

STUDENT RIGHTS ADVOCATE

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Bars, Taverns, Clubs and Restaurants May Be Liable For Damages For Serving Underage Adults

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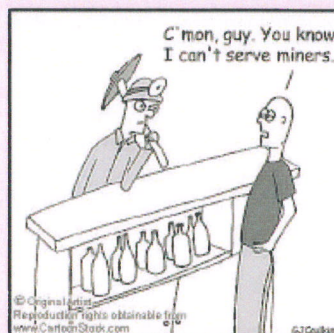
In January 2007, the Massachusetts Supreme Judicial Court, in a unanimous opinion, decided the case of *Nunez v. Carrabba's Italian Grill, Inc. and The Palace*, 448 Mass. 170, (2007). The Court answered the following question: What is the duty of care that a licensed commercial establishment selling alcoholic beverages owes to an adult, but underage, patron.

The underlying facts in the *Nunez* case occurred at approximately 7 P.M. on May 10, 2002. The plaintiff, who was eighteen years old at the time, went to Carrabba's Italian Grill, Inc., a restaurant in Peabody, with a friend. During the next two hours, the plaintiff ate dinner and drank six alcoholic beverages, which were served to him by a bartender who had known the plaintiff since high school. Because the plaintiff was friendly with the staff at Carrabba's, he was not asked to pay for his drinks or dinner.

Around 9:30 P.M., the plaintiff left Carrabba's and drove home. He did not recall having any difficulty walking or driving, but the plaintiff vomited after he arrived home. Nonetheless, after taking a shower, the plaintiff left his house to go to the Palace, a nightclub in Saugus, arriving around 11:30 P.M.. The plaintiff had been to the Palace on more than thirty prior occasions, and on the first several occasions, he had presented a false identification to the bouncer to gain entry; however, once he became familiar to the employees, he no longer did so. Thus, when the plaintiff entered the Palace on May 10, 2002, he greeted the bouncer and proceeded inside without showing his false identification, and he was given a plastic bracelet that the nightclub gave to customers who were at least twenty-one years old and could legally drink alcoholic beverages. While at the nightclub that evening, the plaintiff con-

sumed one or two alcoholic beverages that were served to him by the bartender.

Sometime between midnight and 1 A.M., the plaintiff drove home. As the plaintiff's vehicle approached an intersection in Malden, he saw a green traffic light and accelerated to fifty-five or sixty miles an hour to get through the light before it turned red. When the plaintiff entered the intersection, his vehicle was struck by another car that had failed to stop at the red light for the opposite direction. The impact caused the plaintiff's vehicle to spin and then roll over, the plaintiff was thrown out of the vehicle because he had failed to fasten his seat belt, and he sustained serious injuries. Tests performed when the plaintiff was admitted to a hospital indicated a blood alcohol level of .13, considerably above the allowable limit of .08, as set forth in G. L. c. 90, § 24 (1) (e). An accident reconstruction team of the State police concluded that, at the time of impact, the plaintiff had been traveling at forty seven miles per hour, and the vehicle that hit him had been traveling at eleven miles per hour. The speed limit in the vicinity of the intersection was thirty miles per hour. The report from the State police concluded that, although the plaintiff was not the cause of the accident, his excessive speed at the time of the collision may have contributed to the seriousness of his injuries. (continued on pg.3)



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