

Boromee Holdings, LLC.)	
Tavern by the Marina)	<u>DECISION AND ORDER</u>
601 Belle Avenue)	Violation Nos. 07197, 07198,
Laurel, DE 19956)	07199, 07200, 07205
License No. 13624)	

SUMMARY OF THE EVIDENCE

The Commissioner held a hearing on February 5, 2014 in Georgetown, Delaware, at which the licensee, through its authorized representative, Mr. Boromee, failed to appear for the hearing on the following charges: purchasing more than one case of alcoholic beverages on May 12, 2013 from another retail license (Violation No. 07197); having alcoholic beverages not purchased pursuant to Title 4 on its licensed premises on May 12, 2013 (Violation No. 07198); allowing alcoholic liquors to be consumed on its licensed premises after 2 a.m. on May 26, 2013 (Violation No. 07199); permitting non-employees to enter and remain on its taproom premises on May 26, 2013 after 2 a.m. (Violation No. 07200); and allowing James Lewis to make use of License No. 13624 on behalf of Boromee Holdings, LLC (Violation No. 07205).

Agent Tyler Bryan, of the Division of Alcohol and Tobacco Enforcement, testified the Division had contact with the licensee on January 9 and 13, 2014, at which time it was provided with notice of the February 5th hearing. Mr. Boromee is a resident in Brooklyn, New York. Agent Bryan recently spoke with Mr. Boromee, who said he anticipated not being able to attend the hearing due to expected adverse weather. Last week, Agent Bryan visited the premises, which he found closed with mail shoved in the door. The premises looked to be closed for some time.

In May 2013, during a separate visit, Agent Bryan spoke with the manager, James Lewis; Mr. Lewis is not an owner. Agent Bryan learned Mr. Lewis had invested \$40,000 into the licensee and was losing money; in June 2013, he received a copy of the management agreement. Since that time, the license has been opened sporadically. Agent Bryan requested the Laurel Police Department to visit the licensed site every shift; each time, Laurel police observed no one at the site.

LAW

The Commissioner may cancel every license made use of on behalf of any person other than the one to whom or on behalf of whom it has been issued. 4 Del.C. § 561(a).

The Commissioner may suspend any license and/or fine any licensee if the licensee has violated any provision of the Delaware Liquor Control Act or any of the regulations promulgated pursuant thereto. 4 Del.C. § 561(b)(1).

No licensee shall possess on the licensee's licensed premises or has sold or offered for sale any alcoholic beverages not purchased or sold pursuant to this title. 4 Del.C. § 561(b)(8).

No licensee may have on its premises any unauthorized alcoholic beverage as prohibited by 4 Del.C. § 902 (criminal offenses and penalties).

No person licensed by the Commissioner shall sell, serve or deliver alcoholic liquors on, in or from an establishment licensed for on-premises consumption between the hours of 1:00 a.m. and 9:00 a.m. No alcoholic liquors shall be consumed on licensed premises between the hours of 2:00 a.m. and 9:00 a.m. Commissioner Rule 36(C)(1).

Unless previously authorized in writing by the Commissioner, it is forbidden for any holder of a tavern or taproom license to permit any individuals, other than employees, to enter or remain on the premises to which such license pertains between 2:00 a.m. and 9:00 a.m. of any day that sales of alcoholic liquors are permitted. Commissioner Rule 45.

Any fine imposed by the Commissioner, pursuant to this Section, shall not exceed 10% of the estimated average gross monthly sales of alcoholic liquor for the operations of the licensee within the twelve (12) months immediately preceding the date of the finding of guilt provided that such amount exceeds \$250. In no case shall the fine imposed by the Commissioner upon a finding of guilt be less than \$250. 4 Del.C. § 914.

FINDINGS OF FACT

This matter had been scheduled on three occasions in the past: 1) on July 24, 2013 the matter was scheduled in Sussex County, but this Office received an e-mail dated July 18, 2013 from Mr. Boromee requesting that date be continued and requested that the venue be moved to “Kent County” to be heard on July 29, 2013; 2) on July 29, 2013 Mr. Boromee failed to attend and called Agent Loiseau as the hearing was completed and advised that he “was almost to Wilmington”; 3) the matter was re-scheduled for November 26, 2013 and Mr. Boromee sent an e-mail on November 23, 2013 (a Saturday at 6:52 p.m.) requesting a continuance claiming that he had not received any correspondence from this Office regarding the hearing and had only recently (November 21, 2013) received a phone call advising him of the hearing; the matter was continued; and 4) the present hearing was scheduled for February 5, 2014 and notice was sent to Mr. Boromee by mail at the address in New York he provided as well as his e-mail address. This Office received an e-mail on February 4, 2014 from Mr. Boromee at 1:49 p.m. requesting a continuance due “to the inclement weather.” The Division opposed the request and Deputy Commissioner Wiest e-mailed Mr. Boromee at 4:53 p.m. to advise that the continuance request had been denied.

The Commissioner only allowed evidence regarding the most serious charge of allowing another person to make use of the licensee’s license and did not entertain evidence regarding the other charges as the licensee was not in attendance.

Having heard the testimony of the Division, the Commissioner finds the above licensee allowed James Lewis to make use of License No. 13624 on behalf of Boromee Holdings, LLC (Violation No. 07205).

ORDER

It is this _____ day of _____, 2014 the Decision and Order of the Commissioner that the licensee's liquor license is suspended until further notice from the Commissioner's Office for Violation No. 07205. If the licensee comes forward with a request for a hearing and reason to believe the management agreement was indeed not where another person or entity was operating on behalf of the licensee, another hearing will be scheduled.¹ If there is nothing further requested or provided within sixty (60) days of the date of this Decision and Order, the license shall be revoked for Violation No. 07205. After reviewing the licensee's prior record, the Commissioner is satisfied that the penalty for the offense would be in the public interest and would achieve the desired disciplinary effect. 4 Del.C. § 914.

The licensee's liquor license is hereby suspended until further notice from the Commissioner and absent action by the licensee within sixty (60) days of this Order as stated above, the license will be revoked.

IT IS SO ORDERED.

John H. Cordrey, Commissioner

¹ The other violations remain pending and will be addressed if and when another hearing is scheduled.