



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

Jean M. Lorizio, Esq.
Chairman

DECISION

**SIMRA LLC D/B/A AMHERST MARKET
259 TRIANGLE STREET
AMHERST, MA 01002
LICENSE#: 89833-PK-0024
VIOLATION DATE: 9/22/2023
HEARD: 12/12/2023**

Simra LLC d/b/a Amherst Market ("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 (5 counts) which occurred on September 22, 2023, according to Investigator Velez's Report.

The following documents are in evidence:

1. Investigator Velez's Violation Report;
2. ABCC Licensing Authority Certification, Transfer of License Approved 8/17/2020;
3. ABCC Decision, 11/7/2023;
4. Photograph of Fraudulent Identifications Confiscated.

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

FINDINGS OF FACT

1. On Friday, September 22, 2023, Investigators Keefe, Watson, Terasconi and Velez ("Investigators") conducted surveillance of Simra LLC d/b/a Amherst Market ("Licensee" or "Amherst Market"). (Exhibit 1)
2. Investigator Keefe appeared at the Commission hearing and read the report of Investigator Velez.
3. Atif Tasneem, Licensee and Manager of Record, appeared at the Commission hearing.
4. The Licensee has held a license under M.G.L. c. 138, §15 since 2020 with one prior violation. (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.

Every violation the Commission finds must be based on substantial evidence. See Embers of Salisbury, Inc. v. Alcoholic Beverages Control Comm'n, 401 Mass. 526, 528 (1988). “Substantial evidence” is “such evidence as a reasonable mind might accept as adequate to support a conclusion.” Id. Evidence from which a rational mind might draw the desired inference is not enough. See Blue Cross and Blue Shield of Mass. Inc., v. Comm'r of Ins., 420 Mass 707, 710 (1995). Disbelief of any particular evidence does not constitute substantial evidence to the contrary. New Boston Garden Corp. v. Bd. of Assessor of Boston, 383 Mass. 456, 467 (1981).

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 (5 counts). 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.

Investigator Keefe appeared at the Commission hearing and simply read the report of Investigator Velez. He did not offer corroborating testimony or a first-hand account of the events of September 23, 2023. The information provided to the Commission constitutes hearsay.

A decision of a board that rests entirely on hearsay evidence cannot be sustained. See Moran v. School Committee of Littleton, 317 Mass. 591, 596-597 (1945) (citations omitted); Braintree Brew House LLC d/b/a The Brew House (ABCC Decision March 27, 2013) (violation of § 69 disapproved where all of the evidence presented to the Commission constituted hearsay). The Investigative and Enforcement Division has the burden of proving that a violation occurred. In the present case, no direct evidence was offered. As such, the Commission finds no violation of M.G.L. c. 138, § 34.

CONCLUSION

Based on the evidence, the Commission finds NO VIOLATION of M.G.L. Ch. 138, § 34 – Sale or delivery of an alcoholic beverage to a person under twenty-one (21) years of age (5 counts) occurred.

ALCOHOLIC BEVERAGES CONTROL COMMISSION

Crystal Matthews, Commissioner

Crystal Matthews

Deborah Baglio, Commissioner

Deborah A Baglio

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

Jean M. Lorizio, Chairman

Jean M. Lorizio

Dated: January 21, 2025

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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2023-000247-ad-enf

cc: Local Licensing Board
Frederick G. Mahony, Chief Investigator
Dennis Keefe, Investigator
Nicole Terasconi, Investigator
Nicholas Velez, Investigator
John E. Pearson, Esq.
Administration, File