

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

Jean M. Lorizio, Esq.
Chairman

DECISION

**A-1 NIVNIVA CORP. D/B/A A-1 MARKET
85 EAST MAIN STREET
AVON, MA 02322
LICENSE#: 00009-PK-0058
VIOLATION DATE: 5/07/2021
HEARD: 11/16/2021**

A-1 Nivniva Corp. d/b/a A-1 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, November 16, 2021, regarding an alleged violation of M.G.L. Ch. 138, § 34 Sale or Delivery of an alcoholic beverage to a person under twenty-one years of age (1 count). The above-mentioned occurred on May 7, 2021, according to Investigator Teehan's Report.

The following documents are in evidence:

1. Investigator Teehan's Report;
 2. ABCC Form 43, License Transfer Approval, 6/29/2011;
 3. ABCC Decision, 7/24/2014;
 4. ABCC Decision, 6/15/2016.
- A. Photograph of Fraudulent Identification;
B. TIPS Certificates for Employees.

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

FINDINGS OF FACT

1. On Friday, May 7, 2021, Investigators Kujawski, and Teehan ("Investigators") inspected the business operation of A-1 Nivniva Corp. d/b/a A-1 Market. (Testimony, Exhibit 1)
2. At approximately 6:41 p.m. while outside the licensed premises, Investigators observed a youthful appearing individual exit the store in possession of two 30-packs of Bud Light, one 12-pack of Truly, and three cans of Twisted Tea. Investigators approached, identified themselves and asked the individual's age. Id.
3. Underage #1, actual date of birth 1/21/2004 (age 17), stated that she was not asked for identification when she purchased the alcoholic beverages. Id.

4. Investigators entered the licensed premises and spoke to the clerk on duty, Akshitkumar "Andy" Patel. Mr. Patel stated that Underage #1 had provided an identification to purchase the alcoholic beverages. Id.
5. Investigators observed that Underage #1 was clearly youthful in appearance. Based on their training and experience, Investigators determined that a reasonable person would be able to determine that Underage #1 was under 21-years of age. Id.
6. Investigators informed Mr. Patel of the violation and that a report would be filed with the Chief Investigator for further action. Id.
7. Pinakin Patel, Licensee and Manager of Record, appeared at the Commission hearing with Andy Patel. Andy Patel testified that he asks everyone for identification and does not sell to anyone without identification. He testified that Underage #1 presented an identification on the night in question. (Testimony, Exhibit A)
8. The Licensee has held a license under M.G.L. c. 138, § 15 since 2011 with two prior violations. (Exhibits 3, 4)

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 Licensee is charged with a violation of 204 CMR 2.05 (2) - Permitting an illegality on the licensed premises, to wit: chapter 138, § 34 - Sale or delivery of an alcoholic beverage to a person under twenty-one (21) years of age. A Commission regulation promulgated at 204 CMR 2.05(2) provides in pertinent part, that "[n]o licensee for the sale of alcoholic beverages shall permit any disorder, disturbance or illegality of any kind to the place in or on the licensed premises. The licensee shall be responsible therefore, whether present or not." The law is well-settled that 'under the regulation, [204 C.M.R. 2.05(2)] 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." Burlington Package Liquors, Inc. v. Alcoholic Beverages Control Comm'n, 11 Mass. App. Ct. 785, 788 (1981); Commonwealth v. Gould, 158 Mass. 499, 507 (1893). It is, thus, quite possible for a licensee to offend the regulatory scheme without scienter. The licensee is responsible for illegalities that occur on the licensed premises. Rico's of the Berkshires, Inc. v. Alcoholic Beverages Control Comm'n, 19 Mass. App. Ct. 1026, 1027 (1985)

The Commission heard testimony as to the Investigator observing the underage patron exiting the licensed premises with alcoholic beverages, the underage patron admitting to Investigators she purchased the alcoholic beverages in the licensed premises and the Licensee's employee testifying and confirming he sold the alcoholic beverages to the underage patron. The Licensee argues his employee reasonably relied on the Massachusetts Driver's License presented by the underage patron. (Testimony)

Massachusetts General Laws, Chapter 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. Massachusetts General Laws, Chapter 138, § 34B offers protection from license suspension or revocation or criminal penalties to license holders who reasonably rely on one of the types of identification specified in the statute, including a valid Massachusetts driver's license, Massachusetts liquor identification card, Massachusetts identification card, a United States passport, or a passport issued by the government – recognized by the United States – of a foreign country, a passport card for a U.S. passport, or a valid U.S. military identification card. See M.G.L. c. 138, § 34B. This defense does not apply here as the Licensee relied on a fraudulent identification. (Exhibit A)

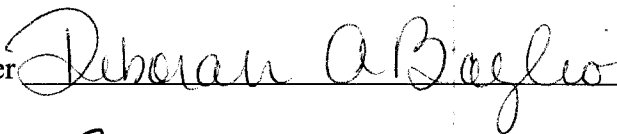
The Commission is persuaded by the evidence that A-1 Nivniva Corp. d/b/a A-1 Market sold alcoholic beverages to a person who was under twenty-one years of age. The Commission finds that the Licensee committed a violation of 204 CMR 2.05 (2) - Permitting an illegality on the licensed premises, to wit: 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).

CONCLUSION

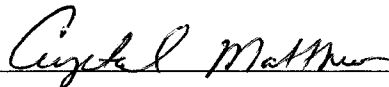
Based on the evidence, the Commission finds the Licensee violated M.G.L. Ch. 138, § 34 Sale or Delivery of an alcoholic beverage to a person under twenty-one years of age (1 count). Therefore, the Commission **suspends the license for a period of three (3) days which is hereby deemed served.**

ALCOHOLIC BEVERAGES CONTROL COMMISSION

Deborah A. Baglio, Commissioner

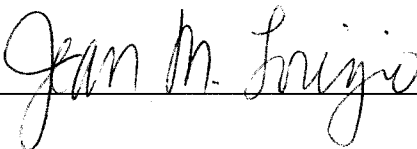


Crystal Matthews, Commissioner



I, the undersigned, hereby certify that I have reviewed the hearing record and concur with the above decision.

Jean M. Lorizio, Chairman



Dated: June 7, 2022

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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cc: Local Licensing Board
Frederick G. Mahony, Chief Investigator
Kyle E. Gill, Esq., Associate General Counsel
Michael Teehan, Investigator
Jan Kujawski, Investigator
William Scannell, Esq.
Administration, File