



*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 – 11/16/2021  
HEARD: 5/03/2022**

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, May 3, 2022, regarding alleged violations of:

- 1) M.G.L. Ch. 138, § 64 Violation of Law of the Commonwealth, to wit: M.G.L. c. 268, § 1 - Perjury (Date of violation: November 16, 2021);
- 2) M.G.L. Ch. 138, § 64 Violation of Law of the Commonwealth, to wit: M.G.L. c. 138, § 34B- Making, using, carrying, selling or distributing a false identification or license (Dates of violation: within May 7, 2021, through November 16, 2021).

The following documents are in evidence:

1. Investigator Teehan's Report;
2. ABCC Form 43, Transfer of License Approval, 6/29/2011;
3. ABCC Decision, 7/24/2013;
4. ABCC Decision, 6/15/2016;
5. Fraudulent Massachusetts Driver's License;
6. Photograph Used to Create Fraudulent Driver's License ;
7. Instagram Messages between Underage #1 and Licensee Employee;
8. Audio Recording of ABCC Hearing, 11/16/2021;
9. Licensee's Stipulation of Facts.

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

## FINDINGS OF FACT

1. On Friday, May 7, 2021, at approximately 6:41 p.m., Investigators Kujawski, and Teehan (“Investigators”), conducted an inspection of A-1 Nivniva Corp. d/b/a A-1 Market where Investigators observed two youthful appearing individuals exit the store in possession of alcoholic beverages, including two 30-packs of Bud Light beer, one 12-pack of Truly hard seltzer, and three cans of Twisted Tea malt beverage.
2. Investigators identified themselves and inquired as to the individuals’ age. 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.
3. Investigators entered the licensed premises and informed the clerk on duty, Akshitkumar (“Andy”) Patel, of the violation. Mr. Patel stated that Underage #1 had provided an identification when she purchased the alcoholic beverages.
4. Investigator Teehan filed a violation report with the Commission regarding a violation of M.G.L. Ch. 138, § 34, sale or delivery of alcoholic beverages to a person under 21 years of age. The Commission held a remote hearing via Microsoft Teams on Tuesday, November 16, 2021. The Licensee, Peter Patel, appeared at the Commission hearing with Andy Patel. The Licensee was represented by counsel.
5. At the start of the November 16, 2021 hearing, Investigator Teehan, Peter Patel, and Andy Patel took an oath to tell the truth, the whole truth and nothing but the truth.
6. When testifying before the Commission, Andy Patel identified the driver’s license, a copy of which was marked as Exhibit A, as the one presented to him by Underage #1 on May 7, 2021.
7. Andy Patel testified he did not know Underage #1 in any way, outside of the purchase and that he was not aware of any communication that the store had with Underage #1.
8. Counsel for the Licensee asked Andy, “At some point, this ID you learned later was dropped off in the store,” to which Andy replied, “yea”.
9. Counsel for the Licensee asked Andy if he had called Underage #1, to which Andy replied, “No”.
10. On Wednesday, November 17, 2021, Avon Police Chief Jeff Bukunt and Investigators Kenny and Teehan met with Underage #1 and her mother.
11. Underage #1 was shown a photocopy of the fraudulent license, submitted by A-1 Nivniva Corp. as an exhibit at the November 16, 2021 Commission hearing. Underage #1 stated that the fraudulent license was not hers but that she recognized the photograph as one from her Instagram social media account.
12. Underage #1 informed Chief Bukunt and the Investigators that she knew Andy Patel. Underage #1 stated that she had previously purchased alcoholic beverages at A-1 Market from Andy.

13. Underage #1 stated that on the day after the May 7, 2021 violation, Andy Patel sent her a friend request on Instagram, which she accepted.
14. Underage #1 stated Andy had sent her several Instagram messages the day after the violation. She retrieved said messages on her cell phone and presented them to Chief Bukunt and Investigators. Investigator Teehan took a photograph of the Instagram messages, which are clearly marked as sent from the account of Andy Patel.
15. In the Instagram messages, Andy Patel asked Underage #1 to send him a facial picture. Andy wanted to create a fake identification, so he could claim to have checked her identification when she purchased the alcohol on May 7, 2021.
16. Underage #1 stated that she never sent any picture to Andy but presented to the Chief and Investigators the Instagram photo that she believed Andy had used to create the fraudulent license.
17. On Monday, December 20, 2021, Investigator Teehan went to the A-1 Market and met with Andy Patel. Investigator Teehan requested to see the original fraudulent driver's license of which a photocopy had been submitted as the Licensee's exhibit at the November 16<sup>th</sup> hearing. Andy Patel stated that the license was in the possession of the Licensee's attorney, and he would have it available for Investigator Teehan the next day.
18. On Tuesday, December 21, 2021, Chief Bukunt contacted Investigator Teehan to advise him that the original fraudulent license had been delivered to the Avon Police Department. Investigator Teehan retrieved the fraudulent license and secured it in the Commission's evidence room.
19. On Friday, January 14, 2022, Investigators Quinn and Teehan entered the licensed premises and spoke with Andy Patel.
20. Investigators asked Andy if he had had any contact or communication, electronic or otherwise, with Underage #1 since the date of the alleged violation, May 7, 2021. Andy replied, "No."
21. Investigators then showed Andy the photographs of the Instagram messages with Underage #1 and asked him if it was his Instagram account. Andy stated, "yes, that's me ... I was [in contact], sorry about that, I apologize."
22. Investigators then asked Andy if he had anything to do with manufacturing the fraudulent identification. Andy stated, "I didn't make it, it came in." He indicated someone unknown had dropped the fraudulent identification off at the store.
23. Investigators showed Andy a photograph from Underage #1's Instagram account and asked him if he used this photograph to produce the fraudulent identification. Andy stated, "Ok, I did manufacture it. I'm sorry, I apologize."
24. Investigators informed Andy of the violation and that a report would be filed with the Chief Investigator for further action.

25. Peter Patel attended the Commission hearing. The Commission was informed that Mr. Patel had no knowledge of Andy Patel's actions.
26. The Licensee has held a license under M.G.L. c. 138, § 15 since 2011 with two prior violations.

### 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 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 alleged to have violated:

M.G.L. Ch. 138, § 64 Violation of Law of the Commonwealth, to wit: M.G.L. c. 268, § 1 – Perjury; and

M.G.L. Ch. 138, § 64 Violation of Law of the Commonwealth, to wit: M.G.L. c. 138, § 34B Making, using, carrying, selling or distributing a false identification or license.

The Commission was presented evidence regarding the action of the Licensee's employee in contacting the underage patron and requesting a photograph of her face so he could create a fraudulent identification and then claim to have checked her identification prior to selling her alcoholic beverages. (Exhibit 7)

There was no evidence presented as to the Licensee's involvement in the employee's scheme, or knowledge of said scheme. The Licensee stipulated to the facts within the Investigator's report but none of those facts implicate the Licensee in acting with the employee, or indicate he knew or should have known of the employee's actions.

The Commission is not persuaded the Licensee violated M.G.L. Ch. 138, § 64 Violation of Law of the Commonwealth, to wit: M.G.L. c. 268, § 1 – Perjury.

The Commission is not persuaded the Licensee violated M.G.L. Ch. 138, § 64 Violation of Law of the Commonwealth, to wit: M.G.L. c. 138, § 34B Making, using, carrying, selling or distributing a false identification or license.

CONCLUSION

Based on the evidence, the Commission finds NO VIOLATION of:

- 1) M.G.L. Ch. 138, § 64 Violation of Law of the Commonwealth, to wit: M.G.L. c. 268, § 1 - Perjury (Date of violation: November 16, 2021);
- 2) M.G.L. Ch. 138, § 64 Violation of Law of the Commonwealth, to wit: M.G.L. c. 138, § 34B Making, using, carrying, selling or distributing a false identification or license (Dates of violation: within May 7, 2021, through November 16, 2021).

**ALCOHOLIC BEVERAGES CONTROL COMMISSION**

Jean M. Lorizio, Chairman Jean M. Lorizio

Crystal Matthews, Commissioner Crystal Matthews

Deborah A. Baglio, Commissioner Deborah A. Baglio

Dated: February 6, 2023

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  
Louis Cassis, Esq.  
Administration, File