

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

January 25, 2018

**LOS RAMOS INC. D/B/A CASA VALLARTA FAMILY MEXICAN RESTAURANT
70 DAVIS STRAITS
FALMOUTH, MA 02540
LICENSE#: 0390-00221
VIOLATION DATE: 11/22/2017
HEARD: 01/23/2018**

After a hearing on January 23, 2018, the Commission finds Los Ramos Inc. d/b/a Casa Vallarta Family Mexican Restaurant violated of 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 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, March 14, 2018 and terminate on Thursday, March 15, 2018. The license will be delivered to the Local Licensing Board or its designee on Wednesday, March 14, 2018 at 9:00 A.M. It will be returned to the Licensee on March 16, 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.

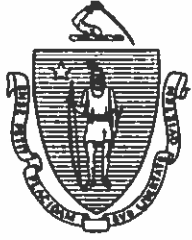
ALCOHOLIC BEVERAGES CONTROL COMMISSION

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Jean M. Lorizio
Chairman

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这份文件是重要的，应立即进行翻译.

cc: Local Licensing Board
Frederick G. Mahony, Chief Investigator
Mark Kenny, Investigator
Michael Teehan, Investigator
Jeffrey Oppenheim, Esq. via facsimile 508-457-9050
Administration, File



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DECISION

**LOS RAMOS INC. D/B/A CASA VALLARTA FAMILY MEXICAN RESTAURANT
70 DAVIS STRAITS
FALMOUTH, MA 02540
LICENSE#: 0390-00221
VIOLATION DATE: 11/22/2017
HEARD: 01/23/2018**

Los Ramos Inc. d/b/a Casa Vallarta Family 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, January 23, 2018, regarding an alleged violation of 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), which occurred on November 22, 2017 according to Investigator Kenny’s report.

The following documents are in evidence:

1. Investigator Kenny’s Investigative Report; and
 2. Fraudulent Driver’s License.
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- A. Photocopy of Scanner Activity Receipt; and
 - B. Photograph of Identification Scanner with Information on Its Use.

There is one (1) audio recording of this hearing, and two (2) witnesses testified.

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

FINDINGS OF FACT

1. On Wednesday, November 22, 2017, at approximately 10:40 p.m., Investigators Teehan and Kenny (“Investigators”) conducted an investigation of the business operation of Los Ramos Inc. d/b/a Casa Vallarta Family Mexican Restaurant to determine the manner in which its business was being conducted.
2. Investigators observed a youthful looking female individual, seated at the bar, in possession of a draft beer. Investigators identified themselves and asked for proof of legal age.

3. Underage #1, actual date of birth 2/18/1997 (age 20) stated that she provided the bartender on duty with a fraudulent Connecticut driver's license when she purchased the alcohol.
4. Investigators informed the manager on duty, Oscar Araiza, 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 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). 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 Connecticut 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 Los Ramos Inc. d/b/a Casa Vallarta Family 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 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 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 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

Jean M. Lorizio, Chairman

Jean M. Lorizio

Elizabeth A. Lashway, Commissioner

Elizabeth A. Lashway

Kathleen McNally, Commissioner

Kathleen McNally

Dated: January 25, 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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