

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

Jean M. Lorizio, Esq.
Chairman

DECISION

**TANZILA INC. D/B/A HOME MARKET
165 BELGRADE AVENUE
BOSTON, MA 02131
LICENSE#: 01264-PK-0116
VIOLATION DATE: 8/24/2020
HEARD: 10/26/2021**

Tanzila Inc. d/b/a Home Market (the "Licensee") holds an alcohol license issued pursuant to M.G.L. c. 138, § 15. The Alcoholic Beverages Control Commission ("ABCC" or "Commission") held a remote hearing via Microsoft Teams on Tuesday, October 26, 2021, regarding an alleged violation of 204 CMR 2.05 (2) Permitting an Illegality on the Licensed Premises, to wit: M.G.L. Ch. 138, § 34 Sale or Delivery of an alcoholic beverage to a person under twenty-one (21) years of age (1 Count). Prior to the commencement of the hearing, the Licensee stipulated to the facts alleged in Investigator Teehan's Report.

The following documents are in evidence:

1. Investigator Teehan's Report;
 2. ABCC Licensee Accela Summary, License Transfer Approved 1/13/2017;
 3. Fraudulent Identification Confiscated;
 4. ABCC Decision, 6/14/2017;
 5. Licensee's Stipulation of Facts.
- A. Massachusetts Department of Transportation Driver's License and Identification Information.

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

FINDINGS OF FACT

1. On Monday, August 24, 2020, Investigator Teehan ("Investigator") conducted an inspection of the business operation of Tanzila Inc. d/b/a Home Market to determine the manner in which its business was being conducted.
2. At approximately 2:45 p.m., while outside the licensed premises, Investigator Teehan observed a youthful looking male subject exit the store in possession of alcoholic beverages. Investigator Teehan approached the individual, identified himself and asked to see proof of legal age.

3. Underage #1, actual date of birth 6/09/2004 (age 16), was in possession of a 30-pack of Bud Light beer. He presented a fraudulent Massachusetts driver's license in his own name with a different date of birth and informed the Investigator he had used the fraudulent identification to purchase the alcohol.
4. Investigator Teehan observed Underage #1 to be so clearly youthful in appearance that a reasonable person should be able to see he was under 21 years of age. Investigator Teehan determined it was not reasonable for the Licensee to rely on the fraudulent identification.
5. Underage #1's mother was contacted, and she came to pick him up.
6. Investigator Teehan informed the clerk on duty of the violations and that a report would be filed with the Chief Investigator for further action.
7. Mohammed Uddin, President of the Licensee entity, appeared at the Commission hearing. Mr. Uddin testified he was the person who sold the alcoholic beverages to Underage #1. He requested identification from Underage #1 and asked him to pull down his mask so he could compare his face to the picture on the identification presented. Mr. Uddin testified he believed the identification presented by Underage #1 was legitimate and that the individual was 21 years old.
8. The Licensee has held a license under M.G.L. c. 138, § 15 since 2017 with one prior violation.

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: c 138, § 34 Sale or delivery of an alcoholic beverage to a person under twenty-one (21) years of age (1 count). 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." Commonwealth v. Gould, 158 Mass. 499, 507 (1893); Burlington Package Liquors, Inc. v.

Alcoholic Beverages Control Comm'n, 11 Mass. App. Ct. 785, 788 (1981). It is, thus, quite possible for a licensee to offend the regulatory scheme without scienter. Rico's of the Berkshires, Inc. v. Alcoholic Beverages Control Comm'n, 19 Mass. App. Ct. 1026, 1027 (1985). A licensee is responsible for illegalities that occur on the licensed premises. See id.

Massachusetts General Laws, Chapter 138, §34 states, in pertinent part, “[w]hoever makes a sale or delivery of any alcoholic beverage or alcohol to any person under twenty-one years of age ... shall be punished by a fine of not more than \$2,000 or by imprisonment for not more than one year or both.” M.G.L. c. 138, § 34.

The Licensee asserts that he examined the underage individual and the Massachusetts driver's license he presented and truly believed it was legitimate. Therefore, he believed the underage individual was 21 years of age.

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. Here the Massachusetts driver's license presented was fraudulent. In addition, the underage individual was only sixteen years old, and evidence was presented, through the testimony of Investigator Teehan, that a reasonable person should have known the individual was under the age of twenty one.

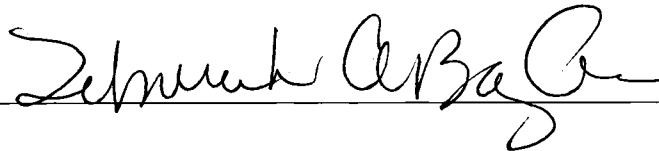
The Commission is persuaded by the evidence that Tanzila, Inc. d/b/a Home Market committed a violation of 204 CMR 2.05 (2) - Permitting an illegality on the licensed premise, to wit: M.G.L. c. 138, § 34 Sale or delivery of an alcoholic beverage to a person under twenty-one (21) years of age (1 count).

CONCLUSION

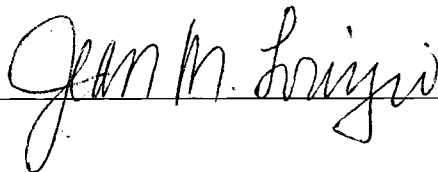
Based on the evidence, the Commission finds the Licensee violated of 204 CMR 2.05 (2) Permitting an Illegality on the Licensed Premises, to wit: M.G.L. Ch. 138, § 34 Sale or delivery of an alcoholic beverage to a person under twenty-one (21) years of age (1 Count). Therefore, the Commission **suspends the license for a period of 3 days which are hereby deemed served.**

ALCOHOLIC BEVERAGES CONTROL COMMISSION

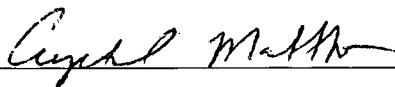
Deborah Baglio, Commissioner



Jean M. Lorizio, Chairman



Crystal Matthews, Commissioner



Dated: March 1, 2022

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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cc: Local Licensing Board
Frederick G. Mahony, Chief Investigator
Kyle E. Gill, Esq., Associate General Counsel
Michael Teehan, Investigator
Administration, File