



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

Jean M. Lorizio, Esq.
Chairman

NOTICE OF SUSPENSION

January 14, 2025

**FENWAY JOHNNIE'S LLC
96-98 BROOKLINE AVENUE
BOSTON, MA 02215
LICENSE#: 04077-RS-0116
VIOLATION DATE: 9/08/2023
HEARD: 3/26/2024**

After a hearing on March 26, 2024, the Commission finds Fenway Johnnie's LLC violated 204 CMR 2.05 (2) Permitting an Illegality on the Licensed Premises, to wit: M.G.L. Ch. 138, § 34C Possession of an alcoholic beverage by a person under twenty-one years of age (2 Counts). The Commission **suspends the license for a period of three (3) days to be served.**

The suspension shall commence on Monday, March 3, 2025, and terminate on Wednesday, March 5, 2025. The license will be delivered to the Local Licensing Board or its designee on Monday, March 3, 2025, at 9:00 A.M. It will be returned to the licensee March 6, 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

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cc: Local Licensing Board
Frederick G. Mahony, Chief Investigator
Nicholas Velez, Investigator
Alicia Cutter, Investigator
Nicole Smith, Investigator
Christopher Temple, Investigator
Nicole Terasconi, Investigator
Seamus L. O’Kelly, Esq.
Administration, File



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DECISION

**FENWAY JOHNNIE'S LLC
96-98 BROOKLINE AVENUE
BOSTON, MA 02215
LICENSE#: 04078-RS-0116
VIOLATION DATE: 9/8/2023
HEARD: 3/26/2024**

Fenway Johnnie's LLC ("Licensee") 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, 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, § 34C Possession of an alcoholic beverage by a person under twenty-one years of age (7 Counts) which occurred September 8, 2023, according to Investigator Velez's Report.

The following documents are in evidence:

1. Investigative Report of N. Velez;
 2. Photographs of Fraudulent Identifications Utilized;
 3. ABCC Application Summary Review, Transfer of License Approved 5/8/2018;
 4. ABCC Decision, 2/3/2023;
 5. ABCC Decision, 5/2/2023.
- A. Video Surveillance, 9/8/2023.

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

FINDINGS OF FACT

1. On Friday September 8, 2023, at approximately 11:00 p.m., Investigators Cutter, Smith, Temple, Terasconi, Watson and Velez ("Investigators") along with Chief Investigator Mahony, conducted an inspection of Fenway Johnnie's LLC ("Licensee"). (Testimony, Exhibit 1)
2. Investigators Terasconi and Velez observed a youthful appearing female individual in possession of what appeared to be an alcoholic beverage. Investigators identified themselves and asked to see proof of legal age to possess an alcoholic beverage. Id.

3. Underage #1, actual date of birth 4/18/2003 (age 20), stated she was in possession of a tequila pineapple mixed drink. She presented to Investigators a fraudulent Virginia driver's license bearing another person's name, address and birth date. Id.
4. Investigators Terasconi and Velez observed a youthful appearing female individual in possession of what appeared to be an alcoholic beverage. Investigators approached the individual, identified themselves and requested she provide proof of legal age to possess an alcoholic beverage. Id.
5. Underage #2, actual date of birth 5/28/2004 (age 19), stated she was in possession of a vodka and soda mixed drink. She presented to Investigators the Massachusetts driver's license of her sister, who was over 21 years of age. Investigators observed that the person before them appeared to be under the age of 21 and determined reliance upon the Massachusetts driver's license presented was not reasonable. Id.
6. Investigator Velez's report details the interaction of Investigators Smith, Terasconi, Temple, and Cutter with 5 other individuals. Id.
7. Investigators informed the manager on duty, Gar McLean, of the violations and that a report would be filed with the Chief Investigator for further action. Id.
8. John Caron, Licensee, appeared at the Commission hearing along with Managers Higor Trindade and Gar McClean.
9. The Licensee has held a license under M.G.L. c. 138, § 12 since 2018 with two prior violations. (Commission Records, Exhibits 4, 5)

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

Here, direct evidence was only presented through the testimony of Investigator Velez. He observed and interacted with two individuals, Underage #1 and Underage #2, who were under the age of 21 and found on the licensed premises in possession of alcoholic beverages.

While Investigator Velez's report cites 5 additional counts of a violation of 204 CMR 2.05 (2) Permitting an Illegality on the Licensed Premises, to wit: M.G.L. Ch. 138, § 34C, the Investigative and Enforcement Division presented no direct evidence as to these counts. As such, this information is hearsay. A decision of a board that rests entirely on hearsay evidence cannot be sustained. See Moran v. School Committee of Littleton, 317 Mass. 591, 596-597 (1945) (citations omitted); Braintree Brew House LLC d/b/a The Brew House (ABCC Decision March 27, 2013) (violation of § 69 disapproved where all of the evidence presented to the Commission constituted hearsay). The Investigators have the burden of proving that a violation occurred. In the present case, no direct evidence was offered to prove 5 of the 7 counts.

The Commission is persuaded by the evidence that the Licensee committed a 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 21 years of age (2 counts).

The Commission finds **NO VIOLATION** occurred regarding the five additional counts.

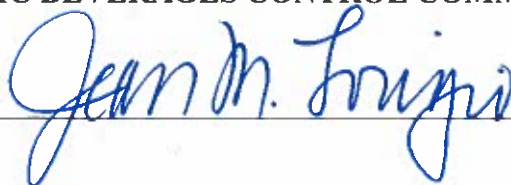
CONCLUSION

Based on the evidence, the Commission finds the Licensee violated 204 CMR 2.05 (2) Permitting an Illegality on the Licensed Premises, to wit: M.G.L. Ch. 138, § 34C Possession of an alcoholic beverage by a person under twenty-one years of age (2 Counts). As a result, the Commission **suspends the license for a period of three (3) days.**

The Commission finds **NO VIOLATION** of 5 counts of 204 CMR 2.05 (2) Permitting an Illegality on the Licensed Premises, to wit: M.G.L. Ch. 138, § 34C occurred.

ALCOHOLIC BEVERAGES CONTROL COMMISSION

Jean M. Lorizio, Chairman



Crystal Matthews, Commissioner

Crystal Matthews

Deborah Baglio, Commissioner

Deborah A Baglio

Dated: January 14, 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.

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