



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

Jean M. Lorizio, Esq.
Chairman

DECISION

AKIKI FINE WINES LLC
1171 HYDE PARK AVENUE
BOSTON, MA 02136
LICENSE#: 02078-PK-0116
VIOLATION DATE: 11/22/2023
HEARD: 3/26/2024

Akiki Fine Wines LLC ("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, March 26, 2024, regarding an alleged violation of 204 CMR 2.05 (2)- Permitting an illegality on the licensed premises, to wit: M.G.L. Ch. 138, § 34 – Sale or delivery of an alcoholic beverage to a person under twenty-one years of age (1 Count) which occurred on November 22, 2023, according to Investigator Smith's report.

The following documents are in evidence:

1. Investigative Report of N. Smith;
2. Photograph of Fraudulent Identification;
3. ABCC Form 43, New License Approval, 4/2/2015.

A. Licensee's Video Surveillance, 11/22/2023.

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

FINDINGS OF FACT

1. On Wednesday November 22, 2023, Investigators Cutter, Teehan, and Smith ("Investigators") conducted surveillance of the business operation of Akiki Fine Wines LLC ("Licensee"). (Testimony, Exhibit 1)
2. At approximately 7:20 p.m., Investigators observed a white Honda Pilot motor vehicle pull into the parking lot of the licensed premises. A youthful appearing male individual exited the vehicle and entered the establishment. Id.
3. Investigator Smith entered the licensed premises shortly after the male and observed him ("Underage #1") approach the counter in possession of one 12-pack of Coors Light beer and two sleeves of McGillicuddy's nips. Underage #1 provided identification to the clerk and paid for the alcohol. Id.

4. Underage #1 exited the premises and placed the alcohol in the Honda Pilot. Id.
5. Investigators Smith, Teehan and Cutter approached the vehicle, identified themselves and requested proof of legal age to purchase and/or possess alcoholic beverages. Underage #1 stated he was 18 years of age. Id.
6. Underage #1, actual date of birth 7/13/2005 (age 18), informed Investigators he purchased the alcoholic beverages using a fraudulent Massachusetts driver's license bearing his name but a different birth date. (Testimony, Exhibits 1, 2)
7. Investigators entered the licensed premises and spoke to the clerk on duty who stated he had checked the identification of Underage #1 but he did not know it was fraudulent. (Testimony, Exhibit 1)
8. Investigators informed the clerk that a violation report would be submitted to the Chief Investigator for further review. Id.
9. Mrs. Rita Akiki, Manager of Record, appeared at the Commission hearing and testified as to the training received provided to employees. (Testimony)
10. The Licensee has held a license under M.G.L. c. 138, § 15 since 2015 with no prior violations. (Exhibit 3, Commission Records)

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 her observations of the sale and delivery of an alcoholic beverage to a person under the age of twenty-one years inside the licensed premises.

The Licensee did not dispute the sale occurred. However, the Licensee argued it reasonably relied on the Massachusetts driver's license presented by the underage individual given the license had all the marks of a legitimate identification

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 four (4) pieces 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. Here, the Massachusetts driver's license presented by the underage individual and relied upon by the Licensee was not valid.

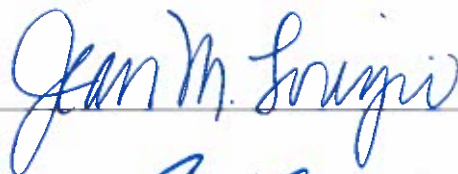
The Commission is persuaded by the evidence that Akiki Fine Wines LLC sold alcoholic beverages to person who was under twenty-one years of age. The Commission finds that the Licensee committed a violation of M.G.L. c. 138, § 34 - Sale or delivery of an alcoholic beverage to a person under twenty-one (21) years of age (1 count).

CONCLUSION

Based on the evidence, the Commission finds the Licensee violated 204 CMR 2.05 (2)- Permitting an illegality on the licensed premises, to wit: 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 **issues a WARNING.**

ALCOHOLIC BEVERAGES CONTROL COMMISSION


Jean M. Lorizio, Chairman



Crystal Matthews, Commissioner



Deborah Baglio, Commissioner



Dated: January 28, 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.

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。
यह दस्तावेज़ महत्वपूर्ण है और इसका तुरंत अनुवाद किया जाना चाहिए
Dokiman sa a enpòtan epi li ta dwe tradwi touswit
'Đây là tài liệu quan trọng và cần được dịch ngay'
ឯកសារនេះសំខាន់ណាស់ ហើយត្រូវបកប្រែជាបន្ទាន់។

2023-000280-ad-enf

cc: Local Licensing Board
Frederick G. Mahony, Chief Investigator
Nicole Smith, Investigator
Alicia Cutter, Investigator
Michael Teehan, Investigator
Paul Cavanaugh, Esq.
Administration, File