

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

Steven Grossman
Treasurer and Revenue General

Kim S. Gainsboro, Esq.
Chairman

NOTICE OF SUSPENSION

April 9, 2013

HEARN HOSPITALITY GROUP, LLC DBA BLACKSTONE GRILL
15 UNION STREET
BOSTON, MA 02109
LICENSE#: 011600779
VIOLATION DATE: 01/01/2013
HEARD: 04/09/2013

After a hearing on April 9, 2013, the Commission finds Hearn Hospitality Group, LLC dba Blackstone Grill in violation of 204 CMR 4.03 (1) (d) Sell, offer to sell or deliver to any person an unlimited number of drinks during any set period of time for a fixed price, except at private functions not open to the public.

The Commission suspends the licensee's license for a total of thirteen (13) days to be served. The suspension shall commence on Wednesday May 29, 2013 and terminate on Monday, June 10, 2013. The license will be delivered to the Local Licensing Board or its designee on Wednesday, May 29, 2013, at 9:00 A.M. It will be returned to the licensee Tuesday, June 11, 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 within twenty (20) calendar days following such 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.

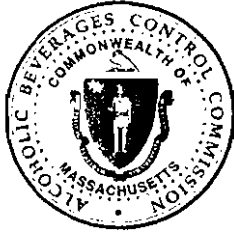
You are advised that you have the right to appeal this decision under M.G.L. c. 30A to Superior Court within thirty (30) days upon receipt of this notice.

ALCOHOLIC BEVERAGES CONTROL COMMISSION

Kim S. Gainsboro
 Chairman

cc: Local Licensing Board
 Frederick G. Mahony, Chief Investigator
 Rose Bailey, Investigator
 Brad Doyle, Investigator
 File

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The Commonwealth of Massachusetts
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DECISION

HEARN HOSPITALITY GROUP, LLC DBA BLACKSTONE GRILL
15 UNION STREET
BOSTON, MA 02109
LICENSE#: 011600779
VIOLATION DATE: 01/01/2013
HEARD: 04/09/2013

Hearn Hospitality Group, LLC dba Blackstone Grill (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 9, 2013, regarding an alleged violation of 204 CMR 4.03 (1) (d) Sell, offer to sell or deliver to any person an unlimited number of drinks during any set period of time for a fixed price, except at private functions not open to the public. Prior to the commencement of the hearing, the licensee stipulated to the violation alleged in Investigator Bailey's Report

The following documents are in evidence:

1. Licensee's Stipulation of Facts; and
2. Investigator Bailey's Investigative Report dated January 1, 2013.
 - A. Email dated December 31, 2012, from L. Bell re: New Year's Eve guest list;
 - B. Guest List; and
 - C. Blackstone Grill Receipt dated January 1, 2013.

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

FACTS

1. On Tuesday, January 1, 2013, at approximately 1:05 a.m., Investigators Doyle, Kujawski, and Bailey investigated the business operation of Hearn Hospitality Group, LLC dba Blackstone Grill to determine the manner in which their business was being conducted.
2. While conducting Safe Holiday Operations, investigators observed a sign on the window of the licensed premises which indicated a "private party."
3. Upon entering the licensed premises, investigators identified themselves and spoke to the license manager, Neel Schmoll.
4. Mr. Schmoll stated that the licensee had rented out the premises, for a flat fee, to a person holding a private party.
5. The host, identified as Leigh Bell, spoke with investigators in the presence of Mr. Schmoll.

6. Investigator Doyle asked the following questions to determine whether the event would be considered a “private function” within the meaning of CMR §§ 4.00, et seq. (commonly referred to as the “Happy Hour” regulation).
 - o Does the private function have a host? Yes.
 - o Is access to the private function restricted to invited guests? Yes.
 - o Were the invited guests charged a fee to attend, indirectly or directly? Yes, the invited guests paid \$75.00 per person for the event which included hor d’oeuvres and open bar. Eighty tickets were sold of which seventy-nine guests were in attendance.
 - o The host is the only individual responsible for payment to the licensee? Yes.
 - o Is there a written guest list available for inspection? Yes.
7. Investigator Doyle informed Mr. Schmoll of the prohibited practice relative to the fee charged the invited guests which included the open bar.
8. Investigators informed Mr. Schmoll that a violation report would be submitted to the Chief Investigator for review.
9. Per the Commission Advisory and prior to Commission decisions issued in May 2004¹, the licensee was in violation of 204 CMR §§ 4.03 § 3 in that each invited guest was charged \$75.00 to attend the function.

CONCLUSION

Based on the evidence, the Commission finds the licensee violated 204 CMR 4.03 (1) (d) Sell, offer to sell or deliver to any person an unlimited number of drinks during any set period of time for a fixed price, except at private functions not open to the public. Therefore, the Commission **suspends the license for ten (10) days of which eight (8) days will be served and two (2) days will be held in abeyance for a period of two (2) years provided no further violations of Chapter 138 or Commission Regulations occur.**

By decision dated July 20, 2011, the Commission had previously ordered a five (5) day license suspension but had held the suspension in abeyance for a period of two (2) years provided no further violations occurred. Based on the violation found above, the licensee violated the conditions of that five (5) day suspension being held in abeyance. **The Commission hereby orders that suspension to be served on and after the eight (8) day suspension. The licensee will serve a total thirteen (13) days.**

¹ <http://www.mass.gov/abcc/regs/reg2040400.htm>

ALCOHOLIC BEVERAGES CONTROL COMMISSION

Susan Corcoran, Commissioner *Susan Corcoran*

I, the undersigned, hereby certify that I have reviewed the hearing record and concur with the above decision.

Kathleen McNally, Commissioner *Kathleen McNally*

DATE: April 9, 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
Brad Doyle, Investigator
Administration
File