



*Commonwealth of Massachusetts
Alcoholic Beverages Control Commission
95 Fourth Street, Suite 3
Chelsea, Massachusetts 02150-2358*

Jean M. Lorizio, Esq.
Chairman

NOTICE OF SUSPENSION

October 8, 2024

**SIMRA LLC D/B/A AMHERST MARKET
259 TRIANGLE STREET
AMHERST, MA 01002
LICENSE#: 89833-PK-0024
VIOLATION DATE: 4/28/2023
HEARD: 12/12/2023**

After a hearing on December 12, 2023, the Commission finds Simra LLC d/b/a Amherst Market violated M.G.L. Ch. 138, § 34 – Sale or delivery of an alcoholic beverage to a person under twenty-one (21) years of age (2 counts). The Commission **suspends the license for a period of three (3) days to be served.**

The suspension shall commence on Monday, December 2, 2024, and terminate on Wednesday, December 4, 2024. The license will be delivered to the Local Licensing Board or its designee on Monday, December 2, 2024, at 9:00 A.M. It will be returned to the licensee on December 5, 2024.

You are advised that pursuant to the provisions of M.G.L. c.138 §23, you may petition the Commission to accept an offer in compromise in lieu of suspension within twenty (20) calendar days following such notice of such suspension. If accepted, you may pay a fine using the enclosed form which must be signed by the Licensee and a Massachusetts Licensed Accountant.

You are advised that you have the right to appeal this decision under M.G.L. c. 30A to Superior Court within thirty (30) days upon receipt of this notice.

ALCOHOLIC BEVERAGES CONTROL COMMISSION

Jean M. Lorizio
Chairman

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2023-000163-ad-enf

cc: Local Licensing Board
Frederick G. Mahony, Chief Investigator
Brian Gould, Investigator
John David, Investigator
Sean Fleming, Investigator
Nicholas Velez, Investigator
John E. Pearson, Esq.
Administration, File



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DECISION

SIMRA LLC D/B/A AMHERST MARKET
259 TRIANGLE STREET
AMHERST, MA 01002
LICENSE#: 89833-PK-0024
VIOLATION DATE: 4/28/2023
HEARD: 12/12/2023

Simra LLC d/b/a Amherst Market (the "Licensee") holds an alcohol license issued pursuant to M.G.L. c. 138, § 15. The Alcoholic Beverages Control Commission ("ABCC" or "Commission") held a remote hearing via Microsoft Teams on Tuesday, December 12, 2023, regarding alleged violations of M.G.L. Ch. 138, § 34 – Sale or delivery of an alcoholic beverage to a person under twenty-one (21) years of age (2 counts) which occurred April 28, 2023, according to Investigator Gould's Report.

The following documents are in evidence:

1. Investigator Gould's Violation Report;
2. ABCC Licensing Authority Certification, Transfer of License Approved 8/17/2020;
3. ABCC Decision, 11/7/2023;
4. Photographs (2) of Confiscated Fraudulent Driver's licenses.

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

FINDINGS OF FACT

1. On Friday, April 28, 2023, Investigators Velez, David, Fleming and Gould ("Investigators") inspected the business operation of Simra LLC d/b/a Amherst Market ("Licensee" or "Amherst Market") to determine the way its business was being conducted. (Testimony, Exhibit 1)
2. While outside the licensed premises, at approximately 8:40 p.m., Investigators observed a youthful appearing male individual enter Amherst Market and exit shortly thereafter in possession of alcoholic beverages. Investigators identified themselves and requested proof of legal age to purchase and/or possess alcoholic beverages. Id.

3. Underage #1, actual date of birth 6/29/2003 (age 20), provided to Investigators a fraudulent Connecticut driver's license bearing his name but a different birth date. He then provided his Massachusetts driver's license. (Testimony, Exhibits 1, 4)
4. Underage #1 was in possession of one 6-pack of Stella Artois beer, one case of White Claw Hard Seltzer, one can of Coors Light beer, and one can of Heineken beer. Investigators confiscated the alcoholic beverages. (Testimony, Exhibit 1)
5. At approximately 9:00 p.m., Investigators observed a youthful appearing male individual enter Amherst Market and exit shortly thereafter in possession of alcoholic beverages. Investigators identified themselves and requested proof of legal age to purchase and/or possess alcoholic beverages. Id.
6. Underage #2, actual date of birth 3/02/2004 (age 20), provided to Investigators a fraudulent Vermont driver's license bearing his name but a different birth date. He then provided his Massachusetts driver's license. (Testimony, Exhibits 1, 4)
7. Underage #2 was in possession of one case of Bud Light beer and one case of White Claw Hard Seltzer. Investigators confiscated the alcoholic beverages. (Testimony, Exhibit 1)
8. At approximately 9:15 p.m., Investigators entered the licensed premises and spoke to a male employee, advised him of the violations, and that a report would be submitted to the Chief Investigator for further review. Id.
9. Atif Tasneem, Licensee, appeared at the Commission hearing and testified he purchased an upgraded identification scanner which is updated monthly. Employees have been instructed to request identification from all patrons and to scan each identification. (Testimony)
10. The Licensee has held a license under M.G.L. c. 138, §15 since 2020. (Exhibits 2, 3)

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 Massachusetts General Laws, Chapter 138.

Chapter 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). 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).

The Licensee is charged with a violation of M.G.L. c 138, § 34 - Sale or delivery of an alcoholic beverage to a person under twenty-one (21) years of age. M.G.L. c. 138, § 34 states, in pertinent part, that; "[w]hoever makes a sale or delivery of any alcoholic beverage or alcohol to any person under twenty-one years of age ... shall be punished by a fine of not more than \$2,000 or by imprisonment for not more than one year or both." M.G.L. c. 138, § 34.

In this matter, direct evidence was presented through the investigator's testimony as to his observations of two individuals, later determined to be under the age of twenty-one, entering the licensed premises and shortly thereafter exiting the establishment in possession of alcoholic beverages.

The Commission is persuaded by the evidence that Simra LLC d/b/a Amherst Market sold and/or delivered alcoholic beverages to persons who were under twenty-one years of age. The Commission finds that the Licensee committed a violation of M.G.L. c. 138, § 34 - Sale or delivery of an alcoholic beverage to a person under twenty-one (21) years of age (2 counts).

CONCLUSION

Based on the evidence, the Commission finds the Licensee violated M.G.L. Ch. 138, § 34 – Sale or delivery of an alcoholic beverage to a person under twenty-one (21) years of age (2 counts). Therefore, the Commission **suspends the license for a period of 3 days.**

ALCOHOLIC BEVERAGES CONTROL COMMISSION

Crystal Matthews, Commissioner

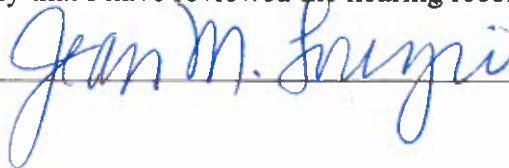


Deborah Baglio, Commissioner



I, the undersigned, hereby certify that I have reviewed the hearing record.

Jean M. Lorizio, Chairman



Dated: October 8, 2024

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.

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