

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

May 16, 2014

JIAN HUI GROUP, INC DBA FOODWORKS
50 SOUTHWEST CUTOFF, SUITE #4, RT. 20
WORCESTER, MA 01646
LICENSE#: 150800319
VIOLATION DATE: 01/17/2014
HEARD: 05/06/2014

After a hearing on May 6, 2014, the Commission finds Jian Hui Group, Inc. dba Foodworks in violation of:

- 1) 204 CMR 2.05 (2) Permitting an Illegality on the Licensed Premises, to wit: c. 138 §34C - Possession of an alcoholic beverage by a person under twenty-one (21) years of age (20 Counts);
- 2) 204 CMR 2.05 (2) Permitting an Illegality on the Licensed Premises, to wit: c. 138 § 12- Possession of an alcoholic beverage off the licensed premises (1 Count).

The Commission suspends the licensee's license for a total of forty (40) days to be served. The suspension shall commence on Wednesday, July 2, 2014, and terminate on Sunday, August 10, 2014. The license will be delivered to the Local Licensing Board or its designee on Wednesday, July 2, 2014 at 9:00 A.M. It will be returned to the licensee Monday, August 11, 2014. No offer in compromise will be considered for ten (10) of the forty (40) days suspension for this penalty.

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
Frederick G. Mahony, Chief Investigator
Rose Bailey, Investigator
Brad Doyle, Investigator
Wei Jia, Esq. via facsimile 617-542-0932
Administration
File



The Commonwealth of Massachusetts
Department of the State Treasurer
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DECISION

JIAN HUI GROUP, INC D/B/A FOODWORKS
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WORCESTER, MA 01646
LICENSE#: 150800319
VIOLATION DATE: 01/17/2014
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Jian Hui Group, Inc. d/b/a Foodworks (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, May 6, 2014, regarding an alleged violation of:

- 1) 204 CMR 2.05 (2) Permitting an Illegality on the Licensed Premises, to wit: c. 138 §34C - Possession of an alcoholic beverage by a person under twenty-one (21) years of age (TWENTY Counts);
- 2) 204 CMR 2.05 (2) Permitting an Illegality on the Licensed Premises, to wit: c. 138 § 12- Possession of an alcoholic beverage off the licensed premises (1 Count).

The following documents are in evidence:

1. Licensee's Stipulation of Facts; and
 2. Investigator Bailey's Investigative Report dated January 17, 2014.
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- A. Photos of Licensed Premises (Interior and Exterior);
 - B. TIPS Certification for Jian H. Chong; and
 - C. TIPS Certification for Wen H. Zhang.

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

FACTS

1. On Friday, January 17, 2014, at approximately 9:50 p. m., Investigators Doyle and Bailey, in conjunction with Worcester Police Department Officers Jolin and Saucier, conducted an investigation of the business operation of Jian Hui Group, Inc. d/b/a Foodworks to determine the manner in which its business was being conducted, and to investigate complaints received by the Worcester Police Department relative to underage drinking.
2. Investigators entered the licensed premises and observed multiple tables with youthful appearing individuals seated in the dining area.

3. Officers Jolin and Saucier entered the licensed premises approximately five minutes prior to the Commission investigators. The investigators were seated at a table in the dining area, making observations.
4. Investigators observed that the dining area was well-lighted, with an open floor plan. They observed the dining area had approximately 30 individuals seated there, and approximately ten individuals were seated at the bar. The bar area was divided by a half wall with opaque glass placed above it.
5. For approximately 45 minutes investigators observed a female waitress on duty, Elizabeth Dibuono, and a male waiter on duty, Wen Hui Zhang, serve what appeared to be alcoholic beverages to multiple tables of youthful looking individuals, without asking the individuals to present identification.
6. Officer Jolin exited the premises to call for back-up. While outside, he observed a male individual in possession of what appeared to be an alcoholic beverage.
7. Officer Jolin heard the male individual telling another individual who was driving into the parking lot, that there were undercover cops inside and not to go inside the premises.
8. When Officer Jolin returned to the premises, he informed investigators of his observations outside in the parking lot. Officer Jolin also observed the male individual, whom he had spotted outside, enter the premises and speak to the waiter, Wen Hui Zhang.
9. Within moments of their witnessing this conversation, investigators observed Mr. Zhang serve two shots of what appeared to be alcoholic beverages to two youthful looking females seated at a table. Prior to serving the alcohol, investigators observed Mr. Zhang ask the females for identification.
10. Investigators had previously observed that the females had been served Mai Tais, which are alcoholic beverages without being asked to produce identification.
11. At approximately 11:00 p.m., upon the arrival of Worcester Police Lieutenant Johnson and uniformed Worcester Police officers, Investigators Doyle and Bailey, with Officers Jolin and Saucier, split into four separate units. With neck badges visible, they identified themselves and requested proof of legal age from all youthful appearing individuals in possession of alcoholic beverages.
12. Nicholas Bratchell, actual date of birth [REDACTED] (age 20) was observed in possession of a Captain Morgan Spiced rum and cola.
13. Keegan Halpin, actual date of birth [REDACTED] (age 20) was observed in possession of a Scorpion Bowl.
14. Male Minor, actual date of birth [REDACTED] (age 17) was observed in possession of a Captain Morgan Spiced rum and cola.
15. Patrick Bourke, actual date of birth [REDACTED] (age 19) was observed in possession of a vodka and cranberry juice.
16. Zachery Firman, actual date of birth [REDACTED] (age 19) was observed in possession of a Captain Morgan Spiced rum and cola.
17. Female Minor, actual date of birth [REDACTED] (age 17) was observed in possession of a Scorpion Bowl.
18. Kelsi Konan, actual date of birth [REDACTED] (age 18) was observed in possession of a Sex on the Beach.
19. Maria Fresolo, actual date of birth [REDACTED] (age 19) was observed in possession of a Scorpion Bowl.
20. Felicia Moroski, actual date of birth [REDACTED] (age 19) was observed in possession of a coconut Mai Tai and a shot of Patron tequila.
21. Joseph Lundberg, actual date of birth [REDACTED] (age 19) was observed in possession of a bottle of Budweiser Light beer.
22. Anthony Wightman, actual date of birth [REDACTED] (age 20) was observed in possession of a bottle of Budweiser Light beer.

23. Nicholas Pezzella, actual date of birth [REDACTED] (age 20) was observed in possession of a bottle of Budweiser Light beer.
24. Julie Filewicz, actual date of birth [REDACTED] (age 19) was observed in possession of a Scorpion Bowl.
25. Justine Torres, actual date of birth [REDACTED] (age 20) was observed in possession of a Scorpion Bowl.
26. Mathew Kachadoorian, actual date of birth [REDACTED] (age 18) was observed in possession of a bottle of Budweiser Light beer.
27. Quintessa Smythe, actual date of birth [REDACTED] (age 19) was observed in possession of a Scorpion Bowl.
28. Guy Vigneau, actual date of birth [REDACTED] (age 18) was observed in possession of a Mai Tai.
29. Joshua Kramer, actual date of birth [REDACTED] (age 18) was observed in possession of a Mai Tai.
30. David Diroberto, actual date of birth [REDACTED] (age 20) was observed in possession of a bottle of Budweiser Light beer.
31. Matthew Mortimer, actual date of birth [REDACTED] (age 19) was observed in possession of a bottle of Budweiser Light beer.
32. The underage individuals in possession of alcohol stated that they had not been asked to present identification or proof of age prior to the service of alcoholic beverages.
33. The underage individuals were placed under arrest, for minors in possession of alcoholic beverages, by the Worcester Police. They were transported to the police station and charged.
34. Investigator Bailey contacted the parents of the two 17-year old minors, advised them of the matter and arranged for these minors to be picked up. These two minors were transported separately to the police station to be released into their parents' custody.
35. Investigators and Worcester Police Lieutenant Johnson identified themselves to the wait staff, Mr. Zhang and Ms. Dibuono. Mr. Zhang stated that he was the owner/licensee.
36. Investigators informed Mr. Zhang of the violation and that a report would be filed with the Chief Investigator for review.
37. The license manager, Mr. Dao Hong Chong, testified that he was not working at the premises that evening.
38. Worcester Police Officer Jolin testified before the Commission that the Worcester Police Department has received phone calls from residents in the area that this licensee is serving alcoholic beverages to minors.
39. At the hearing before the Commission, Investigator Bailey testified that Mr. Zhang, the principal of the licensee, served some underage patrons shots of Patron, which is a distilled spirit.
40. This license was approved by the Commission in December of 2008. Mr. Zhang is the Treasurer of the license corporation and owns 50 % (fifty percent) of the license corporation.
41. The attorney for the licensee notified the Commission that Mr. Zhang is in the process of filing a petition to transfer ownership of the license corporation, so that Mr. Zhang will become the sole principal of the license corporation.

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 G.L. c. 138. The Commission has comprehensive powers of supervision over licensees and has statutory authority (G. L. c. 138, § 64) to revoke or suspend a license for violation of a regulation. Aristocratic Restaurant of Massachusetts, Inc. v. Alcoholic Beverages Control Commission, 374 Mass. 547 (1978).

In reviewing the authority of the Commission, the Supreme Judicial Court has held that [t]he powers of the States in dealing with the regulation of the sale of intoxicating liquors are very broad. What they may wholly prohibit, they may permit only on terms and conditions prescribed by the Legislature. Supreme Malt Products Co., Inc., v. Alcoholic Beverages Control Commission, 334 Mass. ----; Ziffrin, Inc. v. Reeves, 308 U.S. 132, 138-139; Carter v. Virginia, 321 U.S. 131, 137-143. In dealing with a trade, which, because of its great potential evils, can be wholly prohibited, a wide power is given to the Legislature with respect to the delegation of discretionary powers.

The SJC held that “[t]he legislative history of [the Commission’s enabling act], and of G.L. (Ter.Ed.) Ch. 138, as amended, clearly shows that the powers of the commission were not intended to be perfunctory or limited.” Connolly v. Alcoholic Beverages Control Commission, 334 Mass. 613, 617 (1956).

The commission has comprehensive powers of supervision over licensees. Connolly v. Alcoholic Beverages Control Commission, 334 Mass. 613, 617 (1956). The Commission may make regulations for “clarifying, carrying out, enforcing and preventing violation of” statutory provisions for the “method of carrying on the business of any licensee,” and “for the proper and orderly conduct of the licensed business.” M. G. L. c. 138, §24, as appearing in St. 1971, c. 478. The Commission has exercised this authority through the promulgation of regulations that are codified at chapter 204 of the Code of Massachusetts Regulations. Licenses are also revocable for violation of “any regulation adopted by the commission or *local licensing authority*” (emphasis supplied), and local licensing authorities may make “reasonable requirements” with respect to “the conduct of business by any licensee.” M. G. L. c. 138, § 23, quoted in part in fn. 1, supra. 367 Mass. 788, 1975 Mass. LEXIS 900, Boston Licensing Board v. Alcoholic Beverages Control Commission, 367 Mass. 788 (1975).

A Commission regulation promulgated at 204 CMR 2.05(2) provides in pertinent part, that “No 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 therefor, whether present or not.”

M.G.L. c. 138, §34C states: “Whoever, being under twenty-one years of age and not accompanied by a parent or legal guardian, knowingly possesses, transports or carries on his person, any alcohol or alcoholic beverages, shall be punished by a fine of not more than fifty dollars for the first offense and not more than one hundred and fifty dollars for a second or subsequent offense; provided, however, that this section shall not apply to a person between the ages of eighteen and twenty-one who knowingly possesses, transports or carries on his person, alcohol or alcoholic beverages in the course of his employment. A police officer may arrest without a warrant any person who violates this section. A conviction of a violation of this section shall be reported forthwith to the registrar of motor vehicles by the court, and said registrar shall thereupon suspend for a period of ninety days the license of such person to operate a motor vehicle.” M.G.L. c. 138, §34C.

As the Licensee does not dispute the violations, the Commission is convinced by satisfactory proof and finds that there was a violation of 204 CMR 2.05 (2) - Permitting an illegality on the licensed premise, to wit: M.G.L. c. 138, §34C, (20 Counts), and a violation of 204 CMR 2.05 (2) Permitting an Illegality on the Licensed Premises, to wit: c. 138 § 12- Possession of an alcoholic beverage off the licensed premises (1 Count) committed by the Licensee.

CONCLUSION

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

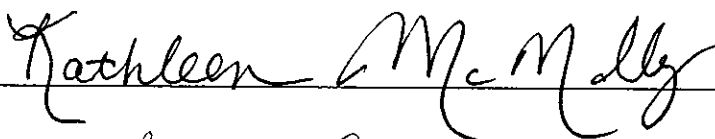
- 1) 204 CMR 2.05 (2) Permitting an Illegality on the Licensed Premises, to wit: c. 138 §34C - Possession of an alcoholic beverage by a person under twenty-one (21) years of age TWENTY COUNTS (20 Counts);
- 2) 204 CMR 2.05 (2) Permitting an Illegality on the Licensed Premises, to wit: c. 138 § 12- Possession of an alcoholic beverage off the licensed premises (1 Count).

Therefore, the Commission **suspends the license for ninety days (90) days of which forty (40) days will be served and fifty (50) days will be held in abeyance for a period of two (2) years provided no further violations of Chapter 138 or Commission Regulations occur. No offer in compromise will be considered for ten (10) of the forty (40) days suspension for this penalty.**

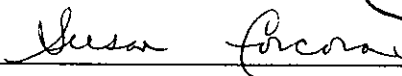
The Commission advises the licensee that in the future failure to comply with the Laws of the Commonwealth, specifically M.G.L. Chapter 138 and Commission Regulations, may result in more severe sanctions.

ALCOHOLIC BEVERAGES CONTROL COMMISSION

Kathleen McNally, Commissioner



Susan Corcoran, Commissioner



Dated: May 16, 2014

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
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Brad Doyle, Investigator
Wei Jia, Esq. via facsimile 617-542-0932
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