

Deborah B. Goldberg
Treasurer and Receiver General

*Commonwealth of Massachusetts
Department of the State Treasurer
Alcoholic Beverages Control Commission
239 Causeway Street
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Jean M. Lorizio, Esq.
Chairman

NOTICE OF SUSPENSION

February 17, 2017

**RUSSIAN BENEVOLENT SOCIETY
14-20 LINDEN STREET
BOSTON, MA 02134
LICENSE#: 011600532
VIOLATION DATE: 04/22/2016
HEARD: 02/14/2017**

After a hearing on February 14, 2017, the Commission finds Russian Benevolent Society 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 by a person under twenty-one (21) years of age (1 Count).

The Commission suspends the license for a period of five (5) days of which three (3) days will be served, and two (2) 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 Wednesday, June 7, 2017 and terminate on Friday, June 9, 2017. The license will be delivered to the Local Licensing Board or its designee on Wednesday, June 7, 2017 at 9:00 A.M. It will be returned to the licensee on Saturday, June 10, 2017.

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.

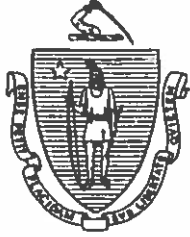
ALCOHOLIC BEVERAGES CONTROL COMMISSION

A handwritten signature in cursive script, reading "Jean M. Lorizio".

Jean M. Lorizio
Chairman

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cc: Local Licensing Board
Frederick G. Mahony, Chief Investigator
Jan Kujawski, Investigator
Mark Kenny, Investigator
Curt Bletzer, Esq. via facsimile 617-254-5522
Administration, File



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DECISION

**RUSSIAN BENEVOLENT SOCIETY
14-20 LINDEN STREET
BOSTON, MA 02134
LICENSE#: 011600532
VIOLATION DATE: 04/22/2016
HEARD: 02/14/2017**

Russian Benevolent Society (the "Licensee") holds an alcohol license issued pursuant to M.G.L. c. 138, § 12. The Alcoholic Beverages Control Commission (the "Commission") held a hearing on Tuesday, February 14, 2017, 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 by a person under twenty-one (21) years of age (1 count). The above captioned occurred on April 22, 2016 according to Investigator Kujawski's report.

The following documents are in evidence:

1. Investigator Kujawski's Investigative Report;
2. Fraudulent Maryland Driver's License of Underage #1; and
3. RMV Printout for Underage #1.

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

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

FINDINGS OF FACT

1. On Friday, April 22, 2016, at approximately 12:10 a.m., Investigators Kenny and Kujawski, along with Chief Investigator Mahony ("Investigators") conducted an investigation of the business operation of Russian Benevolent Society to determine the manner in which its business was being conducted.
2. Investigators observed a youthful appearing individual located near the bar, who was in possession of an alcoholic beverage. Investigators identified themselves and asked for proof of legal age.

3. Underage #1, actual date of birth 6/16/1997 (age 18) was in possession of a Corona Light beer. He presented Investigators with a false Maryland driver's license.
4. Investigators identified all the underage individuals to the manager on duty, Lazarius Askitis.
5. Investigators identified the underage patron to the manager on duty, Lazarius Askitis.
6. Investigators informed Mr. Askitis of the violation and that a report would be filed with the Commission for review.

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 M.G.L. c. 138.

M.G.L. c. 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) (emphasis supplied). The Commission is given "comprehensive powers of supervision over licensees." Connolly, 334 Mass. at 617.

The Commission may make regulations for "clarifying, carrying out, enforcing and preventing violation of" statutory provisions for the "method of carrying on the business of any licensee," and "for the proper and orderly conduct of the licensed business." M. G.L. c. 138, § 24. The Commission has exercised this authority through the promulgation of regulations that are codified at chapter 204 of the Code of Massachusetts Regulations ("CMR"). The Commission also has comprehensive powers of supervision over licensees and has the statutory authority under M.G.L. c. 138, § 64 to revoke or suspend a license for violation of a regulation. Aristocratic Restaurant of Massachusetts, Inc. v. Alcoholic Beverages Control Comm'n., 374 Mass. 547 (1978); Connolly, 334 Mass. at 617.

A Commission regulation promulgated at 204 CMR 2.05(2) provides that "[n]o licensee for the sale of alcoholic beverages shall permit any disorder, disturbance or illegality of any kind to take place in or on the licensed premises. . . ." The law is well-settled that "under the regulation, [204 CMR 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.'" Rico's of the Berkshires, Inc. v. Alcoholic Beverages Control Comm'n., 19 Mass. App. Ct. 1026, 1027 (1985) (quoting Commonwealth v. Gould, 158 Mass. 499, 507 (1893)). The Licensee violated this regulation by permitting illegalities on its premises on December 17, 2015.

The Licensee was charged with a violation of 204 CMR 2.05 (2) to wit: c. 138, §34C - Possession of an Alcoholic Beverage by a Person Under Twenty-One (21) Years of Age, one (1) count. 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." Tobin v. Norwood Country Club, Inc., 422 Mass. 126, 133-134 (1996); accord Fran's Lunch, Inc. v.

Alcoholic Beverages Control Comm'n, 45 Mass. App. Ct. 663, 664 (1998). General Laws chapter 138, § 34C states, in pertinent part, that: “[w]hoever, 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.”

The Commission was presented with evidence that one minor patron presented fraudulent identifications to enter the premises.

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. 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 Comm'n, 24 Mass. App. Ct. 487 (1987); In Re: Alan C. Dinh d/b/a Juliano's Beer & Wine (ABCC Decision April 8, 2005).

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. However, 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 finds that on April 22, 2016, one individual younger than 21 (twenty-one) years of age was inside the licensed premises in possession of alcoholic beverages. The Commission finds that the Licensee committed the 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 twenty-one (21) years of age (1 count).

CONCLUSION

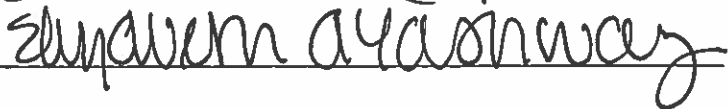
Based on the evidence, the Commission finds the Licensee violated 204 CMR 2.05 (2) Permitting an illegality on the licensed premises, to wit: M.G.L. c. 138, § 34C- Possession of an alcoholic beverage by a person under twenty-one (21) years of age (1 Count). Therefore the Commission **suspends the license for a period of five (5) days of which three (3) days will be served, and two (2) 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

Kathleen McNally, Commissioner



Elizabeth A. Lashway, Commissioner



Dated: February 17, 2017

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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