

*Commonwealth of Massachusetts
Department of the State Treasurer
Alcoholic Beverages Control Commission
239 Causeway Street
Boston, MA 02114
Telephone: 617-727-3040
Facsimile: 617-727-1510*

Jean M. Lorizio, Esq.
Chairman

NOTICE OF SUSPENSION

June 14, 2017

**TANZILA INC. D/B/A HOME MARKET
165 BELGRADE AVE.
BOSTON, MA 02131
LICENSE#: 011601264
VIOLATION DATE: 01/20/2017
HEARD: 06/06/2017**

After a hearing on June 6, 2017, the Commission finds Tanzila Inc. d/b/a Home Market violated 204 CMR 2.05 (2) Permitting an illegality on the licensed premises, to wit: M.G.L. c. 138, § 34 Sale or delivery of an alcoholic beverage to a person under twenty-one (21) years of age (1 count).

The Commission suspends the license for a period of six (6) days of which three (3) 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.

The suspension shall commence on Wednesday, August 2, 2017 and terminate on Friday, August 4, 2017. The license will be delivered to the Local Licensing Board or its designee on Wednesday, August 2, 2017 at 9:00 A.M. It will be returned to the licensee on Saturday, August 5, 2017.

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.

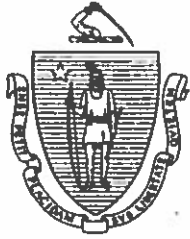
ALCOHOLIC BEVERAGES CONTROL COMMISSION

A handwritten signature in cursive script that reads "Jean M. Lorizio".

Jean M. Lorizio
Chairman

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cc: Local Licensing Board
Frederick G. Mahony, Chief Investigator
Michael Teehan, Investigator
Administration, File



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DECISION

**TANZILA INC. D/B/A HOME MARKET
165 BELGRADE AVE.
BOSTON, MA 02131
LICENSE#: 011601264
VIOLATION DATE: 01/20/2017
HEARD: 06/06/2017**

Tanzila Inc. d/b/a Home Market (the "Licensee") holds an alcohol license issued pursuant to M.G.L. c. 138, § 15. The Alcoholic Beverages Control Commission (the "Commission") held a hearing on Tuesday, June 6, 2017, regarding an alleged violation of 204 CMR 2.05 (2) Permitting an illegality on the licensed premises, to wit: M.G.L. c. 138, § 34 Sale or delivery of an alcoholic beverage to a person under twenty-one (21) years of age (1 count). The above captioned occurred on January 20, 2017, according to Investigator Teehan's report.

The following documents are in evidence:

1. Investigator Teehan's Investigative Report; and
2. Fake Maryland Driver's License for Underage.

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

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

FINDINGS OF FACT

1. On Friday, January 20, 2017, Investigator Teehan ("Investigator") conducted an investigation of the business operation of Tanzila Inc. d/b/a Home Market to determine the manner in which its business was being conducted.
2. At approximately 3:55 p.m., while outside the licensed premises, Investigator Teehan observed a youthful looking male subject exit the store in possession of alcoholic beverages: an 18-pack of Bud Light beer; a 6-pack of Smirnoff Ice [malt alcohol]; 6-pack of Twisted Tea [malt alcohol]; and a 25-ounce can of Natural Ice [beer].
3. Investigator Teehan asked youthful looking subject for proof of legal age.
4. Underage male, actual date of birth 3/16/1999 (age 17) presented a fake Maryland driver's license to the investigator. He stated he had used this identification to purchase the alcoholic beverages.

5. Investigator Teehan informed the manager on duty, Muhommad, of the violation and that a report would be filed with the Chief Investigator for further action.

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: c 138, § 34 Sale or delivery of an alcoholic beverage to a person under twenty-one (21) years of age (1 count). 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.’” Rico’s of the Berkshires, Inc. v. Alcoholic Beverages Control Comm’n, 19 Mass. App. Ct. 1026, 1027 (1985) (quoting Commonwealth v. Gould, 158 Mass. 499, 507 (1893)). “It is, thus, quite possible for a licensee to offend the regulatory scheme without scienter.” Id. The licensee is responsible for illegalities that occur on the licensed premises.

Massachusetts General Laws, Chapter 138, §34 states, in pertinent part, that: “[w]hoever makes a sale or delivery of any alcoholic beverage or alcohol to any person under twenty-one years of age ... shall be punished by a fine of not more than \$2,000 or by imprisonment for not more than one year or both.” M.G.L. c. 138, § 34. 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 pursuant to Section 34. 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 out-of-state identification provides no such defense.

The Commission is persuaded by the evidence that Tanzila, Inc. d/b/a Home Market sold alcoholic beverages to a person who was under twenty-one years of age. The fact that the minor presented a false out-of-state identification 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

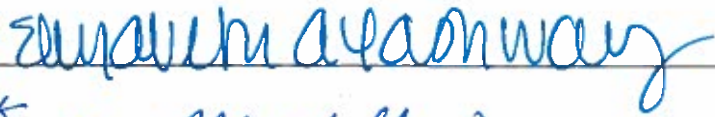
premise, to wit: M.G.L. c. 138, § 34 Sale or delivery of an alcoholic beverage to a person under twenty-one (21) years of age (1 count).

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, § 34 Sale or delivery of an alcoholic beverage to a person under twenty-one (21) years of age (1 count). Therefore, the Commission **suspends the license for a period of six (6) days of which three (3) 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

Elizabeth Lashway, Commissioner



Kathleen McNally, Commissioner



Dated: June 14, 2017

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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