



***Commonwealth of Massachusetts  
Alcoholic Beverages Control Commission  
239 Causeway Street  
Boston, Massachusetts 02114  
Telephone: (617) 727-3040  
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**Jean M. Lorizio, Esq.**  
*Chairman*

**NOTICE OF SUSPENSION**

April 16, 2019

**PAINTED HOUSE LLC D/B/A THE WONDER BAR  
186 HARVARD AVE.  
BOSTON, MA 02134  
LICENSE#: 011600428  
VIOLATION DATE: 10/20/2018  
HEARD: 3/05/2019**

After a hearing on March 5, 2019, the Commission finds Painted House LLC d/b/a The Wonder Bar 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).

The Commission **suspends the license for a period of three (3) days of which one (1) day will be served and two (2) 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 15, 2018, the Commission found violations of 204 CMR 2.05 (2) Permitting an illegality on the licensed premises, to wit: M.G.L. c. 138, § 34C and ordered several days to be served and several days to be held in abeyance for two years provided that no further violations occurred. Based on the violation found above, the Licensee violated the conditions of that suspension being held in abeyance. The Commission hereby orders three (3) days to be carried forward and served on and after the one (1) day suspension. The Licensee will serve a total of four (4) days.

**The suspension shall commence on Wednesday, June 5, 2019 and terminate on Saturday, June 8, 2019.** The license will be delivered to the Local Licensing Board or its designee on Wednesday, June 5, 2019 at 9:00 A.M. It will be returned to the Licensee on June 9, 2019.

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 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**



Jean M. Lorizio  
Chairman

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这份文件是重要的，应立即进行翻译。

cc: Local Licensing Board  
Frederick G. Mahony, Chief Investigator  
Kyle E. Gill, Esq., Associate General Counsel  
Michael Teehan, Investigator  
R. Bailey, J. Carey, J. DiCicco, B. Doyle, C. Guarino, & D. Keefe, Investigators  
Shayna L. Duff, Esq.  
Administration, File



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*Chairman*

**DECISION**

**PAINTED HOUSE LLC D/B/A THE WONDER BAR  
186 HARVARD AVE.  
BOSTON, MA 02134  
LICENSE#: 0116-00428  
VIOLATION DATE: 10/20/2018  
HEARD: 3/05/2019**

Painted House LLC d/b/a The Wonder Bar (the "Licensee" or "Wonder Bar") 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, March 5, 2019, 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 October 20, 2018, according to Investigator Teehan's Report.

The following documents are in evidence:

1. Investigator Teehan's Report;
  2. Copy of Colombian Identification;
  3. ABCC Decision, 4/15/2009;
  4. ABCC Decision, 5/15/2018; and
  5. Licensee's Transfer Application of 6/21/2005 which was approved on 9/8/2005.
- A. Surveillance Video of Licensed Premises on 10/20/2018;
  - B. Written Timeline identifying portion of video relevant to Incident.

There is one (1) audio recording of this hearing, and three (3) witnesses testified.

**FINDINGS OF FACT**

1. On Saturday, October 20, 2018, at approximately 6:00 p.m., Investigators Bailey, Carey, Di Cicco, Doyle, Guarino, Keefe, and Teehan ("Investigators") conducted an investigation of the business operation of Painted House LLC d/b/a The Wonder Bar to determine the manner in which its business was being conducted. (Testimony, Exhibit 1)

2. While on the licensed premises, Investigators observed a male individual in possession of an alcoholic beverage. Investigators identified themselves and asked to see proof of legal drinking age. (Testimony, Exhibit 1)
3. Underage #1, actual date of birth 5/31/2000 (age 18), was in possession of an alcoholic beverage, a gin and tonic. He presented to Investigators a false personal identification from the Republic of Colombia, which he told Investigators that he used to gain entry to the premises. (Testimony, Exhibits 1, 2)
4. Investigators informed the owner, Noah Eisendrath, of the violation and that a report would be filed with the Chief Investigator for further action. (Testimony, Exhibit 1)

### 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 take 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.” Commonwealth v. Gould, 158 Mass. 499, 507 (1893); Burlington Package Liquors, Inc. v. Alcoholic Beverages Control Comm'n, 11 Mass. App. Ct. 785, 788 (1981). It is, thus, quite possible for a licensee to offend the regulatory scheme without scienter. A 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.

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 the types of identification specified in the statute, including a valid Massachusetts driver's license,

Massachusetts liquor identification card, Massachusetts identification card, a United States passport, or a passport issued by the government – recognized by the United States – of a foreign country, a passport card for a U.S. passport, or a valid U.S. military identification card. See M.G.L. c. 138, § 34B. Consequently, a false identification personal card from the country of Colombia provides no such defense. See M.G.L. c. 138, § 34B. Section 34B refers only to the activities of delivery and sale, and it omits any reference to the act of possession. See id. 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 a patron, younger than 21 years of age, was in possession of an alcoholic beverage, a gin and tonic, while inside the licensed premises of Painted House LLC d/b/a The Wonder Bar. The fact that the minor presented a false identification from the Republic of Colombia provides no defense to the Licensee. 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 one (1) day will be served and two (2) 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 15, 2018, the Commission found violations of 204 CMR 2.05 (2) Permitting an illegality on the licensed premises, to wit: M.G.L. c. 138, § 34C and ordered several days to be served and several days to be held in abeyance for two years provided that no further violations occurred. Based on the violation found above, the Licensee violated the conditions of that suspension being held in abeyance. The Commission hereby orders three (3) days to be carried forward and served on and after the one (1) day suspension. The Licensee will serve a total of four (4) days.

### ALCOHOLIC BEVERAGES CONTROL COMMISSION

Kathleen McNally, Commissioner

Handwritten signature of Kathleen McNally in black ink, with a circled 'PH' to the right.

Elizabeth A. Lashway, Commissioner

Handwritten signature of Elizabeth A. Lashway in blue ink.

Dated: April 16, 2019

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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