



*Commonwealth of Massachusetts*  
*Alcoholic Beverages Control Commission*  
*239 Causeway Street*  
*Boston, Massachusetts 02114*  
*Tel. (617) 727-3040*  
*Fax: (617) 727-1510*

Jean M. Lorizio, Esq.  
Chairman

NOTICE OF SUSPENSION

November 15, 2018

**ADOLFO'S RESTAURANT, INC. D/B/A ADOLFO'S RESTAURANT**  
**254 WORTHINGTON ST**  
**SPRINGFIELD, MA 01103**  
**LICENSE#: 1226-00357**  
**VIOLATION DATE: 6/28/2018**  
**HEARD: 11/06/2018**

After a hearing on November 6, 2018, the Commission finds Adolfo's Restaurant, Inc. d/b/a Adolfo's Restaurant 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 (2 counts).

The Commission suspends the license for a period of ten (10) days of which four (4) 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.


By decision dated April 30, 2018, the Commission had previously ordered a twenty-nine (29) day license suspension of which ten (10) days would be served, and nineteen (19) days would be held in abeyance for a period of two (2) years provided no further violations of Chapter 138 or Commission Regulations occur. Based on the violation found above, the Licensee violated the conditions of that 19-day suspension being held in abeyance. The Commission hereby orders that suspension to be served on and after the 4-day suspension. The Licensee will serve a total of twenty-three (23) days.

The suspension shall commence on Wednesday, January 9, 2019 and terminate on Thursday, January 31, 2019. The license will be delivered to the Local Licensing Board or its designee on Wednesday, January 9, 2019 at 9:00 A.M. It will be returned to the Licensee on February 1, 2019.

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**



Jean M. Lorizio  
Chairman

This document is important and should be translated immediately.  
Este documento es importante y debe ser traducido inmediatamente.  
Este documento é importante e deve ser traduzido imediatamente.  
Ce document est important et devrait être traduit immédiatement.  
Questo documento è importante e dovrebbe essere tradotto immediatamente.  
Το έγγραφο αυτό είναι σημαντικό και θα πρέπει να μεταφραστούν αμέσως.  
这份文件是重要的，应立即进行翻译。

cc: Local Licensing Board  
Frederick G. Mahony, Chief Investigator  
Michael Teehan, Investigator  
Dennis Keefe, Investigator  
Christopher Temple, Investigator  
Lisa Watson, Investigator  
Daniel Kelly, Esq.  
Administration, File



*Commonwealth of Massachusetts  
Alcoholic Beverages Control Commission  
239 Causeway Street  
Boston, Massachusetts 02114  
Tel. (617) 727-3040  
Fax: (617) 727-1510*

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

### **DECISION**

**ADOLFO'S RESTAURANT, INC. D/B/A ADOLFO'S RESTAURANT  
254 WORTHINGTON ST  
SPRINGFIELD, MA 01103  
LICENSE#: 1226-00357  
VIOLATION DATE: 6/28/2018  
HEARD: 11/06/2018**

Adolfo's Restaurant, Inc. d/b/a Adolfo's 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 6, 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 (2 counts), which occurred on June 28, 2018, according to Investigator Teehan's Report.

The following documents are in evidence:

1. Investigator Teehan's Investigative Report; and
2. Photocopy of Fraudulent 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 Friday, June 28, 2018, at approximately 10:30 p.m., Investigators Keefe, Temple, Watson, and Teehan ("Investigators"), conducted an investigation of the business operation of Adolfo's Restaurant, Inc. d/b/a Adolfo's Restaurant to determine the manner in which its business was being conducted. (Exhibit 1)
2. While on the licensed premises, Investigators observed two female individuals who appeared to be under 21 years of age and were in possession of alcoholic beverages. Investigators identified themselves and asked to see proof of legal age. (Testimony & Exhibit 1)

3. Underage #1, actual date of birth 2/26/1999 (age 19) was in possession of a mixed drink, Long Island Iced Tea. She informed Investigators that she used a Massachusetts driver's license bearing the name of another to gain entry to the licensed premises. (Exhibit 1)
4. Investigators determined that the person pictured on the license was not the individual before them. The person before them has a lighter hair color, and her chin, cheeks, and forehead were different from the person on the license presented. (Exhibit 1)
5. Underage #2, actual date of birth 12/03/2000 (age 17) was in possession of a mixed drink, Long Island Iced Tea. She informed the Investigators she presented a fraudulent Rhode Island driver's license in order to gain entry to the premises. (Exhibit 1)
6. Investigators informed the owner/manager, Victor Bruno, of the violations and that a report would be filed with the Chief Investigator for further action. (Exhibit 1)

### 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." Commonwealth v. Gould, 158 Mass. 499, 507 (1893); Burlington Package Liquors, Inc. v. Alcoholic Beverages Control Comm'n, 11 Mass. App. Ct. 785, 788 (1981). It is, thus, quite possible for a licensee to offend the regulatory scheme without scienter.

Rico's of the Berkshires, Inc. v. Alcoholic Beverages Control Comm'n, 19 Mass. App. Ct. 1026, 1027 (1985). A licensee is responsible for illegalities that occur on the licensed premises. See 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.

The Licensee asserts that the Investigators cited extremely narrow distinctions in determining that the underage individual presenting the Massachusetts driver’s license was not the person pictured on the identification. This argument is not persuasive as 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. 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, 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. Section 34B refers only to the activities of delivery and sale, and it omits any reference to the act of possession. See id. 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 the minors were younger than 21 years of age and that each was in possession of an alcoholic beverage in the licensed premises of Adolfo’s Restaurant, Inc. d/b/a Adolfo’s Restaurant. 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 (2 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 (2 counts). Therefore, the Commission **suspends the license for a period of ten (10) days of which four (4) 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.**

**By decision dated April 30, 2018, the Commission had previously ordered a twenty-nine (29) day license suspension of which ten (10) days would be served, and nineteen (19) days would be held in abeyance for a period of two (2) years provided no further violations of Chapter 138 or Commission Regulations occur. Based on the violation found above, the Licensee violated the conditions of that 19-day suspension being held in abeyance. The Commission hereby orders that suspension to be served on and after the 4-day suspension. The Licensee will serve a total of twenty-three (23) days.**

**ALCOHOLIC BEVERAGES CONTROL COMMISSION**

Jean M. Lorizio, Chairman

*Jean M. Lorizio*

Elizabeth A. Lashway, Commissioner

*Elizabeth A. Lashway*

Kathleen McNally, Commissioner

*Kathleen McNally*

Dated: November 15, 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.

This document is important and should be translated immediately.  
Este documento es importante y debe ser traducido inmediatamente.  
Este documento é importante e deve ser traduzido imediatamente.  
Ce document est important et devrait être traduit immédiatement.  
Questo documento è importante e dovrebbe essere tradotto immediatamente.  
Το έγγραφο αυτό είναι σημαντικό και θα πρέπει να μεταφραστούν αμέσως.  
这份文件是重要的，应立即进行翻译。

cc: Local Licensing Board  
Frederick G. Mahony, Chief Investigator  
Michael Teehan, Investigator  
Dennis Keefe, Investigator  
Christopher Temple, Investigator  
Lisa Watson, Investigator  
Daniel Kelly, Esq.  
Administration, File