



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

Jean M. Lorizio, Esq.
Chairman

NOTICE OF SUSPENSION

March 12, 2025

**FENWAY JOHNNIE'S LLC D/B/A FENWAY JOHNNIE'S
96-98 BROOKLINE AVENUE
BOSTON, MA 02215
LICENSE#: 04077-RS-0116
VIOLATION DATE: 9/22/2023
HEARD: 4/30/2024**

After a hearing on April 30, 2024, the Commission finds Fenway Johnnie's LLC d/b/a Fenway Johnnie's violated 204 CMR 2.05(2) Permitting an illegality on the licensed premises, to wit: Ch. 138 § 34C - Possession of an alcoholic beverage by a person under twenty-one (21) years of age (13 Counts).

The Commission suspends the license for a period of 25-days of which 15-days will be served and 10-days will be held in abeyance for a period of two (2) years provided no further violations of Chapter 138 or Commission regulations are found by this Commission.

By decision dated February 3, 2023, the Commission previously ordered an 11-day suspension with six (6) days to be served and five (5) days to be held in abeyance for a period of two (2) years provided no further violations of Chapter 138 or Commission regulations were found by the Commission. Based on the violation found above, the Commission, in its discretion, hereby orders that 5-day suspension to be served.

By decision dated May 2, 2023, the Commission previously ordered a 6-day suspension with four (4) days to be served and two (2) days to be held in abeyance for a period of two (2) years provided no further violations of Chapter 138 or Commission regulations were found by the Commission. Based on the violation found above, the Commission, in its discretion, hereby orders that 2-day suspension to be served.

The Licensee will serve a total of 22 days.

The suspension shall commence on Monday, April 28, 2025, and terminate on Monday, May 19, 2025. The license will be delivered to the Local Licensing Board or its designee on Monday, April 28, 2025, at 9:00 A.M. It will be returned to the licensee on May 20, 2025.

You are advised that pursuant to the provisions of M.G.L. c.138 § 23, you may petition the Commission to accept an offer in compromise in lieu of suspension within twenty (20) calendar

days following such notice of such suspension. If accepted, you may pay a fine using the enclosed form which must be signed by the Licensee and a Massachusetts Licensed Accountant.

You are advised that you have the right to appeal this decision under M.G.L. c. 30A to Superior Court within thirty (30) days upon receipt of this notice.

ALCOHOLIC BEVERAGES CONTROL COMMISSION



Jean M. Lorizio
Chairman

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។

2023-000277-ad-enf

cc: Local Licensing Board
Frederick G. Mahony, Chief Investigator
Sean Fleming, Investigator
Alicia Cutter, Investigator
John David, Investigator
Katelyn Quinn, Investigator
Nicole Smith, Investigator
Christopher Temple, Investigator
Seamus O'Kelly, Esq.
Administration, File



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

Jean M. Lorizio, Esq.
Chairman

DECISION

**FENWAY JOHNNIE'S LLC D/B/A FENWAY JOHNNIE'S
96-98 BROOKLINE AVENUE
BOSTON, MA 02215
LICENSE#: 04077-RS-0116
VIOLATION DATE: 9/22/2023
HEARD: 4/30/2024**

Fenway Johnnie's LLC d/b/a Fenway Johnnie's ("Licensee" or "Fenway Johnnies") holds an alcohol license issued pursuant to M.G.L. c. 138, § 12. The Alcoholic Beverages Control Commission ("ABCC" or "Commission") held a remote hearing via Microsoft Teams on Tuesday, April 30, 2024, regarding an alleged violation of 204 CMR 2.05(2) Permitting an illegality on the licensed premises, to wit: Ch. 138 § 34C - Possession of an alcoholic beverage by a person under twenty-one (21) years of age (13 Counts) which occurred on September 22, 2023, according to Investigator Fleming's Report.

The following documents are in evidence:

1. Investigator Fleming's Amended Report;
2. Photographs of Fraudulent Identifications;
3. ABCC Application Summary Review, Transfer of License Approved 5/08/2018;
4. ABCC Decision, 2/3/2023;
5. ABCC Decision, 5/2/2023;
6. Investigator Velez's Report, 9/8/2023;

A. Photographs of Identifications and Scanning History.

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

FINDINGS OF FACT

1. On Friday, September 22, 2023, at approximately 11:20 p.m., Investigators Cutter, David, Quinn, Smith, Temple, and Fleming ("Investigators") inspected the business operation of Fenway Johnnie's LLC d/b/a Fenway Johnnie's ("Licensee" or "Fenway Johnnies"). (Testimony, Exhibit 1)

2. Investigators entered the licensed premises and observed two youthful appearing female individuals in possession of what appeared to be alcoholic beverages. Investigator Fleming identified himself and requested proof of legal age to possess alcoholic beverages. Id.
3. Underage #1, actual date of birth 6/5/2004 (age 19), was in possession of a vodka cranberry mixed drink. Id.
4. Underage #2, actual date of birth 5/28/2004 (age 19), was in possession of a vodka cranberry mixed drink. Id.
5. Investigators then observed a youthful appearing male individual in possession of what appeared to be an alcoholic beverage. Investigator Fleming identified himself and asked for proof of legal age to possess an alcoholic beverage. Id.
6. Underage #3, actual date of birth 11/14/2003 (age 19), was in possession of a Jameson Ginger mixed drink. He provided Investigator Fleming with a fraudulent New Jersey driver's license bearing his name but a different birth date. (Testimony, Exhibits 1, 2)
7. Investigator Quinn observed two youthful appearing female individuals in possession of what appeared to be alcoholic beverages. Investigator Quinn identified herself and requested proof of legal drinking age. (Testimony, Exhibit 1)
8. Underage #4, actual date of birth 12/29/2003 (age 19), was in possession of a vodka cranberry mixed drink. She provided to Investigators a Massachusetts driver's license bearing the name and birth date of another person. (Testimony, Exhibits 1, 2)
9. Underage #5, actual date of birth 2/10/2004 (age 19), was in possession of a vodka cranberry mixed drink. She provided to Investigators a fraudulent New Jersey driver's license bearing her name but a different birth date. Id.
10. Investigators observed another youthful appearing female individual in possession of what appeared to be alcoholic beverages. Investigators Quinn and Temple approached the female, identified themselves and requested proof of legal age to possess alcoholic beverages. (Testimony, Exhibit 1)
11. Underage #6, actual date of birth 10/01/2002 (age 20), was in possession of a vodka mixed drink. She provided to Investigators a fraudulent New York driver's license bearing her name but a different birth date. (Testimony, Exhibits 1, 2)
12. Investigator Smith observed a youthful appearing male individual in possession of what appeared to be an alcoholic beverage. Investigator Smith approached the male, identified herself and requested proof of legal age to possess alcoholic beverages. (Testimony, Exhibit 1)
13. Underage #7, actual date of birth 7/08/2003 (age 20), was in possession of a Coors Light beer. He provided to Investigators a fraudulent New Jersey driver's license bearing his name but a different birth date. (Testimony, Exhibits 1, 2)

14. Investigator Smith observed a youthful appearing female in possession of what appeared to be an alcoholic beverage. Investigator Smith approached the female, identified herself and requested proof of legal age to possess alcoholic beverages. (Testimony, Exhibit 1)
15. Underage #8, actual date of birth 11/06/2003 (age 19), was in possession of a Tito's and soda water mixed drink. She admitted that she was 19 years old and provided Investigator Smith with her school identification bearing her name and photograph. Id.
16. Investigator Cutter observed a youthful appearing female in possession of an alcoholic beverage. Investigator Cutter identified herself and requested proof of legal age to possess alcoholic beverages. Id.
17. Underage #9, actual date of birth 4/22/2004 (age 19), was in possession of a Long Drink canned cocktail beverage. She provided to Investigator Cutter a fraudulent California driver's license bearing her name but a different birth date. (Testimony, Exhibits 1, 2)
18. Investigator David then observed a youthful appearing male individual in possession of what appeared to be an alcoholic beverage. Investigator David approached the male, identified himself and asked for proof of legal age to possess alcoholic beverages. (Testimony, Exhibit 1)
19. Underage #10, actual date of birth 5/19/2004 (age 19), was in possession of a Long Drink canned cocktail beverage. Id.
20. Investigator David observed another youthful appearing male individual in possession of what appeared to be an alcoholic beverage. Investigator David approached, identified himself and requested proof of legal age to possess alcoholic beverages. Id.
21. Underage #11, actual date of birth 11/12/2004 (age 18), was in possession of a Coors Light beer. He presented to Investigator David a fraudulent Connecticut driver's license bearing his name but a different birth date. (Testimony, Exhibits 1, 2)
22. Investigator David then observed two youthful appearing individuals in possession of what appeared to be alcoholic beverages. Investigator David approached the individuals, identified himself and asked for proof of legal age to possess alcoholic beverages. (Testimony, Exhibit 1)
23. Underage #12, actual date of birth 10/15/2003 (age 19), was in possession of a Long Drink canned cocktail beverage. Id.
24. Underage #13, actual date of birth 8/17/2004 (age 19), was in possession of a vodka and soda mixed drink. She provided to Investigator David a fraudulent Maine driver's license bearing her name but a different birth date. (Testimony, Exhibits 1, 2)
25. Investigators informed the manager Higor Trindade of the violations, and that a report would be submitted to the Chief Investigator for further action. (Testimony, Exhibit 1)
26. Michael McCarthy, Head of Security, appeared at the Commission hearing and testified as to employees requesting and checking the identification of each individual seeking to enter

the licensed premises. Mr. McCarthy testified that the Licensee's policy is to scan all identifications. (Testimony)

27. Mr. Trindade, General Manager, also appeared at the Commission hearing. He testified and reiterated that the identification of all people entering the licensed premises are run through a scanner. Employees are trained multiple times each year regarding inspecting identifications and the Licensee's policies. Id.
28. Mr. Trindade testified he examined some of the identifications confiscated by Investigators and determined some of them has scanned as legitimate. (Testimony, Exhibit A)
29. The Licensee has held a license under M.G.L. c. 138, § 12 since 2018 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 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, §34C – Possession of an alcoholic beverage by 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).

Massachusetts 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." M.G.L. c. 138, §34C.

Direct evidence was provided through the eye-witness testimony of Investigators Fleming, Temple, Quinn, Smith, Cutter and David who observed and interacted with patrons younger than twenty-one years of age who were on the licensed premises and in possession of alcoholic beverages.

The Licensee asserts that its employees checked the identification of each person entering the licensed premises and utilized an identification scanner to verify the identifications. The Licensee argues that some of the identifications presented (Exhibit 2) scanned as legitimate. (Exhibit A)

The Commission is not persuaded by the Licensee's argument. Massachusetts General Law, 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. See M.G.L. c. 138, § 34B. However, Section 34B refers only to the activities of delivery and sale, and it omits any reference to the act of possession. See id. Section 34B offers no relief from liability for allowing possession of alcoholic beverages in violation of M.G.L. c. 138, § 34C. See Id.

The Commission finds that the Licensee committed a violation of 204 CMR 2.05 (2) - Permitting an illegality on the licensed premise, to wit: M.G.L. c. 138, §34C- Possession of an alcoholic beverage by a person under twenty-one years of age (13 counts).

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: Ch. 138 § 34C - Possession of an alcoholic beverage by a person under twenty-one (21) years of age (13 Counts).

Therefore, the Commission suspends the license for a period of 25 days of which 15 days will be served and 10 days will be held in abeyance for a period of two (2) years provided no further violations of Chapter 138 or Commission regulations are found by this Commission.

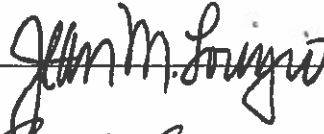
By decision dated February 3, 2023, the Commission previously ordered an 11-day suspension with six (6) days to be served and five (5) days to be held in abeyance for a period of two (2) years provided no further violations of Chapter 138 or Commission regulations were found by the Commission. Based on the violation found above, the Commission, in its discretion, hereby orders that 5-day suspension to be served.

By decision dated May 2, 2023, the Commission previously ordered a 6-day suspension with four (4) days to be served and two (2) days to be held in abeyance for a period of two (2) years provided no further violations of Chapter 138 or Commission regulations were found by the Commission. Based on the violation found above, the Commission, in its discretion, hereby orders that 2-day suspension to be served.

The Licensee will serve a total of 22 days.

ALCOHOLIC BEVERAGES CONTROL COMMISSION

Jean M. Lorizio, Chairman



Crystal Matthews, Commissioner



Deborah Baglio, Commissioner



Dated: March 12, 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.

To 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។

2023-000277-ad-enf

cc: Local Licensing Board
Frederick G. Mahony, Chief Investigator
Sean Fleming, Investigator
Alicia Cutter, Investigator
John David, Investigator
Katelyn Quinn, Investigator
Nicole Smith, Investigator
Christopher Temple, Investigator
Seamus O'Kelly, Esq.
Administration, File