



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

Jean M. Lorizio, Esq.
Chairman

NOTICE OF SUSPENSION

November 5, 2019

**METRO DINING, INC. D/B/A THE DRAFT
32 HARVARD AVE.
BOSTON, MA 02134
LICENSE#: 0116-00424
VIOLATION DATE: 3/08/2019
HEARD: 09/17/2019**

After a hearing on September 17, 2019, the Commission finds Metro Dining, Inc. d/b/a The Draft 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 to a person under twenty-one years of age (3 counts).

The Commission suspends the license for a period of six (6) days of which three (3) days will be served, and three (3) days will be held in abeyance for a period of two (2) years provided no further violations of Chapter 138 or Commission Regulations occur.

The suspension shall commence on Monday, January 6, 2020 and terminate on Wednesday, January 8, 2020. The license will be delivered to the Local Licensing Board or its designee on Monday, January 6, 2020 at 9:00 A.M. It will be returned to the licensee on January 9, 2020.

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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这份文件是重要的，应立即进行翻译。

cc: Local Licensing Board
Frederick G. Mahony, Chief Investigator
Kyle E. Gill, Esq., Associate General Counsel
Christopher Temple, Investigator
Nicholas Velez, Investigator
Carolyn Conway, Esq.
Administration, File



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DECISION

**METRO DINING, INC. D/B/A THE DRAFT
32 HARVARD AVE.
BOSTON, MA 02134
LICENSE#: 0116-00424
VIOLATION DATE: 3/08/2019
HEARD: 09/17/2019**

Metro Dining, Inc. d/b/a The Draft (the "Licensee") holds an alcohol license issued pursuant to M.G.L. c. 138, § 12. The Alcoholic Beverages Control Commission (the "Commission" or "ABCC") held a hearing on Tuesday, September 17, 2019, 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 to a person under twenty-one years of age (3 counts), which occurred on March 8, 2019 according to Investigator Temple's Report.

The following documents are in evidence:

1. Investigator Temple's Investigative Report;
2. Photocopy of U.S. Passport for Underage #1;
3. Photocopy of Fraudulent New York State Driver's License;
4. ABCC Decision, 9/13/2016;
5. LLA Decision, 8/14/2014;
6. ABCC Memorandum & Order, 9/28/2012;
7. ABCC Amended Decision, 9/13/2012;
8. ABCC Decision, 5/29/2012;
9. LLA Decision, 9/30/2010;
10. ABCC Decision, 4/25/2007;
11. Copy of License Transfer Approval, 6/22/2006;
12. RMV Printout for Underage# 1.

A. Email 9/16/2019 from Underage #3.

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

FINDINGS OF FACT

1. On Friday, March 8, 2018, at approximately 12:20 a.m., Investigators Velez and Temple ("Investigators") conducted an investigation of the business operation of Metro Dining, Inc. d/b/a The Draft to determine the manner in which its business was being conducted. (Exhibit 1)
2. Investigators observed three youthful appearing females, at a table closest to the entrance, in possession of alcoholic beverages. Investigators identified themselves and asked to see proof of legal age. (Exhibit 1)
3. Underage #1, actual date of birth 5/04/2000 (age 18) was in possession of a bottle of Bud Light beer. She stated to Investigators that she had used a friend's passport to gain entry to the premises. Investigators observed that the person in the passport photo did not resemble the individual before them. The eyebrows, eyes, and mouth structure were different from each other. (Exhibits 1, 2)
4. Underage #2, actual date of birth, 6/20/2000 (age 18), was in possession of a pitcher of Miller Lite beer. She stated to Investigators that she had used her true identification to gain entry to the premises. (Exhibits 1)
5. Underage #3, actual date of birth, 7/14/2000 (age 18), was in possession of a Bud Light beer. She stated to Investigators that she used a fraudulent New York State driver's license to gain entry to the premises. (Exhibits 1, 3)
6. Investigators informed the door man and the night manager of the violations and that a report would be filed with the Chief Investigator for review. (Exhibit 1)
7. The Licensee has been licensed under M.G.L. c. 138, § 12 since 2006 with two prior violations of Ch. 138, § 34C in 2007 and 2016.

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. A Massachusetts driver's license which purports to show that a patron is 21 years of age or older is not an affirmative defense available for the statutory violation of permitting an illegality of a minor in possession of alcoholic beverages pursuant to Section 34C. While Massachusetts General Laws, Chapter 138, § 34B offers protection from license suspension or revocation or criminal penalties to license holders who reasonably rely on one of four (4) pieces of identification specified in the statute, including a valid Massachusetts driver's license, Massachusetts liquor identification card, Massachusetts identification card, a United States passport, or a passport issued by the government – recognized by the United States – of a foreign country, a passport card for a U.S. passport, or a valid U.S. military identification card. See M.G.L. c. 138, § 34B. Section 34B refers only to the activities of delivery and sale, and it omits any reference to the act of possession. See M.G.L. c. 138, § 34B. Consequently, Section 34B offers no relief from liability for allowing possession of alcoholic beverages in violation of Section 34C.

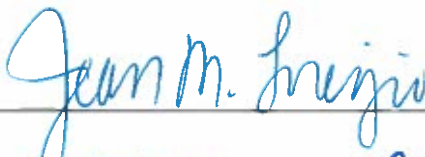
The Commission is persuaded by the evidence that the minors were younger than 21 years of age and were in possession of an alcoholic beverage in the licensed premises of Metro Dining, Inc. d/b/a The Draft. The Commission finds that the Licensee committed a violation of 204 CMR 2.05 (2) - Permitting an illegality on the licensed premise, to wit: M.G.L. c. 138, § 34C- Possession of an alcoholic beverage by a person under 21 years of age (3 counts).

CONCLUSION

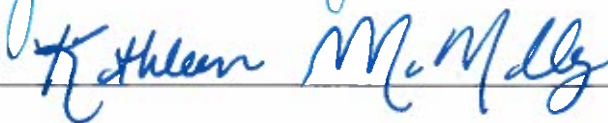
Based on the evidence, the Commission finds the Licensee violated 204 CMR 2.05 (2) Permitting an illegality on the licensed premises, to wit: M.G.L. c. 138, § 34C – Possession of an alcoholic beverage to a person under twenty-one years of age (3 counts). Therefore, the Commission **suspends the license for a period of six (6) days of which three (3) days will be served, and three (3) days will be held in abeyance for a period of two (2) years provided no further violations of Chapter 138 or Commission Regulations occur.**

ALCOHOLIC BEVERAGES CONTROL COMMISSION

Jean M. Lorizio, Chairman



Kathleen McNally, Commissioner



Dated: November 5, 2019

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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