

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

Steven Grossman
Treasurer and Receiver General

Kim S. Gainsboro, Esq.
Chairman

NOTICE OF SUSPENSION

March 15, 2011

Re: Hollywood Liquors, Inc.
DBA: Hollywood Liquors
Premise: 950 Tremont Street
City/Town: Boston, MA 02118
License #: 011601043
Heard: January 25, 2011

After a hearings on January 25, 2011, the Commission finds Hollywood Liquors, Inc. dba Hollywood Liquors in violation of M.G.L. c.138, §34c (2 counts). The Commission **suspends the licensee's license for a total of five (5) days to be served.** The suspension shall commence on **Wednesday, April 27, 2011 and terminate on Sunday, May 1, 2011.** The license will be delivered to the Local Licensing Board or its designee on Wednesday, April 27, 2011 at 9:00 A.M. It will be returned to the licensee Tuesday, May 2, 2011.

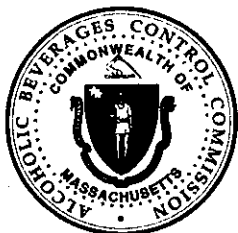
You are advised that pursuant to the provisions of M.G.L. c.138 §23, you may petition the Commission to accept an offer in compromise in lieu of suspension within 20 calendar days following such notice of such suspension. If accepted, you may pay a fine using the enclosed form. All checks must be certified and accompanied by the enclosed form, which must be signed by 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

Kim S. Gainsboro
Chairman

cc: Local Licensing Board
Frederick G. Mahony, Chief Investigator
Caroline Guarino, Investigator
Northeastern University Police Department
Ethan Scheff, Esq.
File



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

DECISION

Re: Hollywood Liquors, Inc.
DBA: Hollywood Liquors
Premise: 950 Tremont Street
City/Town: Boston, MA 02118
License #: 011601043
Heard: January 25, 2011

Hollywood Liquors, Inc. dba Hollywood Liquors (the "Licensee" or "Hollywood Liquors") holds an all alcohol license issued pursuant to M.G.L. c. 138, §15. The Alcoholic Beverages Control Commission (the "Commission") held a hearing on Tuesday, January 25, 2011, regarding alleged violations of M.G.L. c.138, §34c on September 3 and 4, 2010.

The following documents are in evidence:

1. Investigator Caroline Guarino's Report;
2. Northeastern University Police Report by Officer Boyd dated September 3, 2010;
3. Northeastern University Police Report by Officer Boyd dated September 4, 2010;
4. D. Gibson's Expired License;
5. D. Gibson's Valid License;
6. B. Gibson's CJIS Report;
7. D. Gibson's CJIS Report;
8. Virginia Driver's License;
9. Photo of Pineapple Vodka;
10. Photo of Rubinoff Raspberry Vodka; and
11. Photo of Natural Light.

There is one (1) tape of this hearing and two (2) individuals testified.

FACTS

1. On Friday September 3, 2010, at approximately 6:43 P.M., Officer Hynes and Detective Boyd observed a male, later identified as Ohio State University student R. Faber, walk from the direction of Hollywood Liquors. Ex. 1

2. Mr. Faber was carrying a thirty (30) pack of cans of a brand of alcoholic beverages named "Natural Light" and an eighteen (18) pack of cans of a brand of alcoholic beverages named "Bud Light." Ex. 1
3. The officers then observed Mr. Faber hand a youthful appearing male, later identified as Northeastern University student S. Corbesero, the eighteen (18) pack of Bud Light. Ex. 1
4. Mr. Faber was then observed attempting to put the thirty (30) pack of Natural Light into another backpack. Ex. 1
5. Both males were checked for proof of age. Ex. 1
6. Mr. Faber provided a false Virginia driver's license indicating he was twenty-two (22) years old. Ex. 1
7. The officers knew immediately it was a false identification and asked Mr. Faber to provide his valid identification. Then he produced his own valid Massachusetts driver's license. Mr. Faber's license indicated he was nineteen (19) years old. Ex. 2
8. Mr. Corbesero gave a valid Massachusetts drivers license proving he was twenty (20) years old. Ex. 1
9. Detective Boyd asked Mr. Faber where he got the alcoholic beverages and he stated he purchased them at Hollywood Liquors using the false Virginia driver's license. Ex. 1
10. During the hearing, Mr. Genao, the approved license manager and sole stockholder of Hollywood Liquors, testified that he had no recollection of Mr. Faber entering the store or purchasing alcoholic beverages from the store. He testified that they have two machines for detecting fraudulent identifications. He testified that his staff is trained to check all out of state identifications. He testified that if Mr. Faber had attempted to purchase the alcohol from Hollywood Liquors that the machine would have detected the fraudulent identification.
11. The police did not speak with Mr. Genao that evening. Ex. 3
12. On Saturday September 4, 2010, Northeastern University Officers Hynes, Riddle and Detective Boyd, under the direction of Sgt. Detective Casinelli, conducted a plain clothes Alcohol Interdiction Program in Boston.
13. At approximately 6:43 PM, Officer Riddle and Detective Boyd observed a male later identified as Northeastern University student B. Gibson walk into Hollywood Liquors and exit with two (2) bags. Ex. 1
14. Both of the bags were consistent with those commonly used to package bottles of distilled spirits. Ex. 1
15. Mr. Gibson then approached a male, later identified as Northeastern University student Y. Delice, and handed him both brown bags. Ex. 1
16. Mr. Delice then placed both bags inside a backpack. Ex. 1

17. The students were checked for proof of age and both admitted they were nineteen (19) years old. Ex. 1
18. Mr. Gibson admitted using his older brother's Massachusetts driver's license. Ex. 1
19. Mr. Gibson had both a valid and an expired copy of his brother's driver's license. Exs. 4, 8
20. Mr. Gibson admitted he purchased the alcoholic beverages; one (1) bottle of Rubinoff Raspberry Vodka and one (1) bottle of Smirnoff Pineapple Vodka in the brown bags. Ex. 1
21. During the hearing Mr. Genao, the approved license manager and sole shareholder of Hollywood Liquors, testified that he was working that night, and that he sold the alcoholic beverages to Mr. Gibson.
22. He testified that he asked Mr. Gibson for identification indicating that he was over twenty-one years of age, and that Mr. Gibson produced a valid Massachusetts driver's license. Mr. Genao testified that he asked Mr. Gibson for another form of identification as support for the driver's license.
23. In response, Mr. Gibson produced the expired driver's license. Mr. Genao testified that he requested a third form of identification, and Mr. Gibson produced an unexpired credit card.
24. The officers produced a copy of Mr. Dominic Gibson's picture as it appears on his Massachusetts driver's license, as well as a copy of Mr. Brendan Gibson's picture as it appears on his Massachusetts Driver's License. Exs. 6, 7.
25. Dominic Gibson is 5'10" and Brendan Gibson is 5'8". Their facial structures are distinct. Dominic Gibson's nose is narrower than Brendan's, and his chin and face are rounder. Also, Dominic has blue eyes, and Brendan has brown eyes. Exs. 4,5,6.
26. The Commission is persuaded and thus finds that they do not look like the same person.
27. Mr. Genao has been involved with this license since its inception. Hollywood Liquors has been a licensee for eleven (11) years. This is the first violation.

DISCUSSION

M. G. L. c. 138, § 34, prohibits the sale of alcoholic beverages to any person under twenty-one (21) years of age. 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. (emphasis supplied). 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 section 34B. Murray's Liquors, Inc. v. Alcoholic Beverages Control Commission, 48 Mass.App.Ct. 100 (1999); In Re: Alan C. Dinh dba Juliano's Beer & Wine, Quincy (ABCC Decision April 8, 2005).

In determining whether evidence exists to prove a violation, the Commission functions as the finder of facts and determines the credibility and weight to be given to the evidence before it. See Guarino v. Director of the Div of Employment Sec., 393 Mass. 89, 92 (1984), and cases therein cited. In the evenings of September 3, 2010 and September 4, 2010, officers conducted surveillance on Hollywood Liquors. On both evenings, the officers watched two individuals that they believed to be under the age of twenty-one (21) come out of Hollywood Liquors carrying bags containing alcoholic beverages. On both occasions, these individuals admitted to the detectives that they were under the age of twenty-one (21) and purchased alcoholic beverages from Hollywood Liquors. They each told the officers that they used false identification to purchase the beverages and produced to the officers the false identification. Mr. Corbesero had a false Virginia driver's License and Mr. Gibson had his brother's valid Massachusetts driver's License, an expired Massachusetts driver's license and a credit card.

Hollywood Liquor's reliance on the Virginia License. As to the sale on September 3, 2010, Mr. Genao testified that Hollywood Liquors has policies and procedures in place for detecting fraudulent identification. He testified that all out of state identifications are run through a machine to detect if they are fraudulent. He denies that Mr. Corbesero purchased alcoholic beverages at Hollywood Liquor that evening.

However, Mr. Corbesero admitted to Detective Boyd and Officer Hynes that he purchased the alcoholic beverages from Hollywood Liquors using a false Virginia driver's license as proof that he was over twenty-one (21) years of age. He gave the false Virginia license to the officers. He was seen carrying a bag containing alcoholic beverages less than thirty (30) feet from Hollywood Liquors.

Mr. Corbesero's admissions were corroborated by the identification he produced. He was also arrested for being a minor in possession of alcohol, pursuant to M.G.L. c. 138, §34C. As this is a statement against penal interest, the Commission credits Mr. Corbesero's statements. The Commission finds that Hollywood Liquors did not rely on any identification specified in M.G.L.c. 138, § 34B as proof of Mr. Corbesero's age and therefore rules that with regard to that count that Hollywood Liquors does not have any defense under §34B.

Hollywood Liquor's reliance on the Massachusetts license. As to the sale on September 4, 2010, Hollywood argues that it reasonably relied upon the Massachusetts license presented to the sales clerk. The Commission finds that the officers presented persuasive and credible evidence to show that Hollywood Liquor's reliance on the Massachusetts license in selling alcoholic beverages to Mr. Gibson was not reasonable. In Mr. Gibson's case, Mr. Genao testified that he remembered Mr. Gibson, and that he was the individual who sold the alcoholic beverages to him. Mr. Genao testified that he asked for two (2) picture identifications and a third form of supporting identification. In response, Mr. Gibson produced his brother's valid driver's license, his brother's expired license, and his brother's credit card. Mr. Genao testified that the photograph of the individual depicted in the driver's License looked like Brendan Gibson.

At the time of the sale, Mr. Gibson was nineteen (19) years of age. He presented a license stating that he was twenty-two (22). Although the minor's hair and skin pigmentation

appear, at a glance, similar to the photographed male, the Commission is persuaded and finds after reviewing the documents that differences between the two individuals were apparent. The individuals are different heights, have different facial structures, eye color, eye shape, and nose shape. The Commission finds that a reasonable person would be able to discern those differences and know that the photograph on the license did not depict the individual presenting it as proof of his age.

CONCLUSION

Based on the evidence, the Commission finds the licensee violated M.G. L. c.138, §34c (2 counts). Although the licensee has been in existence for eleven (11) years without a violation, the licensee presented no facts that mitigate these two offenses that occurred back-to-back and chose to present no facts to show any changes to its operations to avoid repetition of the conduct that committed these two violations on two successive days.

The Commission suspends the license for five (5) days to be held in abeyance for two (2) years provided no further violations of M.G.L. c. 138 or Commission regulations occur, for the sale to the nineteen (19) years old Mr. Faber on the first count. As to the second count for the sale to the nineteen (19) years old Mr. Gibson, the Commission suspends the license for five (5) days. The aggregate suspension is ten(10) days with five (5) days to serve and the balance held in abeyance for two (2)years provided there are no further violations of M.G.L.c. 138 or Commission Regulations.

ALCOHOLIC BEVERAGES CONTROL COMMISSION

Kim S. Gainsboro, Chairman

Robert H. Cronin, Commissioner

Dated: March 15, 2011

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: Ethan Scheff, Esq.
Local Licensing Board
Frederick G. Mahony, Chief Investigator
Caroline Guarino, Investigator
Northeastern University Police Department
File