



THE STATE
of **ALASKA**
GOVERNOR MIKE DUNLEAVY

**Department of Commerce,
Community, and Economic
Development**

ALCOHOL AND MARIJUANA CONTROL OFFICE
550 West 7th Avenue, Suite 1600
Anchorage, AK 99501
Main: 907.269.0350

MEMORANDUM

TO: The Alcohol Beverage Control Board
DATE: January 18, 2022
FROM: Glen Klinkhart, Director
RE: Pho Lena East, LLC License #5050 – Accusation and Fine

INFORMATION:

At the November 2021 board meeting, the ABC board was presented with a Notice of Violation (NOV) against Pho Lena East, LLC (lic# 5050) reference AMC case # 21-1027. Pho Lena is a restaurant eating place licensee located in Anchorage, Alaska. ABC board voted unanimously to have the Director and AMCO Enforcement follow-up with a formal accusation against the licensee for the alleged violations.

AMCO enforcement and the Director drafted an accusation (see attached) using the fine schedule proposal from ongoing Title 4 re-write legislation recommendations and a fine total of \$950 was levied. The accusation was then served upon the licensee as well as a copy of a Notice of Defense form for the licensee to consider. The licensee indicated they were willing to accept the accusation and wished to pay the fine (\$950). On 12-8-2021 the licensee contacted the AMCO offices and paid the fine of \$950.

STAFF RECOMMENDATION:

The AMCO Director and the licensee request the board consider the accusation, accept the levied fine, and affirm it as presented.

A handwritten signature in black ink, appearing to read "Glen Klinkhart".

Glen Klinkhart
Director
Alcohol & Marijuana Control Board
550 W 7th Ave #1600, Anchorage, AK 99501
Office (907) 269-0350

STATE OF ALASKA

ALCOHOL CONTROL BOARD

In the matter of

Pho Lena East, LLC)
 Biphonh Morisath-Luce, 100% Owner)
 DBA Pho Lena East)
 360 Boniface Parkway, A22)
 Anchorage, AK 99504)
 Restaurant / Eating Place)
 License #5050)
Respondent)
)
)

Accusation No. AM21-1027

ACCUSATION(S) :

Petitioner, Glen Klinkhart, Director of the Alcohol Control Board, acting in his official capacity and upon information and belief, alleges as follows:

INFORMATION/INVESTIGATION

1. Respondent, Pho Lena East, LLC, DBA Pho Lena East, is the holder of a Restaurant/Eating Place License, #5050, located at 360 Boniface Parkway, A22, Anchorage, Alaska. According to AMCO records, **Pho Lena East, LLC** is owned %100 by Biphonh Morisath-Luce.
2. On 9-15-21, AMCO Investigators received an anonymous complaint about Pho Lena East selling them what tasted like an alcoholic margarita beverage.
3. Complainant stated on or about 9-11-21, his daughter had gone into the establishment to pick up a to go order which included a Lime Aid non-alcoholic beverage.
 - (a) When the complainant's daughter tasted the beverage; she thought something was not right and had her parents taste the beverage.

(b) When the complainant and the wife tried the beverage, both stated it tasted like an alcoholic margarita beverage.

(c) Complainant then called the establishment and spoke with owner Biphonh Marisath-Luce. Complainant stated he told the owner about his concerns and she replied something to the effect that maybe the product had begun to ferment and that's why it tasted like it did. The owner later provided the complainant's daughter with new beverages.

3. On 9-15-21, Inv. J. Hamilton and Investigator Supervisor J. Hoelscher went to Pho Lena East and contacted Biphonh Marisath-Luce.

(a) When confronted about the complaint received, Biphonh Marisath-Luce stated they would not do anything like that and again, re-iterated the product may have been old and began to ferment. She also stated there were no alcoholic beverages on the premises.

(b) Inv. Hamilton asked if she would allow him to look behind the counter to which she consented to.

(c) Inv. Hamilton opened an under the counter cabinet first and discovered two tequila bottles. One appeared to be a 1 ltr bottle of Hornito's tequila and the other a 750 ml bottle of Patron tequila. Both were partially empty. (1 count of AS 04.16.045: Obligation to enforce restrictions in licensed premises)

(d) Biphonh Marisath-Luce said she had forgotten about those bottles and that they were from a private party she had at the establishment on May 5th, 2021, Cinco de Mayo. Stated a lawyer friend had brought the tequila for the party. She did not name the lawyer. (2 count AS 04.16.120(b): Removal or introduction of alcoholic beverages and 1 count of AS 04.11.100(a): Restaurant or eating place license)

Prior History

A review of the Alcohol and Marijuana Office records shows the respondent, Pho Lena East, LLC, DBA: Pho Lena East and owned 100% by Biphonh Marisath-Luce, that there are no Notices of Violation.

Requests of the Alcohol Beverage Control Board

Wherefore, in accordance with:

AS 04.11.100(a): Restaurant eating place license (1 Count)

Count 1: \$100

AS 04.16.045: Obligation to enforce restrictions in licensed premises
(1 Count)

Count 2: \$250

AS 04.16.120(b): Removal or introduction of alcoholic beverages (2
Count)

Count 3: \$100

AS 04.16.150: Licensee responsible for violations (1 Count)

Count 4: \$250.00

AS 04.21.030(2): Responsibility of licensee, agents, and employees (1
Count)

Count 5: \$250.00

Total Fines: \$950.00

The petitioner respectfully requests,

1. That the Marijuana Control Board find that the respondent, Pho Lena East, LLC, DBA Pho Lena East, owned 100% by Biphonh Marisath-Luce, is the holder of a Restaurant/Eating Place License, #5050, committed the acts alleged above.

2. The affiant requests the Alcohol Control Board fine the respondent, Pho Lena East, LLC, DBA Pho Lena East, owned 100% by Biphonh Marisath-Luce, is the holder of a Restaurant/Eating Place License, #5050, a total of \$950.00.

Dated at Anchorage, Alaska, this 2nd Day of December 2021.



Glen Klinkhart, Director
State of Alaska
Alcohol Beverage Control Board
November 17th, 2021



Notice of Violation

(3AAC 304.525)

This form, all information provided and responses are public documents per Alaska Public Records ACT AS 40.25

Date: 9/16/21

License #/Type: 5050 Restaurant / Eating Place

Licensee: Pho Lena East, LLC

Address: 360 Boniface Parkway, A22-A-23, Anchorage, AK

DBA: Pho Lena East

AMCO Case #: 21-1027

This is a notice to you as licensee that an alleged violation has occurred. If the Alcoholic Beverage Control Board decides to act against your license, under the provisions of AS 44.62.330 - AS 44.62.630 (Administrative Procedures Act) you will receive an Accusation and Notice of your right to an Administrative Hearing.

Note: This is not an accusation or a criminal complaint.

On 9-15-21 AMCO received a complaint regarding an individual receiving a to go Lime-aid beverage order which tasted remarkably like a margarita. Licensee Morisath-Luce recalled the incident and stated she and her staff would never do such a thing. She stated they didn't even have hard alcohol on the premises; it was possible that the beverage had been sitting around a couple a days and may have begun to ferment. Licensee Morisath-Luce consented to a search behind the counter and in the first cabinet looked into, two opened and partially used bottles of tequila were found. When asked if she cooked with the alcohol, she said no. Licensee Morisath-Luce stated one of her attorney patrons had brought the tequila in for a private party on May 5th, 2021. She stated she would dispose of the rest of the tequila.

Your attention is referred to AS04.11.100(a): Restaurant or eating place which reads, "A restaurant or eating place license authorizes a restaurant or eating place to sell beer and wine for consumption only on the licensed premises". AS04.16.045: Obligation to enforce restrictions in licensed premises which reads "a licensee, an agent, or employee may not permit the consumption of alcoholic beverages by any person within licensed premises unless it is permitted by the license. AS04.16.120(b): Removal or introduction of alcoholic beverages which reads in part, "Except as provided in this subsection, a person may not bring an alcoholic beverage into licensed premises for use or consumption by oneself or another person on the premises unless that person is a licensee, an agent, employee, or common carrier in the regular course of employment. AS04.16.150: Licensee responsible for violations and AS04.21.030: Responsibilities of licensee, agents, and employees.

You are directed to respond in writing to this Notice of Violation within 10 days of receipt to explain what action you have taken to prevent a re-occurrence of this violation. FAILURE TO RESPOND TO THIS NOTICE OF VIOLATION WITHIN 10 DAYS WILL RESULT IN YOUR APPEARANCE, EITHER IN PERSON OR TELEPHONICALLY, BEFORE THE ABC BOARD AT THEIR NEXT REGULARLY SCHEDULED BOARD MEETING.

***Please send your response to the address below and include your alcohol license number in your response.**

3 AAC 304.525 (B) provides that upon receipt of a Notice of Violation, a licensee may request to appear before the Director and be heard regarding the Notice of Violation. The request must be made within ten days after receipt of the Notice and the Director must grant an appearance within ten days after receipt of a request. A Licensee shall respond, either orally or in writing, to the Notice.

Alcohol & Marijuana Control Office

ATTN: Enforcement

550 W. 7th Ave, Suite 1600

Anchorage, Alaska 99501

amco.enforcement@alaska.gov

Issuing Investigator: J. Hamilton

Received by:

SIGNATURE:



SIGNATURE:

Delivered VIA: Mail

Date:

Pho Lena East LLC
360 Boniface Pkwy
Anchorage, AK 99504

Re: Alcohol & Marijuana Control Office
AMCO Case # 21-1027

To Whom it May Concern,

I, Biphonh Morisath-Luce responding to Notice of Violation issued to Pho Lena East LLC DBA Pho Lena East. I have checked with all my employees and can assure that no alcohol was added to the limeade. Our fresh squeezed limeade is one of the popular drinks on the menu. We have been doing business serving our community for over ten years. This complaint is very shocking and upsetting.

My waitress told me a customer called upset and was yelling at her. The customer said we put alcohol in the limeade and his young daughter drank it. We asked them to bring back the drink and apologized that it didn't taste right. We assured him there was no alcohol added to the beverage. The young girl came in with cups that were half empty. We made a new pitcher of the limeade and asked if she would like to get them replaced or refunded. She wanted new limeades and also brought a third cup. If there was any alcohol in those drinks, I believe they may have been added after they left our premises.

A couple of half empty alcoholic bottles were found in the back cabinet of our restaurant. I apologized this was my mistake. We had a family/friend gathering for my dad's 75th birthday. This was after our business closed for the night. A friend brought alcohol over to make margaritas since it was also Cinco De Mayo.

I had thought the alcohol was already removed. I did not know that I couldn't have had alcohol on site even after hours. All bottles have been removed and this will never happen again.

We are a small family-owned business and have been serving our community going twelve years. Our customers have become like family and friends to us. We would never do such a thing that would not only harm our customers, but also our license to do business.

Biphonh Morisath-Luce
Pho Lena East LLC
(907)244-1447

ALASKA DEPARTMENT OF COMMERCE, COMMUNITY, AND
ECONOMIC DEVELOPMENT
ALCOHOL AND MARIJUANA CONTROL OFFICE

In the matter of

Pho Lena East, LLC)
Biponh Morisath-Luce, 100% Owner)
DBA Pho Lena East)
360 Boniface Parkway, A22)
Anchorage, AK 99504)
Restaurant / Eating Place)
License #5050)
Respondent)

AMCO
DEC 9 2021

Accusation No. AM21-1027

NOTICE OF DEFENSE

The Respondent, pursuant to AS 44.62.390, hereby gives Notice of Defense in this proceeding. A hearing on the matters set forth in the Decision is hereby requested.

I. Respondent Initiating Request

not contesting / paid the fine

Date: 12/8/21 Respondent's Name (printed): Biponh Morisath-Luce

Respondent's Signature: [Signature]

Mailing Address: 360 Boniface Pkwy #A22

Anchorage City AK State 99504 Zip Code

Phone Number: (907) 244-1447

OR

II: Attorney Representing Respondent (Note: An attorney is not required for this proceeding.)

Name of Attorney Representing Respondent: _____

Mailing Address: _____

City _____ State _____ Zip Code _____

Phone Number: _____

Date: _____ Signature: _____

NOTE: This Notice of Defense/Request for Hearing must be signed by or on behalf of Respondent, must set forth Respondent's current mailing address, and must be filed **within 15 days** after the enclosed Decision was mailed or delivered to the Respondent, or within 15 days of the informal conference if one is requested. It shall be filed accordingly:

Administrative Officer
Alcohol and Marijuana Control Office
550 West 7th Ave, Suite 1600, Anchorage, AK 99501

Your receipt from AMCO AK DEPT OF COMMERCE

AMCO AK DEPT OF COMMERCE (via Clover) <app@clover.com>

Wed 12/8/2021 8:41 AM

To: pho907@hotmail.com <pho907@hotmail.com>

AMCO

DEC 9 2021



AMCO AK DEPT OF COMMERCE

550W 7TH AVE STE 1600, ANCHORAGE, AK 99501

[tel://+1 907-465-2593]+1 907-465-2593

December 08, 2021 • 8:39 AM

\$950.00

full transaction receipt

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