



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

Deborah B. Goldberg
Treasurer and Receiver General

NOTICE OF SUSPENSION

Kim J. Gainsboro, Esq.
Chairman

January 20, 2017

JOHN P. FRESOLO D/B/A ROCKY'S FOOD AND SPIRITS
139 WATER STREET
WORCESTER, MA 01608
LICENSE#: 150800068
VIOLATION DATE: 07/14/2016
HEARD: 12/07/2016

After a hearing on December 7, 2016, the Commission finds John P. Fresolo d/b/a Rocky's Food and Spirits violated:

- 1) 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 (13 counts);
- 2) 204 CMR 2.05 (2) Permitting an Illegality on the Licensed Premises, to wit: 780 CMR 121.1 Overcrowding.

On the first charge, 204 CMR 2.05 (2), M.G.L. c. 138, §34C (13 counts), the Commission suspends the license for a period of fifty (50) days of which twenty-five (25) days will be served, and twenty-five (25) 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 two (2) of the twenty-five (25) days suspension for this penalty.

On the second charge, 204 CMR 2.05 (2), 780 CMR 121.1, the Commission suspends the license for a period of six (6) days of which three (3) days will be served, and three (3) days will be held in abeyance for a period of two (2) years provided no further violations of Chapter 138 or Commission Regulations occur. This suspension to be served concurrently with the one above.

The suspension shall commence on Wednesday, March 15, 2017 and terminate on Saturday, April 8, 2017. The license will be delivered to the Local Licensing Board or its designee on Wednesday, March 15, 2017 at 9:00 A.M. It will be returned to the licensee on Sunday, April 9, 2017.

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



Kim S. Gainsboro
Chairman

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Το έγγραφο αυτό είναι σημαντικό και θα πρέπει να μεταφραστούν αμέσως.
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cc: Local Licensing Board
Frederick G. Mahony, Chief Investigator
Nicholas Velez, Investigator
Michael Teehan, Investigator
J. DiCicco, M. Kenny, D. Keefe, Investigators
Administration, File



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

Deborah B. Goldberg
Treasurer and Receiver General

DECISION

Kim J. Gainsboro, Esq.
Chairman

JOHN P. FRESOLO D/B/A ROCKY'S FOOD AND SPIRITS
139 WATER STREET
WORCESTER, MA 01608
LICENSE#: 150800068
VIOLATION DATE: 07/14/2016
HEARD: 12/07/2016

John P. Fresolo d/b/a Rocky's Food and Spirits (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 Wednesday, December 7, 2016, regarding alleged violations of:

- 1) 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 (13 counts);
- 2) 204 CMR 2.05 (2) Permitting an Illegality on the Licensed Premises, to wit: 780 CMR 121.1 Overcrowding.

Prior to the commencement of the hearing, the Licensee stipulated to the violations alleged in Investigator Velez's report.

The following documents are in evidence:

1. Investigator Velez's Investigative Report dated July 14, 2016;
2. Licensee's Stipulation of Facts;
3. RMV Report of Underage #1;
4. RMV Report and Fraudulent License of Underage #2;
5. RMV Report and Fraudulent License of Underage #3;
6. RMV Report and Fraudulent License of Underage #4;
7. RMV Report and Fraudulent License of Underage #5;
8. RMV Report of Underage #6;
9. RMV Report of Underage #7;
10. RMV Report and Fraudulent License of Underage #8;
11. RMV Report of Underage #9;
12. RMV Report of Underage #10;
13. RMV Report of Underage #11;
14. Fraudulent Identification of Underage #12 ; and
15. Massachusetts Driver's License of Underage #13.

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

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

FINDINGS OF FACT

1. On Thursday, July 14, 2016, at approximately 11:15 p.m., Investigators Kenny, Teehan, Keefe, DiCicco, and Velez ("Investigators") conducted an investigation of the business operation of John P. Fresolo d/b/a Rocky's Food and Spirits to determine the manner in which their business was being conducted.
2. Upon entering the restaurant, Investigators observed the premises were extremely crowded, with individuals standing shoulder to shoulder from the front to the rear of the premises. It was difficult for Investigators to maneuver about and they observed it presented a very dangerous situation if an emergency were to occur.
3. Investigators did not observe any staff member in possession of a counter device, commonly used by door persons at § 12 premises to keep track of how many patrons were on the premises. No such counter device was presented to Investigators during their inspection.
4. Investigators asked the owner, John P. Fresolo, what was the capacity of the establishment. Fresolo stated the occupant load was 60 persons and he agreed with Investigators that there were approximately 100 persons inside. Mr. Fresolo admitted to Investigators that the licensed premises was overcrowded.
5. Investigators Kenny and Velez observed a group of youthful appearing individuals, standing at a high-top table, in possession of alcoholic beverages. Investigators identified themselves and asked to see proof of legal age.
6. Underage #1 (██████████), actual date of birth 10/08/1996 (age 19) was in possession of a bottle of Bud Light beer. He stated he was not asked for identification when he purchased the alcohol.
7. Underage #2 (██████████), actual date of birth 12/03/1996 (age 19) was in possession of a bottle of Bud Light beer. She presented Investigators with a fraudulent Rhode Island driver's license.
8. Underage #3 (██████████), actual date of birth 7/01/1996 (age 20) was in possession of a bottle of Bud Light beer. She presented Investigators with a fraudulent Connecticut driver's license.
9. Underage #4 (██████████), actual date of birth 6/09/1998 (age 18) was in possession of a bottle of Bud Light beer. She presented Investigators with a fraudulent Connecticut driver's license.
10. Investigators Kenny and Di Cicco observed a group of youthful appearing individuals, standing at a high-top table, in possession of alcoholic beverages. Investigators identified themselves and asked to see proof of legal age.
11. Underage #5 (██████████), actual date of birth 1/12/1996 (age 20) was in possession of a bottle of Bud Light beer. She presented Investigators with a fraudulent New Hampshire driver's license.

12. Underage #6 [REDACTED], actual date of birth 5/21/1998 (age 18) was in possession of a bottle of Bud Light beer.
13. Underage #7 [REDACTED], actual date of birth 8/07/1997 (age 18) was in possession of a bottle of Bud Light beer.
14. Investigators Kenny and Di Cicco observed a group of youthful appearing individuals, standing at a high-top table near the back door, in possession of alcoholic beverages. Investigators identified themselves and asked to see proof of legal age.
15. Underage #8 [REDACTED], actual date of birth 9/10/1996 (age 19) was in possession of a bottle of Bud Light beer. She presented Investigators with a Massachusetts driver's license in another person's name. Investigators determined that Underage #8 did not show a reasonable resemblance to the person on the Massachusetts license.
16. Underage #9 [REDACTED], actual date of birth 12/14/1996 (age 19) was in possession of a mixed drink, vodka and cranberry juice.
17. Underage #10 [REDACTED], actual date of birth 11/18/1996 (age 19) was in possession of a mixed drink, vodka and cranberry juice.
18. Investigator Teehan observed a youthful appearing individual, standing near the bar, in possession of a draft beer. Investigator Teehan identified himself and asked to see proof of legal age.
19. Underage #11 [REDACTED], actual date of birth 3/17/1996 (age 20) was in possession of a bottle of draft beer.
20. Investigators Kenny and Di Cicco observed a youthful appearing individual, in possession of a bottle of Bud Light beer. Investigators identified themselves and asked to see proof of legal age.
21. Underage #12, presented Investigators with a fraudulent Connecticut driver's license. She in possession of a bottle of Bud Light beer. Investigators observed the unidentified female, true identity unknown, exit quickly through the crowd.
22. Investigator Di Cicco observed a youthful appearing individual in possession of a draft beer. Underage #13 presented Investigator DiCicco with a Massachusetts driver's license in her sister's name. Investigators determined that person before them was not the same person on the driver's license. Investigator DiCicco observed the unidentified female exit quickly through the crowd.
23. As Investigators were checking identifications of the above listed individuals, they observed that a large crowd of youthful appearing individuals rapidly exited the premises and the crowd size decreased significantly.
24. Investigators informed Mr. Fresolo of the violation and that a report would be filed with the Chief Investigator for further action.
25. On Tuesday, July 19, 2016, Investigator Velez called Debbie Steele, the licensing coordinator for the City of Worcester to verify the occupancy load of the establishment. Ms. Steele informed Investigator Velez that the capacity of the premises is 40 persons.

CONCLUSION

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

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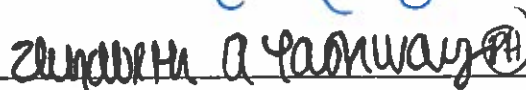
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ALCOHOLIC BEVERAGES CONTROL COMMISSION

Kathleen McNally, Commissioner



Elizabeth A. Lashway, Commissioner



Dated: January 20, 2017

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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