2011;
- 3) SUSPENDED the license for thirty (30) days, to be served consecutively to the thirty (30) days suspension ordered for the no crowd manager violation, for the violation of M.G.L. c. 138 §23, to wit: M.G.L. c. 138 §26-Operating without an approved manager;
- 4) SUSPENDED the license for thirty (30) days, to be served consecutively to the thirty (30) days suspension ordered for the no license manager violation, for violation of 204 CMR 2.05 (2), to wit: c. 138 §69-Sale or Delivery of an Alcoholic Beverage to an Intoxicated Person (1 count);
- 5) INDEFINITELY SUSPENDED the license effective September 26, 2012, until further written order from the Commission, for violation of M.G.L. c. 138 §15A, to wit: Failure to notify licensing authorities of a change of officers and directors. The Commission will not consider issuing any further written order until the licensee has pending before this Commission all applications for all transactions necessary to eliminate the violations adjudicated in this decision;
- 6) Admonished the licensee for its neglect and modifies the license by imposing a condition that it comply with all its reporting obligations within ninety (90) days from the date of that decision, failure to comply timely with this condition will result in further enforcement action by this Commission, for violation of M.G.L. c. 156D §16.22; 950 CMR 113.57 Failure to file Annual Reports with the Secretary of the Commonwealth, Corporations Division;
- 7) SUSPENDED the license for ten (10) days, to be served consecutively to the indefinite suspension ordered for the failure to obtain prior approval for change in the direct or indirect beneficial interest in violation of M.G.L. c. 138, section 15A, for violation of 204 CMR 4.03 (1) (a) No licensee or employee or agent of a license shall (a) offer or deliver any free drinks to any person or group of persons;
- 8) SUSPENDED the license for ten (10) days, to be served concurrently with the 10 days suspension ordered for the 4.03(a) violation, for violation 204 CMR 4.03 (1) (e) No licensee or employee or agent of a license shall sell, offer to sell or deliver drinks to any person or group of persons on any one (1) day at prices less than those charged the general public on that day, except at private functions not open to the public.

Based on the evidence the Commission found the evidence insufficient to prove that the licensee violated:

- 1) M.G.L. c. 138 §23, to wit: M.G.L. c. 138 §26 No license for the sale of alcoholic beverages shall be issued to any person or corporation a majority of whose directors are in fact aliens; and no person not a citizen shall be appointed as a manager or principal representative of any license;
- 2) 204 CMR 2.03 (2) No licensee shall use, or permit to be used, any advertising matter which is false or untrue in any particular. Any advertising matter, which directly, or by ambiguity or omission, tends to deceive or to create a misleading impression, shall be deemed to be false or untrue.

The Commission stated that no fine in lieu of suspension will be accepted for the thirty (30) days suspension ordered in sub-paragraph three (3) above. No fine in lieu of suspension will be accepted for the ten (10) days suspension ordered in sub-paragraphs seven (7) and eight (8) above.

The aggregate suspension was one hundred (100) days, of which forty (40) days must be served. A fine in lieu of suspension will be considered only for the remaining sixty (60) days. All days of suspension will be ordered to be served only after the indefinite suspension that is effective September 26, 2012 is reconsidered and amended by the Commission in a further written order as specified in sub-paragraph five (5) above.

On November 6, 2012, the Licensee, through counsel, filed a Motion for Reconsideration. The Commission held hearings on Tuesday, November 20, 2012, and Tuesday, December 5, 2012, regarding the Licensee's Motion for Reconsideration of the Commission's decision of indefinite suspension issued on September 12, 2012. The licensee attended the hearings before the Commission and argued that good cause exists to reconsider the indefinite suspension.

At this hearing, the following documents were admitted in evidence:

- A. Commission Decision dated September 12, 2012;
- B. Documents from Licensee re: Petition for Change of Officers;
- C. Secretary of State Corporations Division Filing for Change of Supplemental Information of Licensee; and
- D. Licensee's Operation Plan.

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

Based on the evidence presented at that hearing, the Commission reconsiders and reverses its prior order of INDEFINITE SUSPENSION of Melinda Industrial Group, Inc. d/b/a Encuentro Restaurant Night Club license **effective forthwith**.

The indefinite suspension is reconsidered and reversed to a suspension of one hundred sixty-eight (168) days. The license has been suspended since September 12, 2012 and thus has already served one hundred twenty-eight (128) days. The balance of the suspension to be served is forty (40) days. No fine in lieu of suspension will be accepted for the balance of these forty (40) days.

The Commission also reconsiders and amends the other suspensions ordered in the Commission decision dated September 12, 2012 and hereby orders the license suspended as follows:

- 1) SUSPENDS the license for thirty (30) days for violation of 204 CMR 2.05 (2), to wit: 527 CMR 10.13 (2) (d)-Failure of the owner or operator of nightclub, dance hall, discotheque or bar, with an occupant load of one hundred (100) persons or more shall designate one (1) Crowd Manager, for every 250 occupants, or portion thereof based upon the Certificate of

Inspection under 780 CMR as required since June 1, 2011; this suspension is to be served concurrently with the balance of the 168 days suspension ordered above;

- 2) SUSPENDS the license for thirty (30) days, to be served **concurrently** with the thirty (30) day suspension ordered for the no crowd manager violation, for violation of 204 CMR 2.05 (2), to wit: 527 CMR 10.13 (2) (e) Failure to complete the Fire and Building Safety Checklist as prescribed by the Marshall, on each day of operation prior to opening the facility to patrons as required since June 1, 2011;
- 3) SUSPENDS the license for thirty (30) days, to be served **consecutively** to the thirty (30) days suspension ordered for the no crowd manager violation, for violation of M.G.L. c. 138 §23, to wit: M.G.L. c. 138 §26-Operating without an approved manager;
- 4) SUSPENDS the license for thirty (30) days, to be served **consecutively** to the thirty (30) days suspension ordered for the no license manager violation, for violation of 204 CMR 2.05 (2), to wit: c. 138 §69-Sale or Delivery of an Alcoholic Beverage to an Intoxicated Person (1 count);
- 5) SUSPENDS the license for ten (10) days, to be served **consecutively** to the suspension of thirty (30) days suspension ordered for the no crowd manager violation in sub-paragraph one (1) above, for violation of 204 CMR 4.03 (1) (a) No licensee or employee or agent of a license shall (a) offer or deliver any free drinks to any person or group of persons;
- 6) SUSPENDS the license for ten (10) days, to be served **concurrently** with the ten (10) days suspension ordered for the 4.03(a) violation, for violation 204 CMR 4.03 (1) (e) No licensee or employee or agent of a license shall sell, offer to sell or deliver drinks to any person or group of persons on any one (1) day at prices less than those charged the general public on that day, except at private functions not open to the public.

No fine in lieu of suspension will be accepted for the thirty (30) days suspension ordered in sub-paragraph one (1) above. No fine in lieu of suspension will be accepted for the ten (10) days suspension ordered in sub-paragraphs five (5) and six (6) above.

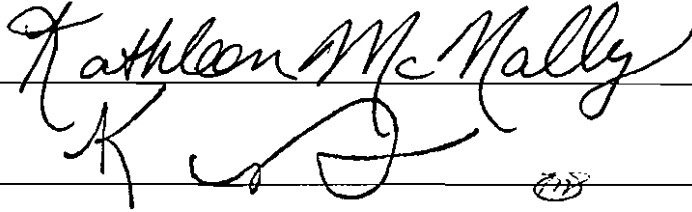
The aggregate suspension is seventy (70) days, of which forty (40) days must be served. A fine in lieu of suspension will be considered only for the remaining thirty (30) days.

The thirty (30) day suspension order in sub-paragraph three (3) above will be held in abeyance for a period of three (3) years from the date of this Memorandum and Order. If the licensee has no violations adjudicated in this three (3) year period, the licensee will not have to serve this suspension. Any adjudicated violation in this three (3) year period will result in the implementation by the Commission of this suspension.

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

Kathleen McNally, Commissioner



A handwritten signature in cursive script, reading "Kathleen McNally", written over a horizontal line. The signature is fluid and extends above and below the line.

Kim S. Gainsboro, Chairman



A handwritten signature in cursive script, reading "Kim S. Gainsboro", written over a horizontal line. The signature is fluid and extends above and below the line.

Dated: January 18, 2013

cc: John Russell, Esq., via Facsimile 617-742-8636
Local Licensing Board
Frederick G. Mahony, Chief Investigator
Rose Bailey, Investigator
Administration
File