



*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**

April 3, 2018

**LA FABRICA CENTRAL LLC d/b/a LA FABRICA  
450 MASS. AVE.  
CAMBRIDGE, MA 02139  
VIOLATION DATE: 10/26/2017  
HEARD: 3/27/2018**

After a hearing on March 27, 2018, the Commission finds La Fabrica Central LLC d/b/a La Fabrica 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.

The suspension shall commence on Wednesday, June 20, 2018 and terminate on Wednesday, June 20, 2018. The license will be delivered to the Local Licensing Board or its designee on Wednesday, June 20, 2018 at 9:00 A.M. It will be returned to the Licensee on June 21, 2018.

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, reading "Jean M. Lorizio".

Jean M. Lorizio  
Chairman

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Το έγγραφο αυτό είναι σημαντικό και θα πρέπει να μεταφραστούν αμέσως.  
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cc: Local Licensing Board  
Frederick G. Mahony, Chief Investigator  
Brad Doyle, Investigator  
Rose Bailey, Investigator  
William A. Kelley, Esq.  
Administration, File



**Jean M. Lorizio, Esq.**  
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## **DECISION**

**LA FABRICA CENTRAL LLC d/b/a LA FABRICA  
450 MASS. AVE.  
CAMBRIDGE, MA 02139  
VIOLATION DATE: 10/26/2017  
HEARD: 3/27/2018**

La Fabrica Central LLC d/b/a La Fabrica (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, March 27, 2018, 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). Prior to the commencement of the hearing, the Licensee stipulated to the facts alleged in Investigator Doyle's Report.

The following documents are in evidence:

1. Investigator Doyle's Investigative Report;
  2. Licensee's Stipulation of Facts Only; and
  3. Photocopy of United Kingdom of Jordan Passport.
- 
- A. Photocopy of False Identifications;
  - B. Copy of TIPS Certificates for Employees;
  - C. Copy of 21 Proof Training Certificates for Employees;
  - D. Copy of Licensee's Nightclub Security Training Certificates for Employees; and
  - E. Copy of Crowd Manager Training Certificates for Employees.

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

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

## FINDINGS OF FACT

1. On Thursday, October 26, 2017, at approximately 11:45 p.m, Investigators Bailey and Doyle (“Investigators”), conducted an investigation of the business operation of La Fabrica Central LLC d/b/a La Fabrica to determine the manner in which its business was being conducted.
2. Investigators observed that the Licensee admitted individuals age 18 or over into the premises. Individuals 21 years or over were given a colored bracelet attached on the wrist. Security staff stated that only individuals wearing a bracelet would be allowed to purchase or consume alcoholic beverages.
3. Investigators observed a youthful looking female in possession of a bottle of beer. The youthful looking female was not wearing a colored bracelet on her wrist. Investigators identified themselves and asked to see proof of legal age.
4. Underage #1, actual date of birth 2/24/1997 (age 20) presented to Investigators a passport from the Hashemite Kingdom of Jordan in another person’s name. Upon review, Investigators noticed that the picture in the passport did not match the facial features of the person presenting it. Investigators observed that the shape of the underage female’s nose and face differed from the person pictured in the passport.
5. The Underage female stated that the passport belonged to her roommate and she had used the passport to gain entry to the licensed premises.
6. Investigators spoke to owners, Dennis Benzan and Hector Pina. The owners spoke to their door staff about the passport. The door staff stated they realized the passport was expired and allowed the underage female into the premises without a bracelet.
7. Investigators informed the owners 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: Chapter 138, § 34C- Possession of an alcoholic beverage by 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.” 204 CMR 2.05(2). 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)). A licensee may violate the regulation even without scienter. Id.

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 La Fabrica Central LLC sold alcoholic beverages to a person who was under twenty-one years of age. The fact that the minor presented a passport that was not her own 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.**

**ALCOHOLIC BEVERAGES CONTROL COMMISSION**

Elizabeth A. Lashway, Commissioner Elizabeth A Lashway

Kathleen McNally, Commissioner Kathleen McNally

Dated: April 3, 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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