



*The Commonwealth of Massachusetts*  
*Department of the State Treasurer*  
*Alcoholic Beverages Control Commission*  
*Boston, Massachusetts 02114*

*Deborah B. Goldberg*  
*Treasurer and Receiver General*

*Kim J. Gainsboro, Esq.*  
*Chairman*

**DECISION**

**AUDITORIUM CAFÉ, INC. D/B/A THE POUR HOUSE**  
**909 BOYLSTON STREET**  
**BOSTON, MA 02115**  
**LICENSE#: 011600122**  
**VIOLATION DATE: 11/01/2015**  
**HEARD: 03/15/2016**

Auditorium Café, Inc. d/b/a The Pour House (the "Licensee") holds an alcohol license issued pursuant to M.G.L. c. 138, §12. The Alcoholic Beverages Control Commission (the "Commission") held a hearing on Tuesday, March 15, 2016, regarding an alleged violation of 204 CMR 2.05 (2) Permitting an illegality on the licensed premises, to wit: M.G.L. c. 138, §34C- Possession of an alcoholic beverage by a person under twenty-one (21) years of age. Prior to the commencement of the hearing, the Licensee stipulated to the violation alleged in Investigator Velez's report.

The following documents are in evidence:

1. Investigator Velez's Investigative Report dated November 1, 2015; and
2. Fake IDs of minor.
  - A. Scanner ID report for minor's fake Guatemala driver's license;
  - B. Scanner ID report for minor's fake ID card;
  - C. Photos from surveillance video; and
  - D. Thumb drive of surveillance video.

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

The Commission took Administrative Notice of the Licensee's record.

**FACTS**

1. On Sunday, November 1, 2015, at approximately 12:24 a.m., Investigators Velez, Keefe, and Bailey ("Investigators") investigated the business operation of Auditorium Café, Inc. d/b/a The Pour House to determine the manner in which their business was being conducted.

2. Investigators' attention was drawn to a youthful appearing individual (the "Patron") sitting at a table near the entrance, in possession of an alcoholic beverage.
3. Investigators identified themselves and asked to see proof of legal drinking age.
4. The Patron was identified, and she informed Investigators that her actual date of birth was 06/02/1995 (age 20).
5. The Patron was in possession of a Samuel Adams draft beer.
6. After further discussion, the Patron presented Investigators with two false Guatemalan identifications with her own name and picture, but with a date of birth of 6/2/1992 (age 23).
7. The Patron had not used those fake identifications to gain entry to the licensed premises.
8. Investigators spoke to the night manager on duty identified as Patrick Nametz.
9. Investigators identified the underage individual to Mr. Nametz.
10. Investigators informed Mr. Nametz that a violation report would be filed with the Chief Investigator for further review.

### 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 M.G.L. c. 138.

M.G.L. c. 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. Board of Registration in Medicine, 383 Mass. 299, 317 (1981) (Emphasis supplied). The Commission is given "comprehensive powers of supervision over licensees." Connolly, 334 Mass. at 617.

The Commission is given broad authority to promulgate regulations. The Commission may make regulations for "clarifying, carrying out, enforcing and preventing violation of" statutory provisions for the "method of carrying on the business of any licensee," and "for the proper and orderly conduct of the licensed business." M. G.L. c. 138, §24. The Commission has exercised this authority through the promulgation of regulations that are codified at chapter 204 of the Code of Massachusetts Regulations ("CMR"). The Commission also has comprehensive powers of supervision over licensees and has the statutory authority under M.G.L. c. 138, § 64 to revoke or suspend a license for violation of a regulation. Aristocratic Restaurant of Massachusetts, Inc. v. Alcoholic Beverages Control Comm'n., 374 Mass. 547 (1978); Connolly, 334 Mass. at 617.

A Commission regulation promulgated at 204 CMR 2.05(2) provides that "[n]o licensee for the sale of alcoholic beverages shall permit any disorder, disturbance or illegality of any kind to take 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 CMR 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." Commonwealth v. Gould, 158 Mass. 499, 507, (1893). Burlington

Package Liquors, Inc. v. Alcoholic Beverages Control Comm'n, 11 Mass. App. Ct. 785, 788 (1981).

General Laws chapter 138, §34 provides, in part, that "[w]hoever makes a sale or delivery of any alcoholic beverage or alcohol to any person under 21 years of age, either for his own use or for the use of his parent or any other person, ... shall be punished." The Appeals Court has stated that "the purpose of the statute [is] to protect the welfare of children from the danger of alcohol." Tobin v. Norwood Country Club, Inc., 422 Mass. 126, 133-134 (1996); accord Fran's Lunch, Inc. v. Alcoholic Beverages Control Comm'n, 45 Mass. App. Ct. 663, 664 (1998).

General Laws chapter 138, §34C states, in pertinent part, that: "Whoever, being under twenty-one years of age and not accompanied by a parent or legal guardian, knowingly possesses any alcohol or alcoholic beverages, shall be punished." Reliance on an identification which purports to show that a person is twenty-one years of age or older is not an affirmative defense available for a violation of Section 34C. See Humarock River House Restaurant, Inc., Scituate (ABCC Decision July 19, 1994).

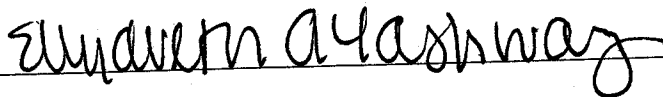
In the present case, the Patron, who was only twenty years old, was in possession of a Samuel Adams draft beer. The Licensee argued at the hearing on this matter that the Patron presented a passport at the front door of the premises in order to gain entry. Regardless of what identification the Patron may have shown at the front door, the fact remains that the Patron was under twenty-one years old and was in possession of an alcoholic beverage on the licensed premises.

#### 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. c. 138, §34C- Possession of an alcoholic beverage by a person under twenty-one (21) years of age (1 count). As the Licensee has had no previous violation, the Commission issues a **WARNING**.

#### **ALCOHOLIC BEVERAGES CONTROL COMMISSION**

Elizabeth A. Lashway, Commissioner



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

Kathleen McNally, Commissioner



Dated: March 29, 2016

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  
Nicholas Velez, Investigator  
Dennis Keefe, Investigator  
Rose Bailey, Investigator  
Stephen V. Miller, Esq. via facsimile 617-946-4624  
Administration, File