

*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*

NOTICE OF SUSPENSION

June 15, 2016

**THE NEXT PLACE, LLC D/B/A THE GREATEST BAR**  
**262-66 FRIEND ST**  
**BOSTON, MA 02114**  
**LICENSE#: 011601397**  
**VIOLATION DATE: 11/01/2015**  
**HEARD: 05/10/2016**

After a hearing on May 10, 2016, the Commission finds The Next Place, LLC d/b/a The Greatest Bar in violation of 204 CMR 2.05 (2) Permitting an illegality on the licensed premises, to wit: M.G.L. c. 138, §34C- Possession of an alcoholic beverage by a person under twenty-one (21) years of age (1 count).

The Commission suspends the license for a period of 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.

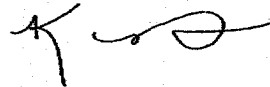
By decision dated May 27, 2015, the Commission had previously ordered a ten (10) day license suspension with five (5) days to be served and five (5) days to be held in abeyance for a period of two (2) years provided no further violations occurred. Based on the violation found above, the Licensee violated the conditions of that five (5) day suspension being held in abeyance. The Commission hereby orders that suspension to be served. The Licensee will serve a total of five (5) days.

The suspension shall commence on Wednesday, August 10, 2016, and terminate on Sunday, August 14, 2016. The license will be delivered to the Local Licensing Board or its designee on Wednesday, August 10, 2016 at 9:00 A.M. It will be returned to the Licensee Monday, August 15, 2016.

You are advised that pursuant to the provisions of M.G.L. c.138 §23, you may petition the Commission to accept an offer in compromise in lieu of suspension within twenty (20) calendar days following such notice of such suspension. If accepted, you may pay a fine using the enclosed form. All checks must be certified and accompanied by the enclosed form, which must be signed by the Licensee and a Massachusetts Licensed Accountant.

You are advised that you have the right to appeal this decision under M.G.L. c. 30A to Superior Court within thirty (30) days upon receipt of this notice.

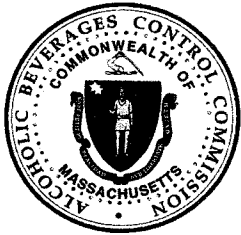
**ALCOHOLIC BEVERAGES CONTROL COMMISSION**



Kim S. Gainsboro  
Chairman

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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  
Chris Temple, Investigator  
Curt F. Bletzer, Esq. via facsimile 617-754-5522  
Administration, File



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

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**DECISION**

**THE NEXT PLACE, LLC D/B/A THE GREATEST BAR**  
**262-66 FRIEND STREET**  
**BOSTON, MA 02114**  
**LICENSE#: 011601397**  
**VIOLATION DATE: 11/01/2015**  
**HEARD: 05/10/2016**

The Next Place, LLC d/b/a The Greatest Bar (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, May 10, 2016, regarding an alleged violation of 204 CMR 2.05 (2) Permitting an illegality on the licensed premises, to wit: M.G.L. c. 138, §34C-Possession of an alcoholic beverage by a person under twenty-one (21) years of age (1 count), which occurred on November 1, 2015, according to Investigator Temple's report.

The following documents are in evidence:

1. Investigator Temple's Investigative Report dated November 2, 2015;
2. Identification of Underage Female #1;
3. Identification of Underage Female #2; and
4. Expired Driver's License of Underage #1.

- A. Photograph #1 of Underage Females; and
- B. Photograph #2 of Underage Females.

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

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

**FACTS**

1. On Sunday, November 1, 2015, at approximately 1:45 a.m., Investigator Temple and Chief Investigator Mahony ("Investigators") investigated the business operation of The Next Place, LLC d/b/a The Greatest Bar to determine the manner in which their business was being conducted.

2. Investigators entered the licensed premises and observed two youthful appearing females, seated at the bar on the second floor who were in possession of two bottles of Budweiser Light beer.
3. Investigators identified themselves to the youthful appearing females and asked to see proof of legal age.
4. Underage #1, actual date of birth 05/04/1995 (age 20) was in possession of a bottle of Budweiser Light beer. Underage #1 presented a Massachusetts driver's license in a name not her own. Investigators observed that the identification provided was not of the person before them. The female before them had a lighter skin tone, and her nose, cheeks and jaw were not as pronounced as the picture on the driver's license.
5. Underage #2, actual date of birth 12/15/1994 (age 20) was in possession of a bottle of Budweiser Light beer. Underage #2 presented a Massachusetts driver's license in another person's name. Investigators believed that the Licensee could have reasonably relied on this identification as the picture on it was similar to the individual who provided it.
6. The Underage females advised Investigators that they would take a ride share service home.
7. Investigators informed the manager, Jovan Beal, of the violation and that a report would be filed for review.

### DISCUSSION

Licenses to sell alcoholic beverages are a special privilege subject to public regulation and control, Connolly v. Alcoholic Beverages Control Comm'n, 334 Mass. 613, 619 (1956), for which States have especially wide latitude pursuant to the Twenty-First Amendment to the United States Constitution. Opinion of the Justices, 368 Mass. 857, 861 (1975). The procedure for the issuance of licenses and required conduct of licensees who sell alcoholic beverages is set out in Massachusetts General Laws, Chapter 138.

Chapter 138 gives the Commission the authority to grant, revoke and suspend licenses. Chapter 138 was "enacted ... to serve the public need and ... to protect the common good." M.G.L. c. 138, §23. "[T]he purpose of discipline is not retribution, but the protection of the public." Arthurs v. Bd. of Registration in Medicine, 383 Mass. 299, 317 (1981). The Commission is given "comprehensive powers of supervision over licensees." Connolly, 334 Mass. at 617.

The Licensee is charged with a violation of 204 CMR 2.05 (2) - Permitting an illegality on the licensed premises, to wit: chapter 138, §34C- Possession of an alcoholic beverage by a person under twenty-one (21) years of age. A Commission regulation promulgated at 204 CMR 2.05(2) provides in pertinent part, that "[n]o licensee for the sale of alcoholic beverages shall permit any disorder, disturbance or illegality of any kind to the place in or on the licensed premises. The licensee shall be responsible therefore, whether present or not." The law is well-settled that 'under the regulation, [204 C.M.R. 2.05(2)] the responsibility of the licensee is to exercise sufficiently close supervision so that there is compliance with the law on the premises. A vendor who sells alcohol is "bound at his own peril to keep within the condition of his license." Burlington Package Liquors, Inc. v. Alcoholic Beverages Control Comm'n, 11 Mass. App. Ct. 785, 788 (1981); Commonwealth v. Gould, 158 Mass. 499, 507, (1893). It is, thus, quite possible for a licensee to offend the regulatory scheme without scienter. The licensee is responsible for illegalities that occur on the licensed premises. Rico's of the Berkshires, Inc. v. Alcoholic Beverages Control Comm'n, 19 Mass. App. Ct. 1026, 1027 (1985).

Massachusetts General Laws, Chapter 138, §34C states, in pertinent part, that: "Whoever, being under twenty-one years of age and not accompanied by a parent or legal guardian, knowingly possesses any alcohol or alcoholic beverages, shall be punished." M.G.L. c. 138, §34C. A Massachusetts driver's license which purports to show that a patron is 21 years of age or older is not an affirmative defense available for the statutory violation of permitting an illegality of a minor in possession of alcoholic beverages pursuant to Section 34C. While Massachusetts General Laws, Chapter 138, §34B offers protection from license suspension or revocation or criminal penalties to license holders who reasonably rely on one of four (4) pieces of identification specified in the statute, including a valid Massachusetts driver's license, Section 34B refers only to the activities of delivery and sale, and it omits any reference to the act of possession. See M.G.L. c. 138, §34B. Consequently, Section 34B offers no relief from liability for allowing possession of alcoholic beverages in violation of Section 34C.

The Commission is persuaded by the evidence that the minor was younger than 21 years of age and was in possession of an alcoholic beverage in the licensed premises of The Next Place, LLC d/b/a The Greatest Bar. The Commission finds that the Licensee committed a violation of 204 CMR 2.05 (2) - Permitting an illegality on the licensed premise, to wit: M.G.L. c. 138, §34C- Possession of an alcoholic beverage by a person under 21 years of age (1 count).

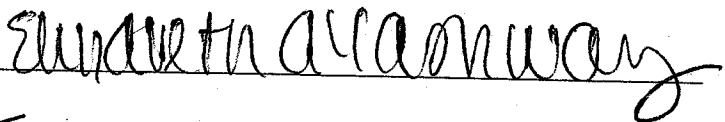
#### CONCLUSION

Based on the evidence, the Commission finds the Licensee violated 204 CMR 2.05 (2) Permitting an illegality on the licensed premises, to wit: M.G.L. c. 138, §34C- Possession of an alcoholic beverage by a person under twenty-one (21) years of age (1 count). Therefore the Commission **suspends the license for a period of 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.**

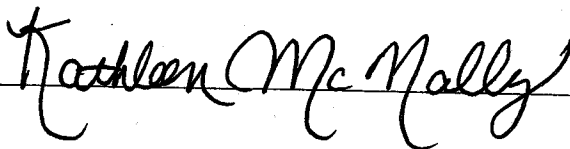
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#### **ALCOHOLIC BEVERAGES CONTROL COMMISSION**

Elizabeth A. Lashway, Commissioner



Kathleen McNally, Commissioner



Dated: June 15, 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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