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GUZMAN II, INC. d/b/a LA HACIENDA MEXICAN RESTAURANT #3

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BEFORE THE TENNESSEE
ALCOHOLIC BEVERAGE COMMISSION

IN THE MATTER OF:	)	
	)	
GUZMAN II, INC.	)	
d/b/a LA HACIENDA	)	**DOCKET NO. 33.01-114484J**
MEXICAN RESTAURANT #3	)	
	)	
Respondent	)	

INITIAL ORDER

This matter came to be heard on December 7, 2011, before Administrative Judge Thomas G. Stovall, assigned by the Office of the Secretary of State, Administrative Procedures Division, and sitting for the Tennessee Alcoholic Beverage Commission (ABC) in Nashville, Tennessee. Mr. E. Keith Bell, Assistant Director of the ABC represented the State. The Respondent was present and not represented by counsel.

The subject of this hearing was the proposed revocation or suspension of the Respondent's liquor-by-the-drink (LBD) license for serving alcohol to minors. After consideration of the record it is determined that the Respondent's LBD license **SHOULD BE SUSPENDED FOR SIXTY (60) DAYS.** This decision is based upon the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. Victor and Salvador Guzman are brothers and the owners and operators of Guzman II, Inc., d/b/a La Hacienda Mexican Restaurant #3 (Respondent) located in Franklin, Tennessee. The Respondent holds LBD License No. 60129.

2. On May 5, 2011, the Franklin Police Department received an anonymous telephone call which stated that six under aged individuals were drinking alcoholic beverages at the Respondent's restaurant. Officer Scott Quinn was dispatched to the restaurant to investigate.

While in route to the restaurant Officer Quinn was sent Facebook photographs of the individuals that had been sent to the police department. Upon going inside the restaurant Officer Quinn identified the individuals in the photographs sitting in a booth. Officer Quinn observed them drinking alcoholic beverages.

3. Officer Quinn took the individuals outside the restaurant. He determined that the individuals, five females and one male, were all between the ages of 18 and 20. None of them was 21 years of age. One of the females had a Tennessee driver's license listing her age as 22. While the photograph on the license resembled the woman, it was later determined that this was not her driver's license. All of these individuals admitted to drinking alcoholic beverages in the Respondent's restaurant and none were asked by a restaurant employee for identification at the time they were served.

4. According to Officer Quinn, the Respondent had received two prior citations from the Franklin City Beer Board for the sale of alcohol to minors on the premises.

APPLICABLE LAW

1. Tenn. Code Ann. Sec. 57-4-203(b)(1) provides:

> (A) Any licensee or other person who sells, furnishes, dispose of, gives, or causes to be sold, furnished, disposed of, or given, any alcoholic beverage to any person under twenty-one years of age commits a Class A misdemeanor…
>
> (B) Any licensee engaging in business regulated hereunder or any employee thereof who sells, furnishes, disposes of, gives, or causes to be sold, furnished, disposed of, or given any beer or malt beverage…to any person under twenty-one years of age commits a Class A misdemeanor.

2. ABC Rule 0100-1-.03(20):

> **Minors in possession of alcohol**. All on premise consumption licensees are required to insure that minors are not in possession of and/or not allowed to consume any alcoholic beverage-including malt beverages or beer-on the licensed premises.

3. Tenn. Code Ann. Sec. 57-4-202:

> The commission shall have the authority to revoke or suspend any permit granted herein for the violations of the provisions of any applicable provision of this chapter,…

CONCLUSIONS OF LAW

1. The ABC has carried its burden of proof by a preponderance of the evidence that the Respondent's LBD license should be suspended pursuant to Tenn. Code Ann. Sec. 57-4-202 for violating the provisions of the law prohibiting the sale of alcohol to minors.

2. On May 5, 2011, six individuals under the age of 21 purchased and consumed alcoholic beverages at the Respondent's restaurant. No employee of the restaurant asked for any form of identification from these individuals prior to serving them alcoholic beverages.

3. Based upon the foregoing, it is hereby **ORDERED** that the Respondent's LBD License No. 60129 be suspended for ten (10) days for **each** violation of selling alcoholic beverages to **each** of the six individuals, for a **total suspension of sixty (60) days.**

This Initial Order entered this 5 day of January, 2012

_____
Thomas G. Stovall
Administrative Judge

Filed in the Administrative Procedures Division, Office of the Secretary of State, this 5 day of January, 2012

_____
Thomas G. Stovall, Director
Administrative Procedures Division