

STATE OF CONNECTICUT

DEPARTMENT OF CONSUMER PROTECTION

IN THE MATTER OF

Bar Taco
Carl A. Pforzheimer, Permittee
971 Farmington Ave. LLC, Backer
Permit #LIR.18656
Docket No. 150162

Case No. 2013-1286
March 19, 2015

MEMORANDUM OF DECISION

This matter involves a restaurant liquor permit issued to Bar Taco, 971 Farmington Ave., West Hartford, Connecticut. A formal administrative hearing was held before the Department of Consumer Protection on December 18, 2014, at which time Carl Pforzheimer, the permittee, appeared with counsel. The record of the hearing was held open until January 15, 2015, to allow the parties an opportunity to submit briefs.

The alleged violation arose from an investigation conducted by Department of Consumer Protection liquor control agents and the West Hartford Police Department. It is alleged that on or about October 18, 2013, the Respondent sold or delivered alcoholic liquor to a minor in violation of Section 30-86(b), Connecticut General Statutes. The Respondent denied the violation and the matter proceeded to a hearing.

We have thoroughly reviewed all the evidence submitted at the hearing and made a part of the record, including the digital video disc submitted by the Respondent. Based upon such review, the following facts are found. On the evening of October 18, 2013, liquor control agents conducted compliance checks for underage drinking in conjunction with the West Hartford Police Department. At approximately 10:35 p.m. Agents Walleth and Bailey entered Bar Taco in an undercover capacity. The bar area was very crowded and so they focused their attention on two tables in the dining room, including a large table in the dining room with young-looking patrons, with one female patron who looked particularly young. This female was later identified as Jenna Damico. During this time, Agent Wallet observed a waitress approach the table and deliver drinks to the patrons, including Ms. Damico. Agent Wallet observed Ms. Damico pick up and consume the drink placed before her by the waitress.

Agents Wallet and Bailey were inside Bar Taco in an undercover capacity for approximately 30 minutes and then exited the premises to rejoin their team. Thereafter, at approximately 11:05 p.m., Liquor Control agents reentered Bar Taco with West Hartford Police Department officers to continue the compliance check. Upon reentry, Agent Walleth went to the large table he had observed earlier and asked the patrons for identification. Ms. Damico was identified as being 20 years old at the

time, with a date of birth of November 28, 1992. During the ensuing interview, Ms. Damico advised Agent Wallett that she ordered and received one alcoholic drink, a Mojito, from a female waitress, later identified as Lyna Macri. Ms. Damico had a driver's license in her possession in the name of Stephanie John. She had not used that false identification to either gain entry to Bar Taco or to obtain her drink from Ms. Macri, nor had she been asked to complete an Age Statement Form. A "Minor Report" was completed encompassing her statements. Ms. Damico signed it that night and affirmed the truth of its contents.

Ms. Macri, the server, spoke briefly with Agent Wallett after he reentered the premises. She indicated she knew most of the party at the table, which included Ms. Damico, as regulars and did not card them; she thought everyone was 21. Later that night, Ms. Macri provided her employer with a written statement of the events which was at variance with her earlier conversation with Agent Wallett. She wrote, "After verifying that they were not underage, I proceeded to take their drink orders." Ms. Macri was aware that her employer would impose severe consequences upon any employee serving a minor. At the December 18, 2014 hearing, Ms. Macri testified that she would check identification of customers she did not know. She would not check the identification of customers she recognized.

The direct and credible testimony Ms. Damico provided at the December 18, 2014 hearing reiterated her October 18, 2013 conversation with Agent Wallett. Although she could not recall whether she had personally ordered the alcoholic drink directly from Ms. Macri fourteen months earlier, Ms. Damico confirmed that she received a Mojito from the waitress who put the drink on the table, that the drink was for her, and that she did not take anyone else's drink.

Mr. Pforzheimer testified that Bar Taco has procedures in place to attempt to prevent service of alcohol to minors. Its servers are TIPS trained and it has a policy which imposes sanctions on employees who serve to underage patrons.

At the hearing, there was conflicting and inconsistent testimony. We find the recitation of circumstances by Liquor Control Agent Wallett and Ms. Damico to be entirely credible and believable, and we do not find Ms. Macri's statements, other than those she made to Liquor Control Agent Wallett on the night of October 18, 2013, to be credible. It is well established that the determination of factual issues on conflicting testimony is within the province of the commission. Noyes v. Liquor Control Commission, 151 Conn. 524, 527, 200 A.2d 467 (1964).

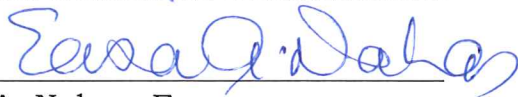
Respondent relies on an edited security video it provided of the inside of the Bar Taco dining room recorded on the evening of October 18, 2013. The video is a grainy, low quality, security video. The room is

poorly lit and the images are fuzzy and shadowy. It shows Ms. Damico interacting with Ms. Macri. However, it does not support the Respondent's contention that Ms. Damico was not served alcohol. We find the video is inconclusive. We rely upon the report and testimony of Agent Wallett, a Liquor Control agent with 20 years' experience, and the testimony of Ms. Damico, both of whom we find credible.

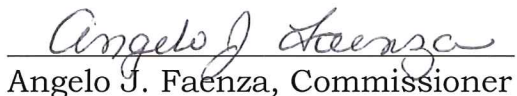
Based upon the substantial evidence adduced at the hearing and mindful of the court's finding in Mathews v. Dept. Of Consumer Protection, No. CV95-0555647S (Conn. Super. Ct. Nov. 12, 1996), we find the respondent in violation of Sec.30-86(b) of the Connecticut General Statutes. Accordingly, we hereby suspend the Respondent's restaurant liquor permit for one day and for an additional seven days. In lieu of the additional 7-day suspension, we will accept payment of a fine of \$525, in accordance with Section 30-6-A8(i) and (k) of the Regulations of Connecticut State Agencies.

**DEPARTMENT OF CONSUMER PROTECTION
LIQUOR CONTROL COMMISSION**

BY:



Elisa A. Nahas, Esq.
Designated Presiding Officer



Angelo J. Faenza, Commissioner

Parties:

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(Via US Mail and Certified Mail # 7012 2920 0000 4559 5199)

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Nonparties:

John Suchy, Director, Liquor Control Division

Connecticut Beverage Journal, 2508 Whitney Ave., P.O. Box 185159, Hamden, CT 06518

Connecticut State Library, 231 Capitol Avenue, Hartford, CT 06106