

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

*Steven Grossman*  
*Treasurer and Receiver General*

*Kim J. Gainsboro, Esq.*  
*Chairman*

**NOTICE OF SUSPENSION**

December 3, 2012

**RAW RESTAURANT GROUP LLC DBA MIJA MEXICAN CANTINA**  
**1 FANEUIL HALL PLACE**  
**BOSTON, MA 02126**  
**LICENSE#: 011600072**  
**VIOLATION DATE: 02/23/2012**  
**HEARD: 05/22/2012 & 06/13/2012**

After a hearing on June 13, 2012, the Commission finds Raw Restaurant Group LLC dba Mija Mexican Cantina in violation of 204 CMR 2.05 (2) - Permitting an illegality on the licensed premise, to wit: c. 138, §34C- Possession of an alcoholic beverage by a person under twenty-one (21) years of age (1 count).

The Commission suspends the licensee's license for a total of four (4) days to be served. The suspension shall commence on Wednesday, January 2, 2013 and terminate on Saturday, January 5, 2013. The license will be delivered to the Local Licensing Board or its designee on Wednesday, January 2, 2013 at 9:00 A.M. It will be returned to the Sunday, January 6, 2013.

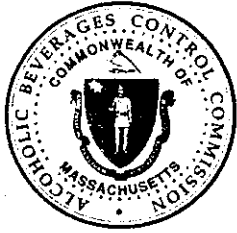
You are advised that pursuant to the provisions of M.G.L. c.138 §23, you may petition the Commission to accept an offer in compromise in lieu of suspension within twenty (20) calendar days following such notice of such suspension. If accepted, you may pay a fine using the enclosed form. All checks must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

cc: Local Licensing Board  
Frederick G. Mahony, Chief Investigator  
Paul Capurso, Investigator  
Kevin Kilduff, Esq.  
Administration  
File



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*Department of the State Treasurer*  
*Alcoholic Beverages Control Commission*  
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*Steven Grossman*  
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**DECISION**

**RAW RESTAURANT GROUP LLC, D/B/A MIJA MEXICAN CANTINA**  
**1 FANEUIL HALL PLACE**  
**BOSTON, MA 02126**  
**LICENSE#: 011600072**  
**VIOLATION DATE: 02/23/2012**  
**HEARD: 05/22/2012 & 06/13/2012**

Raw Restaurant Group LLC, d/b/a Mija Mexican Cantina ("Raw") 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, June 13, 2012, regarding an alleged violation of 204 CMR 2.05 (2) - Permitting an illegality on the licensed premise, to wit: c. 138, §34C- Possession of an alcoholic beverage by a person under twenty-one (21) years of age (1 count), which occurred on February 23, 2012, according to Investigator Capurso's Violation Report.

The following documents are in evidence:

1. Investigator Capurso's Violation Report dated February 23, 2012; and
2. Original Receipt dated February 23, 2012, 10:47 p.m. for \$124.12.
  - A. Printout of Receipt dated February 23, 2012, 11:21 p.m. for \$74.22.

There is one (1) audio recording of this hearing, and one witness testified.

**FACTS**

The Commission makes the following findings, based on the evidence presented at the hearing:

1. On Thursday, February 23, 2012, at approximately 10:15 p. m., Investigators Temple and Capurso investigated the business operation of Raw Restaurant Group LLC, d/b/a Mija Mexican Cantina to determine the manner in which its business was being conducted.
2. Investigators observed three (3) youthful looking patrons sitting at a table, who were in possession of alcoholic beverages.
3. Investigators approached the table, identified themselves, and asked for proof of age.
4. Investigators observed two (2) of the patrons, Ms. Marie Wu and Mr. Mark Mussberger, in possession of, and consuming alcoholic beverages, later identified as margaritas.
5. The third person seated at the table was identified as an employee, the hostess of Raw, Ms. Anhi Wahl.
6. Ms. Wu told the Investigators that she was twenty (20) years of age, and provided investigators with a Mass Art Student ID because she does not drive.

7. Ms. Wu told Investigators that she was not drinking, and that both drinks [on the table] were for Mr. Mussberger, who was of legal drinking age.
8. Ms. Wu further told Investigators that she may have had a sip of the drink only to see how strong it was.
9. Investigators were accompanied by the owner/licensee, Mr. Charles Lerner, while speaking to the underage female.
10. Mr. Lerner testified at the Commission hearing that Ms. Wu was seated at a narrow table with a date who was drinking alcoholic beverages.
11. Mr. Lerner told the Commission that when questioned, the minor Ms. Wu, originally stated "No" that she did not drink any alcoholic beverages at Raw that evening.
12. Mr. Lerner testified that Ms. Wu then said that she "may have had a sip of alcohol."
13. Investigators Capurso and Temple testified that there were two (2) glasses on the table, and each glass had one (1) straw in it. There was a glass which was in front of Ms. Wu, and the straw in the glass was pointing directly towards Ms. Wu.
14. The waiter, Mr. Kyle Jeffs, stated to investigators on the evening on which the incident occurred, that he did not check the identifications of the customers. Mr. Mussberger and Ms. Wu each ordered their own drinks.
15. Mr. Kyle Jeffs told Investigators on that evening that he had served the table four (4) alcoholic beverages (two (2) margaritas to each patron) from the time when they were first seated at the table.
16. Mr. Kyle Jeffs testified at the Commission hearing that he is the head server at Raw. He has been a waiter for four (4) years and is TIPS certified. He trains the other servers who work at the premises. His protocol for checking for identification before serving alcoholic beverages is if a patron orders an alcoholic beverage, and they do not have any wrinkles, then Mr. Jeffs asks them to produce identification.
17. Mr. Jeffs testified before the Commission that the night in question was a Thursday evening, which is one of the busiest nights at Raw. He was responsible that evening for serving Ms. Wu and Mr. Mussberger.
18. Mr. Jeffs told the Commission that upon approaching patrons at a table, he always asks them if they would like to start with an alcoholic beverage.
19. Mr. Mussberger ordered two (2) margaritas at one time. He also ordered a full course meal with drinks and entrees. Mr. Jeffs testified that he checked Mr. Mussberger's identification.
20. Mr. Jeffs testified that Ms. Wu had a college identification showing that she was twenty (20) years old.
21. While Mr. Mussberger ordered two (2) margaritas, Ms. Wu ordered water.
22. Mr. Jeffs testified that on that evening, Mr. Mussberger, took it upon himself to order two (2) drinks at once because it was so busy at Raw that night. He told the Commission that it is not uncommon for a customer to order two (2) drinks at once, because the bar is so very busy and the wait is so long.
23. He also told the Commission that Raw has a service bar where the servers order drinks for their tables.
24. Mr. Jeffs testified that he can recall Ms. Wu's date of birth on her college identification, yet he cannot recall which college Ms. Wu attended.
25. Ms. Anhi Wahl testified before the Commission that she is the hostess at Raw. She has been employed there since one (1) week after the premises opened.
26. Ms. Wahl was on duty that evening as the hostess when Mark Mussberger came into the premises with Ms. Wu. Ms. Wahl knew each of them from working her other job at an Abercrombie store. Mr. Mussberger is the Manager of the Abercrombie store where Ms. Wahl also works.
27. Ms. Wahl testified that she did not check the identifications of either patron that night. She was the hostess and she seated the couple. Ms. Wahl knew Mr. Mussberger's age, but not Ms. Wu's age.

28. After her hostess shift ended, and she was off duty, Ms. Wahl visited at the table with Mr. Mussberger and Ms. Wu. Ms. Wahl went over to their table to say "hi" and to discuss her model thesis with Ms. Wu. Ms. Wu is a model who was helping Ms. Wahl with her school project.
29. Ms. Wahl testified that she saw an empty glass on the table. She did not see Ms. Wu touch the glass or sip any alcohol.
30. Ms. Wahl was seated with Mr. Mussberger and Ms. Wu when the Commission Investigators came over to the table. Ms. Wahl left the table when Mr. Larner, the licensee came to the table.

### DISCUSSION

Licenses to sell alcoholic beverages are a special privilege subject to public regulation and control, Connolly v. Alcoholic Beverages Control Commn., 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 G.L. c. 138. The Commission has comprehensive powers of supervision over licensees and has statutory authority ( G. L. c. 138, § 64) to revoke or suspend a license for violation of a regulation. Aristocratic Restaurant of Massachusetts, Inc. v. Alcoholic Beverages Control Commission, 374 Mass. 547 (1978).

In reviewing the authority of the Commission, the Supreme Judicial Court has held that [t]he powers of the States in dealing with the regulation of the sale of intoxicating liquors are very broad. What they may wholly prohibit, they may permit only on terms and conditions prescribed by the Legislature. Supreme Malt Products Co., Inc., v. Alcoholic Beverages Control Commission, 334 Mass. ----,; Ziffrin, Inc. v. Reeves, 308 U.S. 132, 138-139; Carter v. Virginia, 321 U.S. 131, 137-143. In dealing with a trade, which, because of its great potential evils, can be wholly prohibited, a wide power is given to the Legislature with respect to the delegation of discretionary powers.

The SJC held that "[t]he legislative history of [the Commission's enabling act], and of G.L. (Ter.Ed.) Ch. 138, as amended, clearly shows that the powers of the commission were not intended to be perfunctory or limited." Connolly v. Alcoholic Beverages Control Commission, 334 Mass. 613, 617 (1956).

The commission has comprehensive powers of supervision over licensees. Connolly v. Alcoholic Beverages Control Commn. 334 Mass. 613, 617 (1956). The Commission may make regulations for "clarifying, carrying out, enforcing and preventing violation of" statutory provisions for the "method of carrying on the business of any licensee," and "for the proper and orderly conduct of the licensed business." M. G. L. c. 138, §24, as appearing in St. 1971, c. 478. The Commission has exercised this authority through the promulgation of regulations that are codified at chapter 204 of the Code of Massachusetts Regulations. Licenses are also revocable for violation of "any regulation adopted by the commission or *local licensing authority*" (emphasis supplied), and local licensing authorities may make "reasonable requirements" with respect to "the conduct of business by any licensee.: M. G. L. c. 138, § 23, quoted in part in fn. 1, supra. 367 Mass. 788, 1975 Mass. LEXIS 900, Boston Licensing Board v. Alcoholic Beverages Control Commission, 367 Mass. 788 (1975).

A Commission regulation promulgated at 204 CMR 2.05(2) provides in pertinent part, that "No 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 therefor, whether present or not."

M.G.L. c. 138, §34C states: "Whoever, being under twenty-one years of age and not accompanied by a parent or legal guardian, knowingly possesses, transports or carries on his person, any alcohol or alcoholic beverages, shall be punished by a fine of not more than fifty dollars for the first offense and not more than

one hundred and fifty dollars for a second or subsequent offense; provided, however, that this section shall not apply to a person between the ages of eighteen and twenty-one who knowingly possesses, transports or carries on his person, alcohol or alcoholic beverages in the course of his employment. A police officer may arrest without a warrant any person who violates this section. A conviction of a violation of this section shall be reported forthwith to the registrar of motor vehicles by the court, and said registrar shall thereupon suspend for a period of ninety days the license of such person to operate a motor vehicle." M.G.L. c. 138, §34C.

After reviewing all of the evidence, the Commission is not persuaded by the testimony of Mr. Jeffs. Investigators Capurso and Temple testified under oath that on the night of the incident, when initially questioned, Mr. Jeffs told the Investigators that he did not check the identifications of either Mr. Mussberger or Ms. Wu. Yet he testified before the Commission that he did in fact check their identifications, and that Ms. Wu produced a college identification which indicated that she was twenty (20) years of age.

Mr. Jeffs also told Investigators that in fact each patron had ordered their own alcoholic drinks and that he had already served them four (4) drinks (2 Margaritas each). There was no mention at all that evening of water being ordered by Ms. Wu, as Mr. Jeffs told the Commission. Furthermore, Mr. Jeffs told the Commission that he initially served the table two (2) drinks and a glass of water because it gets so very busy, the customers usually know to order (2) drinks at one time. However, there is a service bar for employees to order drinks for patrons at tables.<sup>1</sup> He admitted he did not check identifications, he did not mention serving water, and he said he had previously served them four (4) four drinks. The Commission finds Mr. Jeffs' testimony to be completely contrary to what he told the Investigators on the actual night of the incident.

The Commission also considered Ms. Wahl's testimony. Mr. Mussberger was the manager at Ms. Wahl's second job at Abercrombie. Ms. Wu was a model who was helping Ms. Wahl with her school project. The Commission is not persuaded by her testimony.

Investigators Capurso and Temple testified that on the evening in question, no mention was made by Mr. Jeffs of serving water to Ms. Wu, he did not check their identifications, and he had previously served them four (4) margaritas. Ms. Wu told the Investigators that she had a sip of an alcoholic beverage. Mr. Lerner, the Licensee, testified that Ms. Wu stated that she had a sip of alcohol. Investigators told the Commission that there were two glasses containing alcoholic beverages on the table. One glass was directly in front of Ms. Wu, and the straw in the drink was pointed directly at Ms. Wu.

The Commission is convinced by satisfactory proof and finds that there was a violation of 204 CMR 2.05 (2) - Permitting an illegality on the licensed premise, to wit: M.G.L. c. 138, §34C, committed by the Licensee.

#### CONCLUSION

Based on the evidence, the Commission finds the licensee violated 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 twenty-one (21) years of age (1 count).


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<sup>1</sup> It is the customary and personal experience of the Commission that employees at a service bar inside a licensed premises are generally served first, and therefore there would be no reason for one patron to order two (2) drinks at a time.

Therefore, the Commission suspends the license for seven (7) days, of which four (4) days will be served, and 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.

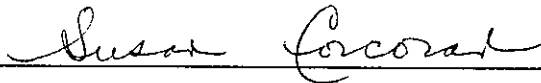
ALCOHOLIC BEVERAGES CONTROL COMMISSION

Kathleen McNally, Commissioner



I, the undersigned, hereby certify that I have reviewed the hearing record and concur with the above decision.

Susan Corcoran, Commissioner



Dated: December 3, 2012

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.

cc: Kevin Kilduff, Esq.  
Local Licensing Board  
Frederick G. Mahony, Chief Investigator  
Paul Capurso, Investigator  
Administration  
File