

**Jean M. Lorizio, Esq.**  
*Chairman*

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

April 3, 2018

**LA FABRICA CENTRAL LLC d/b/a LA FABRICA  
450 MASS. AVE.  
CAMBRIDGE, MA 02139  
VIOLATION DATE: 09/21/2017  
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 (6 counts).

The Commission **suspends the license for a period of twenty-five (25) days of which twelve (12) days will be served, and thirteen (13) 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, May 16, 2018 and terminate on Sunday, May 27, 2018.** The license will be delivered to the Local Licensing Board or its designee on Wednesday, May 16, 2018 at 9:00 A.M. It will be returned to the Licensee on May 28, 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.

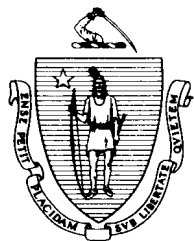
**ALCOHOLIC BEVERAGES CONTROL COMMISSION**

A handwritten signature in cursive script that reads "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  
Joseph Di Cicco, Investigator  
Michael Teehan, Investigator  
William A. Kelley, Esq.  
Administration, File



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## **DECISION**

**LA FABRICA CENTRAL LLC d/b/a LA FABRICA  
450 MASS. AVE.  
CAMBRIDGE, MA 02139  
VIOLATION DATE: 09/21/2017  
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 (6 counts). Prior to the commencement of the hearing, the Licensee stipulated to the facts alleged in Investigator Di Cicco’s Report.

The following documents are in evidence:

1. Investigator Di Cicco’s Investigative Report;
  2. Licensee’s Stipulation of Facts Only;
  3. Photocopy of Fraudulent Columbian License; and
  4. Photocopy of Fraudulent Maryland Driver’s License.
- 
- 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, September 21, 2017, Investigators Teehan and Di Cicco (“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. At approximately 9:55 p.m., Investigators observed two youthful appearing individuals, seated at the bar, in possession of alcoholic beverages. Investigators identified themselves and asked to see proof of legal age.
3. Underage #1, actual date of birth 11/12/1998 (age 19) was in possession of a Mojito mixed drink. She stated to Investigators that she had used a fraudulent Colombian license to gain entry to the licensed premises and order alcoholic beverages.
4. Underage #2, actual date of birth 6/25/1998 (age 20) was in possession of a glass of white wine. She presented Investigators with a false Maryland driver's license which she had used to gain entry to the premises and order alcoholic beverages.
5. Investigators then observed three youthful appearing individuals, seated at a table, in possession of alcoholic beverages.
6. Underage #3, actual date of birth 7/06/1999 (age 18) was in possession of a bottle of Presidente beer. He stated to Investigators that he was not asked for identification when he ordered an alcoholic beverage.
7. Underage #4, actual date of birth 8/2/1999 (age 18) was in possession of a mixed drink, an Aguardiente. She stated to Investigators that she was not asked for identification when she ordered an alcoholic beverage.
8. Underage #5, actual date of birth 8/26/1999 (age 18) was in possession of a mixed drink, a vodka and tonic water. She stated to Investigators that she was not asked for identification when she ordered an alcoholic beverage.
9. Investigators made contact with a youthful appearing individual seated at another table. Underage #6, actual date of birth 7/21/1997 (age 20) was in possession of a bottle of Presidente beer. He stated to Investigators that he was not asked for identification when he ordered an alcoholic beverage.
10. Investigators spoke to Dennis Benzan, who identified himself as one of the owners. Investigators also contacted the other two owners, Hector Pina and Nivia Pina. Investigators informed the owners of the violations and that a report would be filed with the Chief Investigator for further review.

### 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 (six counts). 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 persons who were under twenty-one years of age. The fact that, in some situations, the minors presented false out-of-state identifications 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 (6 counts).

### CONCLUSION

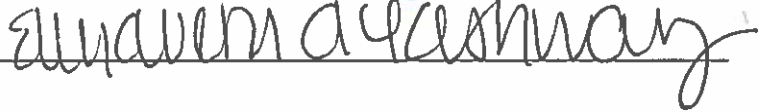
Based on the evidence, the Commission finds the Licensee violated 204 CMR 2.05 (2) Permitting an illegality on the licensed premises, to wit: M.G.L. c. 138, § 34C- Possession of an alcoholic beverage by a person under twenty-one (21) years of age (6 counts). Therefore, the Commission **suspends the license for a period of twenty-five (25) days of which twelve (12) days will be served, and thirteen (13) 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



Elizabeth A. Lashway, Commissioner



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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