

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

MOTI 1 INC. D/B/A LIT
41 BOLTWOOD WALK
AMHERST, MA 01002
LICENSE#: 002400109
VIOLATION DATE: 12/04/2015
HEARD: 03/29/2016

Moti 1, Inc. d/b/a Lit (the "Licensee") holds an alcoholic beverages license issued pursuant to M.G.L. c. 138, §12. The Alcoholic Beverages Control Commission (the "Commission") held a hearing on Tuesday, March 29, 2016, regarding alleged violations of:

- 1) M.G.L. c. 138, §34 – Sale or delivery of an alcoholic beverage to a person under twenty-one (21) years of age (1 count); and
- 2) 204 CMR 2.01 (10) – Failure to post License.

The above-captioned occurred on December 4, 2015, according to Investigator Egan-Bailey's report.

The following document is in evidence as an exhibit:

1. Investigator Egan-Bailey's Investigative Report dated December 4, 2015.

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

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

FACTS

1. On Friday, December 4, 2015, at approximately 11:55 p.m., Investigators Kujawski and Egan-Bailey ("Investigators") investigated the business operation of Moti 1 Inc. D/B/A Lit to determine the manner in which their business was being conducted and to investigate a complaint filed with this Commission.
2. Investigators entered the licensed premises and observed a youthful appearing female at the bar, speaking with a female bartender. Investigators observed the sale and delivery of an alcoholic beverage, Kettle One vodka and pineapple juice, to the youthful female.

3. Investigators approached the youthful female patron, identified themselves, and asked to see proof of age.
4. The underage female stated her identification was in her coat, which was in the coat room. Investigators accompanied her to the coat room. The underage female stated that she did not have her driver's license, only her UMASS student identification.
5. Underage female, actual date of birth 10/04/1995 (age 20), stated that she was not asked for identification when she entered the establishment.
6. Investigators made certain that the underage female was provided with safe transport home.
7. Investigators spoke to the manager on duty, Renald Cuko, and asked to review the posted liquor license. They also asked to speak with the female bartender on duty.
8. Investigators spoke to female bartender, Katelyn Masaitis, who stated that she did not ask the underage patron for identification, and that identifications were checked by security at the door.
9. After a period of time Mr. Cuko informed Investigators that he couldn't locate the liquor license. Mr. Cuko stated that he had contacted the owner, Reza Rahmani, who said the cleaning company must have removed the posted liquor license from the wall this morning.
10. Investigators informed Mr. Cuko of the violations and that a report would be filed with the Chief Investigator for further action.

DISCUSSION

Licenses to sell alcoholic beverages are a special privilege subject to public regulation and control, Connolly v. Alcoholic Beverages Control Comm'n, 334 Mass. 613, 619 (1956), for which States have especially wide latitude pursuant to the Twenty-First Amendment to the United States Constitution. Opinion of the Justices, 368 Mass. 857, 861 (1975). The procedure for the issuance of licenses and required conduct of licensees who sell alcoholic beverages is set out in M.G.L. c. 138.

M.G.L. c. 138 gives the Commission the authority to grant, revoke and suspend licenses. Chapter 138 was "enacted ... to serve the public need and ... to protect the common good." M.G.L. c. 138, §23. "[T]he purpose of discipline is not retribution, but the protection of the public." Arthurs v. Bd. of Registration in Medicine, 383 Mass. 299, 317 (1981) (emphasis supplied). The Commission is given "comprehensive powers of supervision over licensees." Connolly, 334 Mass. at 617.

The law is well-settled that the responsibility of the licensee is to exercise sufficiently close supervision so that there is compliance with the law on the premises. A vendor who sells alcohol is "bound at his own peril to keep within the condition of his license." Commonwealth v. Gould, 158 Mass. 499, 507 (1893); Burlington Package Liquors, Inc. v. Alcoholic Beverages Control Comm'n, 7 Mass. App. Ct. 186, 190 (1979). It is, thus, quite possible for a licensee to offend the regulatory scheme without scienter. Rico's of the Berkshires, Inc. v. Alcoholic Beverages Control Comm'n, 19 Mass. App. Ct. 1026, 1027 (1985).

General Laws chapter 138, §34 provides, in part, that "[w]hoever makes a sale or delivery of any alcoholic beverage or alcohol to any person under 21 years of age, either for his own use or for the use of his parent or any other person, ... shall be punished." The Appeals Court has stated that "the purpose of the statute [is] to protect the welfare of children from the danger of alcohol," See Tobin v. Norwood Country Club, Inc., 422 Mass. 126, 133-134 (1996); Fran's Lunch, Inc. v. Alcoholic Beverages Control Comm'n, 45 Mass.App.Ct. 663, 664 (1998).

In this matter, the evidence presented to the Commission was an investigator's eyewitness testimony of the sale and delivery of an alcoholic beverage to a minor inside the premises. The Commission was also presented with evidence that the minor was not in possession of an identification which indicated proof of legal drinking age. The underage patron was in possession of her college identification. However, she was not asked to present any identification for proof of legal age before she was served an alcoholic beverage. The Licensee's bartender told Investigators that she did not ask the underage patron for identification before she served the underage patron alcohol because identifications were being checked by security at the door. However, Investigators determined that the minor patron was also not asked for any identification when she entered the establishment.

General Laws chapter 138, §34B provides, in pertinent part, that "[a]ny licensee, or agent or employee thereof, under this chapter, who reasonably relies on such a liquor purchase identification card, or an identification card issued under section 8E of chapter 90, or motor vehicle license issued pursuant to said section eight, for proof of a person's identity and age shall be presumed to have exercised due care in making such delivery or sale of alcohol or alcoholic beverages to a person under twenty-one years of age. Such presumption shall be rebuttable."

M.G.L. c. 138, §34B offers protection from license revocation or criminal penalties to license holders who reasonably rely on one (1) of four (4) pieces of identification specified in the statute, including a valid Massachusetts driver's license. The Commission has established that to obtain the protection accorded to a license holder under §34B, a license holder must obtain proof of age prior to the purchase of alcoholic beverages and also must obtain proof of age on the day of the alleged sale to a minor. The Appeals Court has reviewed this Commission interpretation and upheld it as reasonable. Howard Johnson Company v. Alcoholic Beverages Control Comm'n, 24 Mass. App. Ct. 487 (1987); In Re: Alan C. Dinh d/b/a Juliano's Beer & Wine (ABCC Decision April 8, 2005).

The Commission finds that in this matter, the Licensee did not ask the underage patron to produce **any** identification, neither at the front door prior to her entry, nor at the bar prior to service. The Commission finds that the Licensee committed the violation of sale of an alcoholic beverage to a minor and advises the Licensee that it is responsible for determining proof of legal age **prior** to the service of alcoholic beverages at its licensed premises.

The Commission also finds that the Licensee did not post its alcoholic beverages license as required by law.

CONCLUSION

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

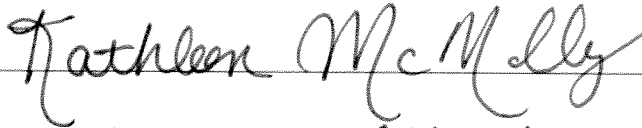
- 1) M.G.L. c. 138, §34 – Sale or delivery of an alcoholic beverage to a person under twenty-one (21) years of age (1 count); and
- 2) 204 CMR 2.01 (10) – Failure to post License.

On the first violation M.G.L. c. 138, §34, the Commission **suspends the license for three (3) days of which 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.**

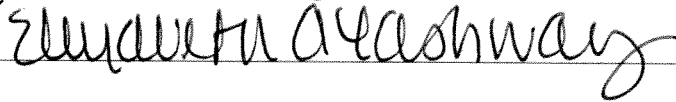
On the second violation 204 CMR 2.01 (10), the Commission **issues a WARNING.**

ALCOHOLIC BEVERAGES CONTROL COMMISSION

Kathleen McNally, Commissioner



Elizabeth A. Lashway, Commissioner



Dated: April 19, 2016

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.

<p>This document is important and should be translated immediately. Este documento es importante y debe ser traducido inmediatamente. Este documento é importante e deve ser traduzido imediatamente. Ce document est important et devrait être traduit immédiatement. Questo documento è importante e dovrebbe essere tradotto immediatamente. Το έγγραφο αυτό είναι σημαντικό και θα πρέπει να μεταφραστούν αμέσως. 这份文件是重要的，应立即进行翻译。</p>

cc: Local Licensing Board
Frederick G. Mahony, Chief Investigator
Rose Bailey, Investigator
Jan Kujawski, Investigator
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Administration
File