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Commonwealth of Massachusetts  
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NOTICE OF INDEFINITE SUSPENSION

June 19, 2018

**TAAM CHINA RESTAURANT INC.**  
**423A HARVARD ST.**  
**BROOKLINE, MA 02146**  
**LICENSE#: 0148-00115**  
**HEARD: 6/12/2018**

After a hearing on June 12, 2018, the Commission finds Taam China Restaurant Inc. violated

- 1) 204 CMR 2.05 (2) Permitting An Illegality on the Licensed Premises, To Wit: M.G.L. Ch. 272 § 105: Whoever willfully photographs, videotapes or electronically surveils another person who is nude or partially nude, with the intent to secretly conduct or hide such activity, when the other person in such place and circumstances would have a reasonable expectation of privacy in not being so photographed, videotaped or electronically surveilled, and with that person's knowledge and consent (15 counts);
- 2) M.G.L. Ch. 138, § 26 No corporation, organized under the laws of the commonwealth or of any other state or foreign country, shall be given a license to sell in any manner any alcoholic beverages ... unless such manager or representative is, with respect to his character, satisfactory to the licensing authorities.

Therefore, the Commission **INDEFINITELY SUSPENDS** the license of Taam China Restaurant Inc. **effective forthwith** until further written order of the Commission.

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.

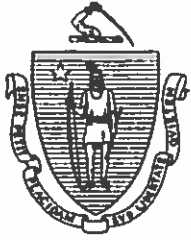
**ALCOHOLIC BEVERAGES CONTROL COMMISSION**

A handwritten signature in black ink, appearing to read "Jean M. Lorizio".

Jean M. Lorizio  
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  
Christopher Temple, Investigator  
Administration, File



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## **DECISION**

**TAAM CHINA RESTAURANT INC.  
423A HARVARD ST.  
BROOKLINE, MA 02146  
LICENSE#: 0148-00115  
HEARD: 6/12/2018**

Taam China Restaurant Inc. (the "Licensee") holds an alcohol license issued pursuant to M.G.L. c. 138, § 12. The Alcoholic Beverages Control Commission (the "Commission" or "ABCC") held a hearing on Tuesday, June 12, 2018, regarding alleged violations of:

- 1) 204 CMR 2.05 (2) Permitting An Illegality on the Licensed Premises, To Wit: M.G.L. Ch. 272 § 105: Whoever willfully photographs, videotapes or electronically surveils another person who is nude or partially nude, with the intent to secretly conduct or hide such activity, when the other person in such place and circumstances would have a reasonable expectation of privacy in not being so photographed, videotaped or electronically surveilled, and with that person's knowledge and consent (15 counts);
- 2) M.G.L. Ch. 138, § 26 No corporation, organized under the laws of the commonwealth or of any other state or foreign country, shall be given a license to sell in any manner any alcoholic beverages ... unless such manager or representative is, with respect to his character, satisfactory to the licensing authorities.

The above-mentioned occurred from June 1, 2015 to present according to Investigator Temple's report.

The following documents are in evidence:

1. Investigator Temple's Investigative Report; and
  2. Brookline Police Department Incident Report.
- A. Note from Mr. Chung's Attorney.

There is one (1) audio recording of this hearing, and four (4) witnesses testified.<sup>1</sup>

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

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<sup>1</sup> Andy (Tze Ping) Chung did not appear at the hearing before the Commission.

## FINDINGS OF FACT

1. Taam China Restaurant Inc. is a Massachusetts corporation organized and filed under M.G.L. Ch. 156B on March 12, 1998. (Commission records, Testimony, Exhibit 1)
2. On April 27, 1998, Taam China Restaurant Inc. filed an application for Transfer of License with the ABCC. The officers and directors were: Andy (Tze Ping) Chung as President, Clerk, and Director, holding 100 shares; Tai Sheng Ying as Treasurer and Director, holding 100 shares; and Doris Rui as a Director. Andy (Tze Ping) Chung was approved as license manager of Taam China Restaurant, Inc. The application was approved by the ABCC on August 18, 1998. (Commission records, Testimony, Exhibit 1)
3. On June 7, 2018, the Investigative and Enforcement Division of the ABCC received notice that members of the Weston Police Department, Brookline Police Department, and the Middlesex County Sherriff's Officer were conducting an investigation of Andy Chung. Investigator Temple received the following information concerning the investigation and alleged illegal activity which took place on the licensed premises. (Testimony, Exhibit 1)
4. On Tuesday, April 10, 2018, Weston Police Detective Sergeant Boehner notified Brookline Police Department Detectives that Weston Police were conducting an investigation of Andy Chung. As part that investigation, Weston Police seized an iPad and iPhones belonging to Chung which contained several recordings of a sexual nature that he had made. In addition, Weston Detectives found what looked to be secret recordings of numerous women in various states of undress, using the toilet in the bathroom of the Taam China Restaurant, which Chung owns and manages. (Testimony, Exhibits 1, 2)
5. Under the direction of Brookline Police Department Detective Sergeant Matthew McDonnell, Brookline Police Detectives Julie McDonnell and Brian Sheehy ("Detectives") proceeded to the restroom in Taam China Restaurant, located at 423 Harvard Street, Brookline. Detectives confirmed the images had been taken in the large restroom on the licensed premises, located at the back of the dining room. Detectives observed the tile pattern on the walls and several visible items, including stacks of chairs and a mop bucket, which were consistent with the still images captured from Chung's video devices. (Testimony, Exhibits 1, 2)
6. Middlesex County Sherriff Deputy Schwabb sent Brookline Detective Sheehy an electronic package which contained numerous video files taken from several different devices. As part of the investigation, Detective Sheehy reviewed hundreds of files and captured images from videos in an attempt to depict an identifiable victim. One Asian female appeared most frequently, likely dozens of times and possibly more times in videos which did not capture a discernable facial image. (Testimony, Exhibits 1, 2)
7. On June 7, 2018, Brookline Detective Sgt. McDonnell and Detective Sheehy went to the licensed premises to speak with a manager about possibly identifying any potential victims of the secret recordings. Approaching the front door, Detective Sheehy recognized Andy Chung walking into the restaurant. Detectives asked Chung if he was the owner, to which Chung initially said no. When Detectives identified themselves as police detectives, Chung admitted that he was the owner. (Testimony, Exhibits 1, 2)

8. Detectives informed Chung of the reason they were there. While in the restaurant, Detective Sheehy recognized the woman behind the counter as the Asian female who appeared most frequently in the videos. Chung stated to Detectives that woman was his girlfriend. (Testimony, Exhibits 1, 2)
9. Detectives asked the female employee to step outside in order to speak with her away from Chung. The female employee stated that she is a server in the restaurant and has worked there for eight years. She told Detectives that she spoke Mandarin, so Detectives contacted Brookline Police Officer Goon to come and translate. (Testimony, Exhibits 1, 2)
10. Through Officer Goon, the female server stated that she was not Chung's girlfriend but that she and Chung had had an on-again off-again relationship which she had terminated more than six years ago. The female server stated that she understood Detectives' explanation they were investigating the possibility that she was recorded using the bathroom in the restaurant. (Testimony, Exhibits 1, 2)
11. Detective Sheehy showed the female server several images from the video recordings, and she confirmed that the pictures were of her. One photograph, from February 12, 2018, showed the female server wearing the same necklace as the one she wore during the interview with Detectives. The female server stated that she had no idea that anyone was recording her in the restroom and that she had not given anyone permission to do so. (Testimony, Exhibits 1, 2)
12. Based on his examination of the video recordings and seeing the female server in person, Detective Sheehy confirmed that each of the images is of the female server. Detective Sheehy confirmed fifteen (15) separate incidents of secret sexual surveillance in which license manager Andy Chung recorded the female server/employee without her knowledge or consent. (Testimony, Exhibits 1, 2)
13. In these incidents, Chung recorded the female server from angles both opposite the toilet as well as looking up from the toilet capturing images of her vagina and anus while she urinated and cleaned herself. Each of these images was saved and apparently edited. The dates these incidents occurred were: June 1, 2015; October 16, 2015; June 10, 2016; September 23, 2016; December 12, 2016; January 20, 2017; March 16, 2017 (two separate times); May 4, 2017; May 11, 2017; May 28, 2017; June 5, 2017; October 8, 2017; February 12, 2018; and February 21, 2018. (Testimony, Exhibits 1, 2)
14. The video recordings came from devices seized, and the devices were in the sole control of Mr. Chung. Furthermore, the incidents were edited for content and specificity. In support of this, is the fact that the recordings were not continuous but saved as separate files; the recordings did not depict any men nor any other specific activity other than women urinating. (Testimony, Exhibits 1, 2)

## 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).

Chapter 138 was “enacted . . . to serve the public need and . . . to protect the common good.” M.G.L. c. 138, § 23. In order to effectuate the purpose of Chapter 138, the Commission has “general supervision of the conduct of the business of manufacturing, importing, exporting, storing, transporting and selling alcoholic beverages. . . .” M.G.L. c. 10, § 71. As part of these “comprehensive powers of supervision over licensees,” Connolly, 334 Mass. at 617, the Commission has the authority to grant, revoke and suspend licenses. “[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) (emphasis supplied).

The law is well-settled that “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), and citing Burlington Package Liquors, Inc. v. Alcoholic Beverages Control Comm’n, 7 Mass. App. Ct. 186, 190 (1979)).

In order for the Commission to make a finding, there must be substantial evidence that a violation has occurred. “Substantial evidence of a violation is more than a mere scintilla. It means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.” Consol. Edison Co. of New York v. N.L.R.B., 305 U.S. 197, 229 (1938); accord Charlesbank Rest. Inc. v. Alcoholic Beverages Control Comm’n, 12 Mass. App. Ct. 879 (1981).

### I. Violation of 204 CMR 2.05 (2) Permitting an Illegality on the Licensed Premises, To Wit: M.G.L. Ch. 272 § 105

Based on the testimony and evidence presented during the hearing, the Commission finds that violations (15 counts) of 204 CMR 2.05 (2) Permitting An Illegality on the Licensed Premises, to wit: M.G.L. Ch. 272 § 105: Whoever willfully photographs, videotapes or electronically surveils another person who is nude or partially nude, with the intent to secretly conduct or hide such activity, when the other person in such place and circumstances would have a reasonable expectation of privacy in not being so photographed, videotaped or electronically surveilled, and with that person's knowledge and consent, 15 counts, were committed by Mr. Andy (Tze Ping) Chung who is the approved president, clerk, director, shareholder/owner, and license manager of Taam China Restaurant, Inc.

### II. License Manager Character Not Satisfactory to the Licensing Authorities: M.G.L. Ch. 138, § 26

Taam China Restaurant, Inc., the licensee, appointed Mr. Andy (Tze Ping) Chung as the manager of record pursuant to G.L. c. 138, §26, which states in pertinent part that a license manager must be “.... with respect to his character, satisfactory to the licensing authorities.” (Emphasis

supplied) The obligation established by §26 is the necessity of appointing a manager whose character is satisfactory to both the authority granting the license and also to the authority approving the license, and vesting in the manager full authority and control of the licensed premises, including the sale of alcoholic beverages. See Gottlin v. Herzig & others, 40 Mass. App. Ct. 163, 167 (1996). The evident purpose of this provision is to assure the licensing authority that each licensee will be managed by a responsible person satisfactory to the licensing authorities, and that the licensing authorities, in executing its responsibilities under c. 138, will have available at all times a person whose responsibility for the conduct of the licensed business will be beyond challenge by any corporate licensee. Id.; see New Palm Gardens, Inc. v. Alcoholic Beverages Control Comm'n., 11 Mass. App. Ct. 785, 788 (1981) (the statutory scheme of c. 138 is designed to give the commission authority necessary to serve the public need and to protect the common good, and the purpose of its powers, including the authority to revoke and suspend licenses, is "not retribution but the protection of the public").

Based on the evidence, Mr. Andy (Tze Ping) Chung, who is the president, clerk, and director, owner/shareholder, and license manager of Taam China Restaurant, Inc. is the individual, whom the Commission finds after a hearing, committed the violations of 204 CMR 2.05 (2) Permitting an Illegality on the Licensed Premises, to wit: M.G.L. Ch. 272 § 105 (15 counts). The Commission finds that Mr. Andy (Tze Ping) Chung is not of satisfactory character to be the individual who is vested with full authority and control of the licensed premises, pursuant to M.G.L. c. 138 § 26.

The Commission is extremely concerned with the egregiousness of Mr. Andy (Tze Ping) Chung's illegal conduct. Mr. Chung committed these very serious illegalities at the licensed premises. Mr. Andy (Tze Ping) Chung, as license manager, is appointed and approved by the licensing authorities as the individual responsible for the conduct and legal operation of the premises within the parameters of M.G.L. c. 138 and the laws of the Commonwealth of Massachusetts. The Commission finds that Mr. Andy (Tze Ping) Chung committed these violations, and therefore, Mr. Andy (Tze Ping) Chung CANNOT be the license manager, officer, director, or shareholder/owner of Taam China Restaurant, Inc.

## CONCLUSION

Based on the evidence the Commission finds Taam China Restaurant, Inc. violated:

- 1) 204 CMR 2.05 (2) Permitting An Illegality on the Licensed Premises, To Wit: M.G.L. Ch. 272 § 105: Whoever willfully photographs, videotapes or electronically surveils another person who is nude or partially nude, with the intent to secretly conduct or hide such activity, when the other person in such place and circumstances would have a reasonable expectation of privacy in not being so photographed, videotaped or electronically surveilled, and with that person's knowledge and consent (15 counts);
- 2) M.G.L. Ch. 138, § 26 No corporation, organized under the laws of the commonwealth or of any other state or foreign country, shall be given a license to sell in any manner any alcoholic beverages ... unless such manager or representative is, with respect to his character, satisfactory to the licensing authorities.

Therefore, the Commission **INDEFINITELY SUSPENDS** the license of Taam China Restaurant, Inc. **effective forthwith** until further written order of the Commission.

The Commission will not issue any further order without a written request from the Licensee showing good cause to reconsider this indefinite suspension and a hearing before the Commission that the Licensee attends.

Good cause for the Commission to consider issuing a further written order revising the order of indefinite suspension will include, but not be limited to, the Licensee filing with both the Commission and the Local Licensing Authorities the appropriate applications to change the license manager of record to someone other than Mr. Andy (Tze Ping) Chang, and to remove Andy (Tze Ping) Chang as President, Clerk, Director, Shareholder/Owner of the corporation; and that such appropriate applications are granted by the Local Licensing Authorities and approved by the Commission.

In addition, the license issued by the Local Licensing Authorities shall bear on the face of the document for every year the license is issued the language, viz., "Andy (Tze Ping) Chang shall not be allowed in the licensed premises at any time, for any reason."

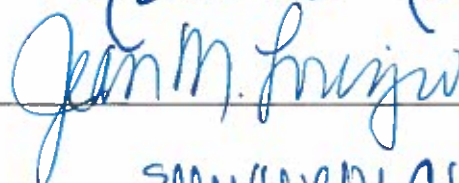


**ALCOHOLIC BEVERAGES CONTROL COMMISSION**

Kathleen McNally, Commissioner



Jean M. Lorizio, Chairman



Elizabeth A. Lashway, Commissioner



Dated: June 19, 2018

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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