

*The Commonwealth of Massachusetts*  
*Department of the State Treasurer*  
*Alcoholic Beverages Control Commission*  
*Boston, Massachusetts 02114*

*Steven Grossman*  
*Treasurer and Receiver General*

*Kim S. Gainsboro, Esq.*  
*Chairman*

**NOTICE OF SUSPENSION**

November 27, 2012

**ROSARIO 1859 HOUSE INC. DBA 1859 RESTAURANT**  
**12 HAMPSHIRE STREET**  
**METHUEN, MA 01844**  
**LICENSE #: 069600014**  
**VIOLATION DATE: 07/27/2012**  
**HEARD: 11/20/2012**

After a hearing on November 20, 2012 the Commission finds Rosario 1859 House, Inc. dba 1859 Restaurant in violation of:

1. 204 CMR 2.05 (2) Permitting an illegality on the licensed premises, to wit: M.G.L. Ch.138, §34C – Possession of an alcoholic beverage by a person under 21 years of age (1 Count).
2. 204 CMR 2.05 (2) Permitting an illegality on the licensed premises to wit: Ch. 138, §23 Sale of alcoholic beverages other than those purchased under §18 or §19 or from the holder of a special permit under §22A (2 Counts); and
3. 204 CMR 2.05 (2) Permitting an illegality on the licensed premise, to wit: M.G.L. Ch.94 §186 – Falling below the standard of Purity (8 Counts).

The Commission suspends the licensee's license for a total of two (2) days to be served. The suspension shall commence on Wednesday, January 9, 2013 and terminate on Thursday, January 10, 2013. The license will be delivered to the Local Licensing Board or its designee on Wednesday, January 9, 2013 at 9:00 A.M. It will be returned to the licensee Friday, January 11, 2013.

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. All checks must be certified and accompanied by the enclosed form, which must be signed by a Massachusetts Licensed Accountant.

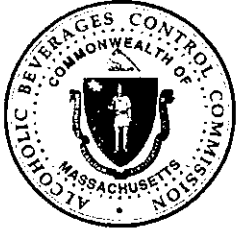
You are advised that you have the right to appeal this decision under M.G.L. c. 30A to Superior Court within thirty (30) days upon receipt of this notice.

**ALCOHOLIC BEVERAGES CONTROL COMMISSION**

Kim S. Gainsboro  
Chairman

cc: Local Licensing Board  
Christopher Temple, Investigator  
File

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*The Commonwealth of Massachusetts*  
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*Alcoholic Beverages Control Commission*  
*Boston, Massachusetts 02114*

*Steven Grossman*  
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*Kim J. Gainsboro, Esq.*  
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**DECISION**

**ROSARIO 1859 HOUSE INC. DBA 1859 RESTAURANT**  
**12 HAMPSHIRE STREET**  
**METHUEN, MA 01844**  
**LICENSE #: 069600014**  
**VIOLATION DATE: 07/27/2012**  
**HEARD: 11/20/2012**

Rosario 1859 House, Inc. dba 1859 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, November 20, 2012, regarding an alleged violation of:

1. 204 CMR 2.05 (2) Permitting an illegality on the licensed premises, to wit: M.G.L. Ch. 138, §34C – Possession of an alcoholic beverage by a person under 21 years of age (1 Count).
2. 204 CMR 2.05 (2) Permitting an illegality on the licensed premises to wit: Ch. 138, §23 Sale of alcoholic beverages other than those purchased under §18 or §19 or from the holder of a special permit under §22A (2 Counts); and
3. 204 CMR 2.05 (2) Permitting an illegality on the licensed premises, to wit: M.G.L. Ch. 94 §186 – Falling below the standard of Purity (8 Counts).

Prior to the commencement of the hearing, the licensee stipulated to the violation alleged in Investigator Temple's Report.

The following document is in evidence:

1. Investigator Temple's Investigative Report dated July 27, 2012;
2. Licensee's Stipulation of Facts; and
3. Box of Eight (8) Bottles of Alcoholic Beverages Containing Fruit Flies.

There is one (1) audio recording of this hearing, and one witness testified.

**FACTS**

1. On Friday July 27, 2012 at approximately 11:05 pm Investigators Kujawski, Keefe and Temple entered the license premises.
2. Investigators observed a bartender, later identified as Kevin Timmons, drinking a shot of alcoholic beverage with patrons.
3. Investigators also observed a youthful looking female, who ordered and took possession of an alcoholic beverage.
4. Investigators identified themselves to the youthful looking female and asked to see her identification.

5. The female stated that her identification was in the car.
6. Investigators asked the female how she got in without identification.
7. The female stated that she had been there before. The female then stated that she was underage and was drinking a Jack [Daniels] & Coke (cola).
8. The female was identified as: Kelsie O'Neil, date of birth August 23, 1991, age twenty (20) years.
9. Investigators spoke to Mr. Timmons, the bartender who served the underage individual.
10. Mr. Timmons stated that he did not ask Ms. O'Neil for identification because he had seen her in there before.
11. Investigators spoke to the underage's friend, Ms. Cynthia Morin, date of birth December 19, 1980. Ms. Morin agreed to provide safe transportation for the underage.
12. Investigators then inspected the upstairs bar.
13. Investigators observed multiple bottles of alcohol with sticky glue-like substances in the shape of retail price stickers on the exterior of the bottles.
14. Based upon their training and experience the sticky glue-like substance is an indication that the alcoholic beverages had been purchased from a \$15 retail package store.
15. Investigators removed the bottles from the bar area and set them aside.
16. The following bottles were taken as evidence:
  - One (1) liter Martini & Rossi
  - One (1) liter Myers's Rum
17. During the inspection, investigators were joined by the owner/ manager, Mr. Miguel Rosario.
18. Mr. Rosario stated that he occasionally buys his alcohol from a package store if he runs out. Investigators informed him that pursuant to chapter 138 that practice is prohibited.
19. Mr. Rosario stated, "I know, but everybody does it."
20. Upon further inspection of the bar, investigators observed bottles containing foreign matter, specifically fruit flies.
21. The following bottles were taken as evidence:
  - Two (2) 1-liter bottles Martini & Rossi
  - One (1) liter DeKuyper Strawberry
  - One (1) liter Seagram's
  - One (1) liter Myers's Rum
  - One (1) 750 ml Jim Beam
  - One (1) liter Milagro Tequila
  - One (1) liter Crown Royal.
22. Investigators informed Mr. Rosario that a violation report would be submitted to the Chief Investigator for further review.

### CONCLUSION

Based on the evidence, the Commission finds the licensee violated:

1. 204 CMR 2.05 (2) Permitting an illegality on the licensed premises, to wit: M.G.L. Ch.138, §34C – Possession of an alcoholic beverage by a person under 21 years of age (1 Count).
2. 204 CMR 2.05 (2) Permitting an illegality on the licensed premises to wit: Ch. 138, §23 Sale of alcoholic beverages other than those purchased under §18 or §19 or from the holder of a special permit under §22A (2 Counts); and
3. 204 CMR 2.05 (2) Permitting an illegality on the licensed premise, to wit: M.G.L. Ch.94 §186 – Falling below the standard of Purity (8 Counts).

Therefore, the Commission suspends the license for eight (8) days of which two (2) days will be served and six (6) 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 *Kathleen McNally*

I, the undersigned, hereby certify that I have reviewed the hearing record and concur with the above decision.

Susan Corcoran, Commissioner *Susan Corcoran*

DATE: November 27, 2012

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.

cc: Local Licensing Board  
Frederick G. Mahony, Chief Investigator  
Christopher Temple, Investigator  
Administration  
File