

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

Deborah B. Goldberg
Treasurer and Receiver General

Kim J. Gainsboro, Esq.
Chairman

NOTICE OF SUSPENSION

November 10, 2015

ST. ENTERTAINMENT GROUP INC. D/B/A TUNNEL
100 STUART STREET
BOSTON, MA 02128
LICENSE#: 011600503
VIOLATION DATE: 08/21/2015
HEARD: 10/27/2015

After a hearing on October 27, 2015, the Commission finds St. Entertainment Group Inc. d/b/a Tunnel violated 204 CMR 2.05 (2) - Permitting an illegality on the licensed premises, to wit: 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 four (4) days of which two (2) 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, January 6, 2016, and terminate on Thursday, January 7, 2016. The license will be delivered to the Local Licensing Board or its designee on Wednesday, January 6, 2016 at 9:00 A.M. It will be returned to the Licensee Friday, January 8, 2016.

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 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

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cc: Local Licensing Board
Frederick G. Mahony, Chief Investigator
Christopher Temple, Investigator
Dennis Keefe, Investigator
Karen D. Simão, Esq. via facsimile 617-946-4624
Administration
File



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Department of the State Treasurer
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DECISION

ST. ENTERTAINMENT GROUP INC. D/B/A TUNNEL
100 STUART STREET
BOSTON, MA 02128
LICENSE#: 011600503
VIOLATION DATE: 08/21/2015
HEARD: 10/27/2015

St. Entertainment Group Inc. d/b/a Tunnel (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, October 27, 2015, regarding an alleged violation of 204 CMR 2.05 (2) - Permitting an illegality on the licensed premises, to wit: c. 138, §34C Possession of an alcoholic beverage by a person under twenty-one (21) years of age one (1 Count), which occurred on August 21, 2015, according to Investigator Temple's Report.

The following documents are in evidence as exhibits:

1. Investigator Temple's Report dated August 21, 2015; and
2. Fraudulent Arizona Identification.

There is one (1) audio recording of this hearing and four (4) witnesses testified.

The Commission took administrative notice of the Licensee's Commission file.

FACTS

1. On Friday, August 21, 2015, at approximately 1:40 a.m., Investigators Keefe and Temple, along with Chief Investigator Mahony ("Investigators") conducted an investigation of the business operation of St. Entertainment Group Inc. d/b/a Tunnel to determine the manner in which the business was being conducted.
2. Upon entering the licensed premises, Investigators observed three (3) youthful looking individuals in possession of alcoholic beverages. Investigators took note of these individuals and continued to the other end of the bar.

3. Investigators then observed these previously identified youthful-looking individuals preparing to leave.
4. Investigators approached the youths to ascertain their ages. Female Minor #1, actual date of birth 07/01/1996 (age 19), stated she was drinking a whiskey and ginger [ale].
5. Female Minor #1 provided Investigators with a fraudulent Arizona driver's license.
6. Investigators identified Female Minor #1 to the manager on duty, Eric Tong, and to the doorman.
7. Investigators informed Mr. Tong of the above violation and that a report would be filed with the Chief Investigator for review.
8. At the Commission hearing, Mr. Ron O'Connor, security staff for the licensee, testified that Female Minor #1 presented the Arizona license with two back-up forms of identification, a credit card and a school-issued identification.
9. Mr. O'Connor testified that Tunnel has a scanner through which he and all of security staff/door people scan the identifications presented to determine if any of the identifications are fraudulent.
10. Mr. O'Connor and the staff usually scan every identification presented at the door.
11. On weekends, the licensee denies entrance to many people because they do not present proper identification.
12. As a result of this incident, Mr. Brian Lesser, the owner of the licensee, has retrained all of his staff regarding the alcoholic beverages laws of Massachusetts and the safe sale and service of alcohol.

DISCUSSION

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 Commission, 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. ABCC, 19 Mass. App. Ct. 1026, 1027 (1985) (rescript).

M.G.L. 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." Although the minor presented an identification, before she was served and in possession of alcoholic beverages, which purports to show that the patron is 21 years of age or older, this is not an affirmative defense available for the statutory violation of permitting an illegality of a minor in possession of alcoholic beverages pursuant to M.G.L. Chapter 138, §34C.

General Laws chapter 138, §34B provides, in pertinent part, that “[a]ny licensee, or agent or employee thereof, under this chapter, who reasonably relies on such a liquor purchase identification card, or an identification card issued under section 8E of chapter 90, or motor vehicle license issued pursuant to said section eight, for proof of a person’s identity and age shall be presumed to have exercised due care in making such delivery or sale of alcohol or alcoholic beverages to a person under twenty-one years of age. Such presumption shall be rebuttable.” (Emphasis supplied.) The long-established rules of statutory construction require that the Commission cannot, and will not, read words into this statute.

M.G.L. c. 138, §34B offers protection from license 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, 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 sale/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 Commission, 24 Mass. App. Ct. 487, 510 N.E.2d 293 (1987); In Re: Alan C. Dinh d/b/a Juliano’s Beer & Wine, Quincy (ABCC Decision April 8, 2005.)

M.G.L. c. 138, § 34B refers only to the activities of delivery and sale, and omits any reference to the act of possession. This statute offers no relief from liability for allowing possession of alcoholic beverages in violation of M.G.L. c. 138, § 34C. (Emphasis supplied.)

The Commission is persuaded by the evidence that the individual, identified as Female Minor #1, was younger than 21 years of age, and was in possession of an alcoholic beverage in the licensed premises of St. Entertainment Group Inc. d/b/a Tunnel.

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 (1 count). On the date of this offense, the aforementioned under-aged patron of St. Entertainment Group Inc. d/b/a Tunnel was 19 years old. The Commission finds that the Licensee permitted an illegality, allowing a minor patron, age 19, to be in possession of an alcoholic beverage on the licensed premises.

CONCLUSION

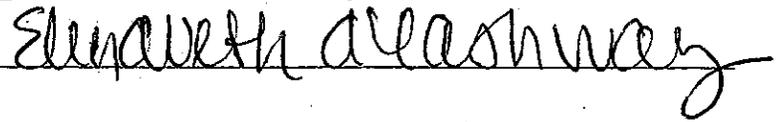
Based on the evidence, the Commission finds the Licensee violated 204 CMR 2.05 (2) - Permitting an illegality on the licensed premises, to wit: c. 138, §34C Possession of an alcoholic beverage by a person under twenty-one (21) years of age (1 Count). Therefore, the Commission **suspends the license for four (4) days of which two (2) 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: November 10, 2015

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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