



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

Deborah B. Goldberg
Treasurer and Receiver General

Kim J. Gainsboro, Esq.
Chairman

DECISION

MONICA'S, INC. D/B/A MONICA'S RESTAURANT
143-145 RICHMOND STREET
BOSTON, MA 02113
LICENSE#: 011601442
VIOLATION DATES: 1/16/07 and 3/20/2007¹
HEARD: 10/18/2016

Monica's, Inc. d/b/a Monica's Restaurant (the "Licensee" or "Monica's Restaurant") holds an all alcoholic beverages license issued pursuant to M.G.L. c. 138, § 12. The Alcoholic Beverages Control Commission (the "Commission") held a hearing on Tuesday, October 18, 2016, regarding an alleged violation of 204 CMR 2.01(8), which provides that "[a]ll applications shall be made under the penalties of perjury and any false statement contained in an application shall be a cause or ground for refusing to grant the license or for suspending, canceling or revoking the license already granted." Prior to the commencement of the hearing, the Licensee stipulated to the violation alleged in Investigator Di Cicco's Report.

The following documents are in evidence as exhibits:

1. Investigator Di Cicco's Report; and
 2. Stipulation.
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- A. Representative Michlewitz's letter to the ABCC, 5/2/16;
 - B. City of Boston Councillor LaMattina's letters to the ABCC, 10/17/16, 5/2/16;
 - C. Eliot School letter, 4/25/16;
 - D. Affidavits of Patrick Mendoza;
 - E. Summary of M.G.L. c. 276 § 100C;
 - F. Packet entitled, "Know Your CORI Rights";
 - G. Statement of Change of Supplemental Information for Monica's Mercato; and
 - H. Various ABCC license applications submitted by the Mendozas.

¹ The violation date on the Investigative Report and Notice of Hearing was incorrectly identified as May 2, 2016. Despite the error, counsel for the Licensee represented that his client waived the issue of prejudice.

There is one (1) audio recording of this hearing. The Licensee requested that testimony given by State Representative Aaron Michlewitz at the hearing of Monica's Mercato, Inc. d/b/a Monica's Pizzeria be considered in the instant hearing, and the Commission allowed that that request.

The Commission took Administrative Notice of the Licensee's record.

FINDINGS OF FACT

1. Monica's, Inc. d/b/a Monica's Restaurant, license # 011601442, holds a § 12 all alcoholic beverages license exercised at 143-145 Richmond Street, Boston, MA. (Commission File)
2. Commission files reflect that Jorge Mendoza ("Jorge") is the President and Director; Patrick Mendoza ("Patrick") is the Treasurer and Director; and Francisco Mendoza ("Francisco") is the Secretary and Director of Monica's Restaurant. (Commission Files)
3. Investigator Di Cicco was assigned an application of Monica's Mercato, Inc. at 67 Prince Street, and in the course of that investigation, Investigator Di Cicco conducted an administrative review of the Commission files for the files in which the Mendozas claimed a beneficial interest, including that of Licensee Monica's Restaurant. The investigation into the Licensee's Commission File revealed the following:
 - On or about January 16, 2007, Monica's Restaurant filed an application for a new officer/director and a transfer of stock. In the application, Patrick was added as a corporate officer and as having 20 shares of stock. The Licensee responded "no" to a question asking if anyone with a beneficial or financial interest had ever been convicted of violating a state, federal, or military law. The Commission approved the application on February 6, 2007. (Exhibit 1; Testimony)
 - On or about March 20, 2007, Monica's Restaurant filed an application for a new license, upgrading to an all alcoholic beverages license from a wines/malt beverages license. In the application, Patrick was listed as a corporate officer and as having 20 shares of stock. The Licensee responded "no" to a question asking if anyone with a beneficial or financial interest had ever been convicted of violating a state, federal, or military law. The Commission approved the application on or about April 20, 2007. (Exhibit 1; Testimony)
4. Investigator DiCicco discovered that Patrick had a criminal record, namely felony convictions from 1998, but that the Licensee had not disclosed it. (Testimony)
5. On May 3, 2016, Investigator Di Cicco with Chief Investigator Mahony interviewed Jorge and Patrick Mendoza with Attorney Ferullo present. Investigators expressed concerns about the failure to disclose the criminal history on the application. (Exhibit 1; Testimony)
6. Patrick took steps to seal his criminal record in 2003 and incorrectly assumed that his record was sealed after that time. (Testimony; Exhibit D)
7. Consequently, Patrick never disclosed his criminal past to his attorney or on his license application forms. (Testimony; Exhibit D)

8. In about June 2016, after this issue came to light, Attorney Ferrulo sealed Patrick's criminal record. (Testimony)

DISCUSSION

The Licensee is charged with violating 204 CMR 2.01(8):

204 CMR 2.01(8): All 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, cancelling or revoking a license or permit already granted.

In order to violate this Regulation, an applicant must not only make a false statement on its application, but the statement must be willfully false on a material matter. See, e.g., M.G.L. c. 268, § 1A ("Whoever signs and issues such a written statement containing or verified by such a written declaration [that the statement is being made under the penalties of perjury] shall be guilty of perjury and subject to the penalties thereof if such statement is willfully false in a material matter"); accord McDonough, Gerald, Massachusetts Practice: Administrative Law and Practice, § 4:11 (July 2016); Charles River Distrib. Corp., Randolph (ABCC Decision December 19, 1994) ("While a material misstatement in an application is serious and is a basis for denying an application, a denial is not compelled. It is the opinion of the Commission that given there is no evidence indicating an attempt to deceive . . . the applicant is of sufficient character and fitness to hold this license").


The Licensee has admitted that it failed to disclose the criminal history of an officer/shareholder of the company. (Testimony; Exhibit D) However, the Commission must determine whether the failure to disclose was made willfully, and it finds that it was not. The Commission accepts Patrick's account that he thought his criminal record was sealed in 2003/2004 after he had taken steps to do so. (Testimony; Exhibit D) In the present case, the failure to disclose was not a willful failure to disclose material information by the Licensee. The Commission therefore finds no violation of 204 CMR 2.01(8).

However, the Commission cautions the Licensee that should there be similar charges in the future, failures to disclose may in fact establish a pattern of willfulness on the Licensee's part to falsify material information on an application before the Local Board and/or the Commission in violation of 204 CMR 2.01(8) and M.G.L. c. 268, § 1A. "The Commission warns the licensee that any future applications will be reviewed pointedly given the conduct of the [applicant] in this application." Margaret's Restaurant Inc. d/b/a Hokey's, Oxford (ABCC Decision July 12, 2005).

CONCLUSION

Based on the evidence, the Commission finds no violation of 204 CMR 2.01 (8).

ALCOHOLIC BEVERAGES CONTROL COMMISSION

Elizabeth Lashway, Commissioner 

Kathleen McNally, Commissioner 

Dated: November 9, 2016

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.

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cc: Local Licensing Board
Frederick G. Mahony, Chief Investigator
Joseph Di Cicco, Investigator
William Ferullo Esq. via facsimile 617-946-4624
Administration, File