



*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 MERCATO**  
**130 SALEM STREET**  
**BOSTON, MA 02113**  
**LICENSE#: 011601682**  
**VIOLATION DATES: 12/28/2006<sup>1</sup>**  
**HEARD: 10/18/2016**

Monica's Mercato, Inc. d/b/a Monica's Mercato (the "Licensee" or "Monica's Mercato") holds a wines and malt beverages license issued pursuant to M.G.L. c. 138, § 15. 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.
- 
- 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.

---

<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 Mercato, license # 011601682, holds a § 15 wines and malt beverages license exercised at 130 Salem 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 Mercato. (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 Mercato. The investigation into the Licensee's Commission File revealed the following:
  - On or about February 22, 2007, Monica's Mercato, Inc. filed an application to transfer to it a wine/malt § 15 license and to transfer the location to 130 Salem Street, Boston. The application was signed on December 28, 2006. Patrick Mendoza was named as a corporate officer and as having twenty shares of stock. In the application, 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 6, 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. Chief Investigator Mahony advised them that the record was not sealed and that a convicted felon is prohibited from ownership in a § 15 license. (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.<sup>2</sup> (Testimony)

---

<sup>2</sup> In addition to Patrick sealing his record, the Licensee has filed an application to remove Patrick from the § 15 license. That application is pending. (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

*Elizabeth Lashway*

Kathleen McNally, Commissioner

*Kathleen McNally*

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.

This document is important and should be translated immediately.  
Este documento es importante y debe ser traducido inmediatamente.  
Este documento é importante e deve ser traduzido imediatamente.  
Ce document est important et devrait être traduit immédiatement.  
Questo documento è importante e dovrebbe essere tradotto immediatamente.  
Το έγγραφο αυτό είναι σημαντικό και θα πρέπει να μεταφραστούν αμέσως.  
这份文件是重要的，应立即进行翻译。

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