



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

DECISION

HOME TEXTURES INC. DBA JOHNNY'S BEACH CLUB
87 WAHCONAH STREET
PITTSFIELD, MA 01201
LICENSE#: 097400043
VIOLATION DATE: 05/30/2014
HEARD: 08/26/2014

Home Textures Inc. dba Johnny's Beach Club (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, August 26, 2014, regarding an alleged violation of:

- 1) 204 CMR 2.05 (2) Permitting An Illegality on the Licensed Premises, 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 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.
- 2) 204 CMR 2.05 (2) - Permitting an Illegality on the Licensed Premises, to wit: 527 CMR 10.13 (2) (E) - Failure to complete the fire & building safety checklist as prescribed by the Marshall, on each day of operation prior to opening the facility to patrons.
- 3) 204 CMR 2.05 (2) Permitting an Illegality on the Licensed Premises, to wit: Section 34D – any establishment which sells alcoholic beverages to be drunk on the premises, shall post a copy of the penalties set forth in subdivision.
- 4) 204 CMR 2.05 (2) Permitting an Illegality on the Licensed Premises, to wit: M.G.L. C.138 §23 - Sale of alcoholic beverages other than those purchased under §18 or §19 or from a holder of a special permit under §22a (2 Counts).

Prior to the commencement of the hearing, the licensee stipulated to the violation alleged in Investigator Temple's Report.

The following documents are in evidence:

1. Licensee's Stipulation of Facts; and
 2. Investigator Temple's Investigative Report dated May 30, 2014;
- A. List dated August 2014 of Certified Crowd Managers.

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

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FACTS

1. On Friday, May 30, 2014, at approximately 9:20 p.m., Chief Investigator Mahony and Investigator Temple, along with members of the Pittsfield Police Department, Pittsfield Probation, and Pittsfield Fire Department, conducted an investigation of the business operation of Home Textures Inc. dba Johnny's Beach Club to determine the manner in which its business was being conducted.
2. Investigators entered the licensed premises and identified themselves to the manager, John Giardina.
3. Investigators asked Mr. Giardina what was the occupancy load of the club. Mr. Giardina stated that the licensed occupancy load was 184 persons.
4. Investigators asked Mr. Giardina if he or his staff had completed the Fire and Building Safety Checklist. Mr. Giardina stated that he did not know about this checklist, and he had never completed one before.
5. Investigators asked to see the crowd manager certificate for the designated crowd manager for the licensed premises but Mr. Giardina could not provide one to investigators.
6. Investigators then asked Mr. Giardina if he had warning signs posted, to which Mr. Giardina replied, "Warning signs for what? Smoking?" Investigators described the warning signs for criminal violation for driving under the influence of alcohol. Mr. Giardina stated that he did not have this sign but that he did have a sign at the door which stated you must be 21 to enter.
7. Investigators informed Mr. Giardina that he should get the warning signs from the Pittsfield Licensing Authority as soon as possible.
8. Investigators inspected the bar area and observed bottles of alcohol with retail price stickers on the exterior. Based on their training and experience, investigators recognized these stickers as indications that the alcoholic beverages were purchased from a \$15 retail package store.
9. Investigators removed the bottles of alcohol to hold as evidence. They were one 1.75 liter bottle of Bacardi rum and one 1.75 liter bottle of Kahlua coffee liqueur.
10. Investigators informed Mr. Giardina of the violation and that a report would be filed with the Chief Investigator for review.

CONCLUSION

Based on the evidence, the Commission finds the licensee violated:

- 1) 204 CMR 2.05 (2) Permitting An Illegality on the Licensed Premises, 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 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.
- 2) 204 CMR 2.05 (2) - Permitting an Illegality on the Licensed Premises, to wit: 527 CMR 10.13 (2) (E) - Failure to complete the fire & building safety checklist as prescribed by the Marshall, on each day of operation prior to opening the facility to patrons.
- 3) 204 CMR 2.05 (2) Permitting an Illegality on the Licensed Premises, to wit: Section 34D – any establishment which sells alcoholic beverages to be drunk on the premises, shall post a copy of the penalties set forth in subdivision.
- 4) 204 CMR 2.05 (2) Permitting an Illegality on the Licensed Premises, to wit: M.G.L. C.138 §23 - Sale of alcoholic beverages other than those purchased under §18 or §19 or from a holder of a special permit under §22a (2 Counts).

On the first violation, 204 CMR 2.05 (2), to wit: 527 CMR 10.13 (2) (D), the Commission **suspends the license for three (3) days of which three (3) days will be held in abeyance for a period of two (2) years provided no further violations of Chapter 138 or Commission Regulations occur.**

On the second violation, 204 CMR 2.05 (2), to wit: 527 CMR 10.13 (2) (E), the Commission **suspends the license for three (3) days of which three (3) days will be held in abeyance for a period of two (2) years provided no further violations of Chapter 138 or Commission Regulations occur. This suspension held in abeyance to run concurrently with the one above.**

On the third violation, 204 CMR 2.05 (2), to wit: Section 34D the Commission **suspends the license for one (1) day of which one (1) day will be held in abeyance for a period of two (2) years provided no further violations of Chapter 138 or Commission Regulations occur. This suspension held in abeyance to run concurrently with those above.**

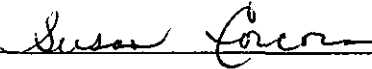
On the fourth violation, 204 CMR 2.05 (2), to wit: M.G.L. C.138 §23 - Sale of alcoholic beverages other than those purchased under §18 or §19 or from a holder of a special permit under §22a (2 Counts), the Commission **suspends the license for one (1) day of which one (1) day will be held in abeyance for a period of two (2) years provided no further violations of Chapter 138 or Commission Regulations occur. This suspension held in abeyance to run concurrently with those above.**

ALCOHOLIC BEVERAGES CONTROL COMMISSION

Kathleen McNally, Commissioner



Susan Corcoran, Commissioner



Dated: August 27, 2014

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
Christopher Temple, Investigator
Administration
File