



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

*Steven Grossman*  
*Treasurer and Receiver General*

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

**BIG NIGHT VENUES BOSTON 1, LLC D/B/A RED LANTERN**  
**41-45 STANHOPE ST.**  
**BOSTON, MA 02116**  
**LICENSE#: 011600703**  
**HEARD: 11/20/2013**

This is an appeal of the action of the City of Boston Licensing Board (the "Local Board" or "Boston") for suspending the M.G.L. c. 138 §12 license of Big Night Venues Boston 1, LLC d/b/a Red Lantern (the "Licensee" or "Red Lantern") located at 41-45 Stanhope Street, Boston, MA, for two (2) days. The Licensee timely appealed the Local Board's decision to the Alcoholic Beverages Control Commission (the "Commission") and a hearing was held on Wednesday, November 20, 2013.

The following documents are in evidence as exhibits:

1. City of Boston's Pre-Hearing Memorandum;
  2. Licensed Premises Inspection Notice no. 14088 dated 2/16/2013;
  3. Boston Police Department Incident Report no. 130099190 dated 2/16/2013;
  4. Local Board's Statement of Reasons dated 3/28/2013;
  5. Photocopies of Three Driver's Licenses;
  6. Photocopies of Three Driver's Licenses; and
  7. Local Board's Decision dated 7/1/2013.
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- A. Letter from Kathryn Copp dated 2/16/2013;
  - B. Letter from Jamie Pollock dated 11/20/2013; and
  - C. Licensee's Identification Checking Policy for Servers.

There is one (1) audio recording of this hearing and two (2) witnesses testified.

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

**FACTS**

1. Big Night Venues Boston I, LLC is the holder of a Common Victualler 7-Day All Alcoholic Beverage license, located at 41-45 Stanhope Street, Boston, with a 2:00 A.M. closing hour. (Commission records, Testimony)
2. Boston Police Detective William Gallagher appeared at the Commission hearing and testified that on February 16, 2013, at approximately 9:10 p.m., he along with Lieutenant Detective Stephen Meade, and Sergeant Detective Robert Mulvey inspected the licensed premises. (Testimony)

3. Upon entering the premises, detectives observed a table of youthful looking female patrons eating dinner. Six (6) of these patrons were in possession of martini glasses. (Testimony)
4. Detectives approached the female patrons, identified themselves as police officers, and asked the patrons for proof of their ages. The female patrons first hesitated, and then said that they were not asked for identification by the server. However, their story changed. Three of the female patrons provided the detectives with the fraudulent out of state identifications with which they used to purchase the alcoholic beverages. (Testimony)
5. The first underage female was Sarah Catherine Hicks, who has an actual date of birth [REDACTED] (age 17). Ms. Hicks presented a fraudulent New York Driver's License which was in her name, with a date of birth [REDACTED] (age 22). She produced and used this fake license to purchase a Red Lotus martini containing alcohol. (Testimony)
6. The second underage female, Tess McKay Anderson, who has an actual date of birth of [REDACTED] (age 18), provided a fake Pennsylvania Driver's License, in her name with a date of birth [REDACTED] (age 22). She used this fake license to purchase a Sumo wine alcoholic beverage. (Testimony)
7. The third underage female, Sonya Erika Raab, with an actual date of birth of [REDACTED] (age 18), provided a fake New York Driver's License in her name, with a date of birth [REDACTED] (age 21). She presented this fraudulent license to purchase a Red Lotus martini containing alcohol. (Testimony)
8. Detective Gallagher testified that the officers also observed three other females patrons who were younger than 21 years of age, in possession of alcoholic beverages. The officers determined that these three patrons did not present fraudulent identifications to obtain alcoholic beverages. The three patrons were: Margeaux Nanfeldt, with an actual date of birth [REDACTED] (age 18); Madeline Cherneff, with an actual date of birth [REDACTED] (age 18); and Grace Brescia, with an actual date of birth [REDACTED] (age 17).
9. These three underage females stated that they were not asked for any identification when they ordered the alcoholic beverages. Each of these patrons was in possession of a lychee martini containing alcohol. (Testimony)
10. Detectives informed the manager on duty, Tim Mahoney, and the server, Katherine Copp, of the underage patrons. All six of the underage females were high school students. (Testimony)
11. Ms. Copp admitted serving the alcoholic beverages to the underage patrons. She stated that the minor patrons presented out-of-state identifications. She admitted that they looked young, but she did not request back-up identification from any of them. She stated that as they were sitting in the dining area of the restaurant, she presumed they were older than 21 years of age. (Testimony, Exhibit A)
12. Mr. Jamie Pollock, an employee of the licensee, testified that he has worked for the licensee since 2011. He is TIPS trained and certified, and he provides staff training once a month for identification checking. Red Lantern follows an internal training protocol for the safe service of alcohol, and has implemented a mandatory TIPS certification for all employees. (Testimony, Exhibit B)
13. Mr. Pollack testified that he trained Ms. Copp in the safe service of alcohol. The Licensee keeps a book at the register inside the premises, which provides information instructing how to inspect out of state identifications. (Testimony)

14. The licensee was issued a violation for the sale of alcohol to persons (minors) under 21 years of age, and the failure to check identification properly. (Testimony)

### DISCUSSION

The City of Boston alleges that Big Night Ventures d/b/a Red Lantern violated the provisions of its license, specifically M.G.L. Ch. 138, §34, for service of alcohol to a minor, and failure to properly inspect identification. Specifically, the City of Boston alleges that the Red Lantern sold alcoholic beverages to six (6) individuals who were under the age of twenty-one (21) in violation of M.G.L. c. 138, §34, and that the Licensee failed to check identifications properly.

The Licensee argues that the Local Board erred in concluding that Red Lantern had not taken “reasonable steps,” because Red Lantern did not “properly train” the staff. Red Lantern believes it ought to have been found to have met a standard of due care when a server reasonably relies on a fraudulent identification.

Pursuant to M.G.L. c. 138, §67, “[t]he ABCC is required to offer a de novo hearing, that is to hear evidence and find the facts afresh. [United Food Corp v. Alcoholic Beverages Control Commission, 375 Mass. 240 (1978).] As a general rule the concept of a hearing de novo precludes giving evidentiary weight to the findings of the tribunal from whose decision an appeal was claimed. See, e.g. Devine v. Zoning Bd. of Appeal of Lynn, 332 Mass. 319, 321 (1955); Josephs v. Board of Appeals of Brookline, 362 Mass. 290, 295 (1972); Dolphino Corp. v. Alcoholic Beverages Control Com’n, 29 Mass. App. Ct. 954, 955 (1990) (rescript). The findings of a local licensing board are ‘viewed as hearsay evidence, [and] they are second-level, or totem pole hearsay, analogous to the non-eyewitness police reports in Merisme v. Board of Appeals on Motor Vehicle Liab. Policies and Bonds, 27 Mass. App. Ct. 470, 473 – 476 (1989).’ Dolphino Corp. v. Alcoholic Beverages Control Commission, 29 Mass. App. Ct. 954, 955 (1990) (rescript).

M.G.L. Chapter 138 gives the Local Board and 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.” G.L. Chapter 138, §23, as amended through St. 1977, c. 929, §7. “[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). The Commission is given “comprehensive powers of supervision over licensees,” Connolly v. Alcoholic Beverages Control Comm., 334 Mass. 613, 617 (1956), as well as broad authority to issue regulations. The Local Board has authority to enforce Commission regulations. New Palm Gardens, Inc. v. Alcoholic Beverages Control Commission, 11 Mass. App. Ct. 785, 788 (1981).

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 Commission, 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. ABCC, 19 Mass. App. Ct. 1026, 1027 (1985) (rescript).

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,” see Tobin v. Norwood Country Club, Inc., 422 Mass. 126, 133-134 (1996). Fran’s Lunch, Inc. v. Alcoholic Beverages Control Commission, 45 Mass.App.Ct. 663, 664, 700 N.E.2d 843, 845 (1998). This public policy of the Commonwealth prohibiting the sale or delivery of alcoholic beverages to persons under the age of 21

years old (commonly referred to as “minors” for the purpose of the Liquor Control Act) has been characterized as “strongly paternalistic.” Tobin v. Norwood Country Club, Inc., 422 Mass. 126, 136, 661 N.E.2d 627, 634 (1996); In Re: Alan C. Dinh d/b/a Juliano’s Beer & Wine, Quincy (ABCC Decision April 8, 2005.)

Red Lantern accepted the essential facts presented by Boston Police Detective Gallagher. During the Commission hearing, Detective Gallagher testified that all six minor patrons were served alcoholic beverages. However, the Licensee disputes the severity of the penalty and asserts that there was a discrepancy of facts as stated by Detective Gallagher.<sup>1</sup> Detective Gallagher testified that only three of the six minors presented identifications which were out of state fraudulent identifications. The Licensee believes that the server, Ms. Copp, inspected the out of state identifications of all six minor patrons who were served alcoholic beverages. The Licensee admits that Ms. Copp did not request any back-up identification from the six minors.

Red Lantern argues that the City of Boston Licensing Board erred in concluding that Red Lantern had not taken “reasonable steps,” because Red Lantern did not “properly train” the staff. Red Lantern argues that it ought to have been found to have met a standard of due care when a server reasonably relies on a fraudulent identification.

General Laws chapter 138, §34B provides, in pertinent part, that “[a]ny licensee, or agent or employee thereof, under this chapter, who reasonably relies on such a liquor purchase identification card, or an identification card issued under section 8E of chapter 90, or motor vehicle license issued pursuant to said section eight, for proof of a person’s identity and age shall be presumed to have exercised due care in making such delivery or sale of alcohol or alcoholic beverages to a person under twenty-one years of age. Such presumption shall be rebuttable. (Emphasis supplied.)

M.G.L. c. 138, §34B offers protection from license revocation or criminal penalties to license holders who reasonably rely on one (1) of four (4) pieces of identification specified in the statute, including a valid Massachusetts driver’s license. However, the Commission has established that to obtain the protection accorded to a license holder under §34B, a license holder must obtain proof of age prior to the purchase of alcoholic beverages, and also must obtain proof of age on the day of the alleged sale to a minor. The Appeals Court has reviewed this Commission interpretation and upheld it as reasonable. Howard Johnson Company v. Alcoholic Beverages Control Commission, 24 Mass.App.Ct. 487, 510 N.E.2d 293 (1987); In Re: Alan C. Dinh dba Juliano’s Beer & Wine, Quincy (ABCC Decision April 8, 2005.)

A non-Massachusetts driver’s license is not a piece of identification on which alcoholic beverages license holders may rely as proof of age to obtain the protections extended under §34B. Murray’s Liquors, Inc. v. Alcoholic Beverages Control Commission, 48 Mass. App. Ct. 100 (1999); In Re: Alan C. Dinh d/b/a Juliano’s Beer & Wine, Quincy (ABCC Decision April 8, 2005), M& B and Sons Liquors, Inc., Lowell (ABCC Decision, December 16, 2009).

The Commission carefully reviewed the statement and testimony of Mr. Jamie Pollack, the General Manager, as well as the licensee’s training information for checking identifications, introduced as an exhibit during the Commission hearing. Mr. Pollack testified that the licensee keeps a book at the register of the premises that instructs one as to what to look for to recognize a fraudulent out of state

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<sup>1</sup> The Commission remanded the matter to the Local Board upon a Motion for Reconsideration filed by the Licensee for the penalty imposed by the Local Board. The Local Board rejected the licensee’s arguments on remand, and affirmed its earlier ruling.

identification. There is very little mention in the training information as to what constitutes the forms of identification on which a licensee may reasonably rely for proof of age.<sup>2</sup>

The Commission is not persuaded by the Licensee's argument. Even assuming, *arguendo*, that the Commission found that all six minor patrons presented out of state identifications as stated by Ms. Copp, the licensee's server still did not request any back up identification from these minor patrons. Thus, the Red Lantern is not afforded the protection under M.G.L. c. 138, section 34B because the server relied on out of state identifications, and admittedly did not request any additional or back up identification for the out of state identifications presented.

The Commission finds that the Licensee sold alcoholic beverages to six minors in violation of M.G.L. c. 138, §34. The Licensee's employee admitted to serving the minors alcoholic beverages. The Commission finds that the server did not exercise due care in the sale of alcoholic beverages to these underage patrons, as three of the minors did not present any proof of age prior to the sale, and the three other patrons who presented out of state identifications were served alcohol without presenting any back up identification. The Commission finds that the licensee did not rely on any identification specified in M.G.L. c. 138, §34B as proof of age on the date of the alleged violation, and therefore rules that Red Lantern does not have any defense under M.G.L. c. 138, §34B. Based on this evidence, the Commission is persuaded that the Licensee sold alcoholic beverages to the under-aged persons in violation of M.G.L. c. 138, §34. The Commission approves the action of the Local Board in finding that the Licensee violated M.G.L. c. 138, §34.

The Licensee admitted to the violation and to the essential facts that alcoholic beverages were sold to six individuals who were younger than the age of twenty-one (21). However, the Licensee argues that the penalty of a two (2) day suspension imposed by the Local Board for this violation is too severe. The Commission disagrees. The Licensee's employee served alcoholic beverages to six (6) underage patrons, who were all high school students. The Commission finds that the imposed sanction of a two (2) day suspension was one that was not arbitrary and capricious, but rather a reasonable exercise of the Local Board's lawful discretion.

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<sup>2</sup> In addition to the statute, please refer to the ABCC Advisory as to the forms of identification on which a licensee may reasonably rely for proof of age. See [www.mass.gov/abcc](http://www.mass.gov/abcc).

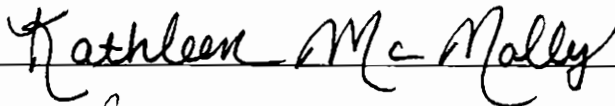
### CONCLUSION AND DISPOSITION

Based on the evidence, the Alcoholic Beverages Control Commission **APPROVES** the action of the Local Board in finding that Big Night Venues Boston 1, LLC d/b/a Red Lantern committed the violation of sale of alcoholic beverages to a person under the age of 21, in violation of M.G.L. c. 138, §34, and failure to properly check identifications.

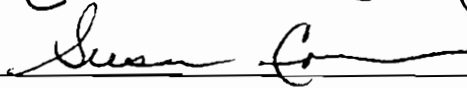
The Alcoholic Beverages Control Commission **APPROVES** the action of the Local Board in suspending the license for a period of two (2) days. This is a reasonable exercise of the Local Board's lawful discretion for the violation approved by the Commission.

### **ALCOHOLIC BEVERAGES CONTROL COMMISSION**

Kathleen McNally, Commissioner



Susan Corcoran, Commissioner



Dated: April 7, 2014

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.

cc: Thomas Reed, Esq., via Facsimile 617-338-9225  
Jean Lorizio, Esq., via Facsimile 617-635-4742  
Frederick G. Mahony, Chief Investigator  
Local Board  
Administration  
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