

*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 MERCATO, INC. D/B/A MONICA'S PIZZERIA**  
**67 PRINCE STREET**  
**BOSTON, MA 02113**  
**LICENSE#: 011601609**  
**VIOLATION DATES: 12/11/06, 7/24/07, 3/14/16<sup>1</sup>**  
**HEARD: 10/18/2016**

Monica's Mercato, Inc. d/b/a Monica's Pizzeria (the "Licensee" or "Monica's Pizzeria") holds a wines and malt 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.

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<sup>1</sup> 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, and three (3) witnesses testified.

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

### FINDINGS OF FACT

1. Monica's Mercato, Inc. d/b/a Monica's Pizzeria, license # 0116-01609, holds a § 12 wines and malt beverages license exercised at 67 Prince Street, Boston, MA. (Commission File)
2. The Secretary of the Commonwealth's Corporations Division lists Monica's Mercato Inc. as having Jorge Mendoza ("Jorge"); Francisco Mendoza ("Francisco"), and Patrick Mendoza ("Patrick") as its corporate officers. (Exhibit 1)
3. On March 1, 2016, Investigator Di Cicco was assigned Monica's Pizzeria's application to change its wines and malt beverages license to an all alcoholic beverages license. (Exhibit 1; Testimony)
4. The application to change Monica's Pizzeria's license to an all alcoholic beverages license listed only two individuals, Jorge and Francisco, as having a beneficial interest in the license. Each man was listed as a 50% stockholder. Patrick was not disclosed on the application. (Exhibit 1; Testimony)
5. Investigator Di Cicco contacted the Applicant's contact, Attorney William Ferullo, about Patrick not listed on the application. On March 14, 2016, the investigator received an amended application. (Exhibit 1; Testimony)
6. In the amended application, which included a Personal Information Form and CORI Request Form for Patrick Mendoza, Patrick disclosed that he was a corporate officer of Monica's Pizzeria. (Exhibit 1; Testimony)
7. Patrick indicated he had a criminal conviction but only for a non-conviction matter that was continued without a finding. (Exhibit 1; Testimony)
8. The investigation revealed Patrick had felony convictions from February 1998 and had been incarcerated for those convictions. (Exhibit 1; Testimony)
9. On March 16, 2016, Investigator Di Cicco spoke to Attorney Ferullo about Patrick's convictions and requested Attorney Ferullo forward the police reports and court records regarding Patrick's criminal history. (Exhibit 1; Testimony)
10. Attorney Ferullo indicated that Patrick may have believed that the criminal records had been sealed. (Exhibit 1; Testimony)

11. Investigator Di Cicco conducted an administrative review of the Commission files for Monica's Pizzeria and other files in which the Mendozas claimed a beneficial interest, which revealed the following:

- Monica's Inc. (currently Monica's Mercato, Inc.) at 67 Prince St. submitted an application on December 11, 2006 to transfer stock and change officers and directors. Patrick was listed as a shareholder but did not reveal any convictions. The Commission approved the application on February 6, 2007.
- In 2007, Monica's, Inc. submitted an application to transfer its license to Monica's Mercato, Inc. and change the manager. Jorge, Francisco, and Patrick were listed as the officers and directors of the corporation. No convictions were revealed in the application. Jorge signed the application on July 24, 2007, and the Commission approved the application on October 11, 2007. (Exhibit 1; Testimony)

12. 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 inconsistencies and failure to disclose criminal history on the application. Attorney Ferrulo explained that he was not in the office when the application to change Licensee's license to an all alcoholic beverages license was prepared and that it was an error that Patrick was not listed as an officer in the application. (Exhibit 1; Testimony)

13. Patrick took steps to seal his criminal record in 2003 and incorrectly assumed that his record was sealed after that time. (Testimony; Exhibit D)

14. Consequently, Patrick never disclosed his criminal past to his attorney or on his license application forms. (Testimony; Exhibit D)

15. 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”).

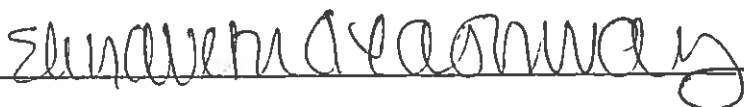
The Licensee has admitted that it failed to make full disclosures on material matters within its application, specifically who exactly owns the license and the criminal history of an officer of the company. (Testimony; Exhibit D) However, the Commission must determine whether these failures to disclose were made willfully, and it finds that they were not. Counsel for the Licensee admitted at the hearing that he was absent when the application to change the wine/malt license to an all alcoholic beverages license was filed and that the omission of Patrick from the application was an accidental error made by his office. (Testimony) The Commission accepts counsel’s representation that it was an innocent error made by his office. The Commission also 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, 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