



Commonwealth of Massachusetts
Alcoholic Beverages Control Commission
95 Fourth Street, Suite 3
Chelsea, Massachusetts 02150-2358

Jean M. Lorizio, Esq.
Chairman

DECISION

**MARGARITAS MANAGEMENT GROUP-FRAMINGHAM INC.
D/B/A TIO JUAN'S MARGARITAS MEXICAN RESTAURANT
725 COCHITUATE ROAD
FRAMINGHAM, MA 01701
LICENSE#: 00137-RS-0428
VIOLATION DATE: 2/03/2023
HEARD: 5/09/2023**

Margaritas Management Group-Framingham Inc. d/b/a Tio Juan's Margaritas Mexican Restaurant ("Licensee" or "Tio Juan's") holds an alcohol license issued pursuant to M.G.L. c. 138, § 12. The Alcoholic Beverages Control Commission ("ABCC" or "Commission") held a remote hearing via Microsoft Teams on Tuesday, May 9, 2023, regarding an alleged violation of 204 CMR 2.05 (2) Permitting an illegality on the licensed premises, to wit: Ch. 138, § 34C – Possession of an alcoholic beverage by a person under 21 years of age (1 Count).

The following documents are in evidence:

1. Investigator Fleming's Report;
2. ABCC Form 43, Transfer of License Approval, 7/09/2010.

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

FINDINGS OF FACT

1. On Friday February 3, 2023, at approximately 8:30 p.m., Investigators Keefe and Fleming ("Investigators") inspected Margaritas Management Group-Framingham Inc. d/b/a Tio Juan's Margaritas Mexican Restaurant ("Licensee" or "Tio Juan's") to determine the way its business was being conducted. (Testimony, Exhibit 1)
2. At a table in the rear of the restaurant, Investigators observed youthful appearing individuals in possession of what appeared to be alcoholic beverages. Investigators approached the patrons, identified themselves and requested proof of legal age to possess alcoholic beverages. Id.
3. Underage #1, actual date of birth 2/25/2002 (age 20), was in possession of a coconut margarita. She presented to Investigators her valid New Hampshire driver's license. Underage #1 stated that she was not in possession of any other identification and had not been asked to produce any identification while on the licensed premises. Id.

4. Investigators informed the manager and server of the violation and that a report would be filed with the Chief Investigator for further action. Id.
5. Michael Hernandez, Manager, and Mr. Belanger, Vice President of Operations, appeared at the Commission hearing. Mr. Belanger testified the Licensee already had a thorough training program in place which all servers complete prior to engaging with patrons. He stated that employees were re-trained after this incident, a staff meeting was held and management teams have been established which are distributed throughout the licensed premises to watch over operations. (Testimony)
6. The Licensee has held a license under M.G.L. c. 138, § 12 since 2010, with no prior violations. (Exhibit 2, Commission Records)

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 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, §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.

Direct evidence was provided through the eye-witness testimony of Investigator Fleming who observed a patron younger than twenty-one years of age who was in possession of an alcoholic beverage on the licensed premises.

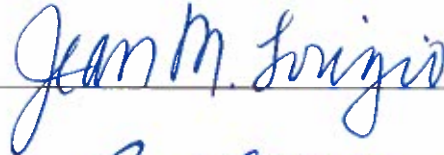
The Commission is persuaded and finds that the Licensee committed a violation of 204 CMR 2.05 (2) - Permitting an illegality on the licensed premise, to wit: M.G.L. c. 138, §34C- Possession of an alcoholic beverage by a person under twenty-one years of age (1 count).

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: Ch. 138, § 34C – Possession of an alcoholic beverage by a person under 21 years of age (1 Count). Therefore, the Commission **issues a WARNING.**

ALCOHOLIC BEVERAGES CONTROL COMMISSION

Jean M. Lorizio, Chairman



Crystal Matthews, Commissioner



Deborah Baglio, Commissioner



Dated: March 13, 2024

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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2023-000034-ad-enf

cc: Local Licensing Board
Frederick G. Mahony, Chief Investigator
Sean Fleming, Investigator
Dennis Keefe, Investigator
Administration, File