

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
Facsimile: 617-727-1510*

NOTICE OF SUSPENSION

March 8, 2018

**TORNIS, INC D/B/A EL MARIACHI MEXICAN RESTAURANT
620 WASHINGTON STREET, UNIT 6
EASTON, MA 02375
LICENSE#: 0368-00066
VIOLATION DATE: 10/12/2017
HEARD: 3/06/2018**

After a hearing on March 6, 2018, the Commission finds Tornis, Inc d/b/a El Mariachi Mexican Restaurant violated 204 CMR 2.05 (2) Permitting an Illegality on the Licensed Premises, to wit: Ch. 138 § 34 - Sale or delivery of an alcoholic beverage to a person under twenty-one (21) years of age. (5 counts).

The Commission suspends the license for twenty-one (21) days of which six (6) days will be served and fifteen (15) 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, April 25, 2018 and terminate on Monday, April 30, 2018. The license will be delivered to the Local Licensing Board or its designee on Wednesday, April 25, 2017 at 9:00 A.M. It will be returned to the Licensee on Tuesday, May 1, 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.

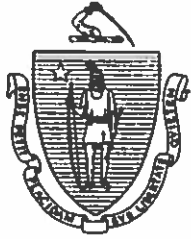
You are advised that you have the right to appeal this decision under M.G.L. c. 30A to Superior Court within thirty (30) days upon receipt of this notice.

ALCOHOLIC BEVERAGES CONTROL COMMISSION

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cc: Local Licensing Board
Frederick G. Mahony, Chief Investigator
Jack Carey, Investigator
Caroline Guarino Wilichoski, Investigator
Administration, File



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DECISION

**TORNIS, INC D/B/A EL MARIACHI MEXICAN RESTAURANT
620 WASHINGTON STREET, UNIT 6
EASTON, MA 02375
LICENSE#: 0368-00066
VIOLATION DATE: 10/12/2017
HEARD: 3/06/2018**

Tornis, Inc d/b/a El Mariachi Mexican Restaurant (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 6, 2018, regarding an alleged violation of 204 CMR 2.05 (2) Permitting an illegality on the licensed premises, to wit: Ch. 138 § 34 - Sale or delivery of an alcoholic beverage to a person under twenty-one (21) years of age. (5 counts). The above-captioned occurred on October 12, 2017, according to Investigator Carey's Report.

The following documents are in evidence:

1. Investigator Carey's Investigative Report; and
2. False Driver's Licenses.

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 12, 2017, at approximately 10:18 p.m., Investigators Wilichoski and Carey ("Investigators") conducted an investigation of the business operation of Tornis, Inc d/b/a El Mariachi Mexican Restaurant to determine the manner in which its business was being conducted.
2. Investigators observed a table with five youthful appearing females in possession of alcoholic beverages.
3. Investigators identified themselves and asked to see proof of legal age.
4. Underage #1, actual date of birth 5/25/1998 (age 19) was in possession of a piña colada mixed drink. She presented to Investigators a fraudulent Connecticut driver's license.

5. Underage #2, actual date of birth 2/20/1998 (age 19) was in possession of a piña colada mixed drink. She presented to Investigators a fraudulent Maine driver's license.
6. Underage #3, actual date of birth 11/28/1998 (age 18) was in possession of a piña colada mixed drink. She presented to Investigators a fraudulent New Jersey driver's license.
7. Underage #4, actual date of birth 1/04/1998 (age 19) was in possession of a piña colada mixed drink. She presented to Investigators a fraudulent Connecticut driver's license.
8. Underage #5, actual date of birth 8/08/1998 (age 19) was in possession of a Bud Light beer. She presented Investigators a fraudulent Peru driver's license.
9. Investigators spoke with the manager, Ania-Nabi Ruiz, of their findings. Mr. Ruiz stated he did check the identifications of these patrons when they came in and because the identifications were all from out of state, he asked for backup.
10. Investigators informed Mr. Ruiz, 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, § 34 - Sale or delivery of an alcoholic beverage to a 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." 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." Burlington Package Liquors, Inc. v. Alcoholic Beverages Control Comm'n, 11 Mass. App. Ct. 785, 788 (1981); Commonwealth v. Gould, 158 Mass. 499, 507 (1893). It is, thus, quite possible for a licensee to offend the regulatory scheme without scienter. The licensee is responsible for illegalities that occur on the licensed premises. Rico's of the Berkshires, Inc. v. Alcoholic Beverages Control Comm'n, 19 Mass. App. Ct. 1026, 1027 (1985).

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. 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.

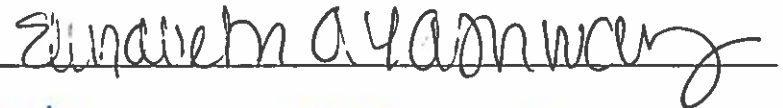
The Commission is persuaded by the evidence that Tornis, Inc d/b/a El Mariachi Mexican Restaurant sold alcoholic beverages to a person who was under twenty-one years of age. The fact that the minor presented a false out-of-state identification provides no defense to the Licensee. The Commission finds 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 (5 counts).

CONCLUSION

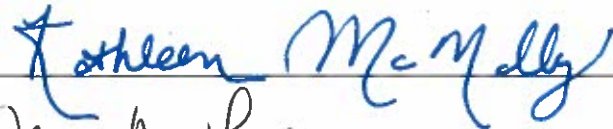
Based on the evidence, the Commission finds the Licensee violated 204 CMR 2.05 (2) Permitting an illegality on the licensed premises, to wit: Ch. 138 § 34 - Sale or delivery of an alcoholic beverage to a person under twenty-one (21) years of age. (5 counts). The Commission **suspends the license for a period of for twenty-one (21) days of which six (6) days will be served and fifteen (15) 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

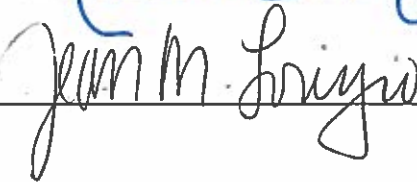
Elizabeth Lashway, Commissioner



Kathleen McNally, Commissioner



Jean M. Lorizio, Chairman



Dated: March 8, 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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