



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

Jean M. Lorizio, Esq.
Chair

NOTICE OF SUSPENSION

November 5, 2019

**WEST END DINING LLC D/B/A CAUSEWAY
65-71 CAUSEWAY ST.
BOSTON, MA 02109
LICENSE#: 0116-00172
VIOLATION DATE: 5/18/2019
HEARD: 9/03/2019**

After a hearing on September 3, 2019, the Commission finds West End Dining LLC d/b/a Causeway 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 one (1) day which will be held in abeyance for a period of two (2) years provided no further violations of Chapter 138 or Commission Regulations occur.**

By decision dated June 8, 2018 the Commission had previously ordered an 11-day license suspension with six (6) days to be served and five (5) days to be held in abeyance for a period of two (2) years provided no further violations occurred. Based on the violation found above, the Licensee violated the conditions of that five (5) day suspension being held in abeyance. The Commission, in its discretion, hereby orders that 5-day suspension to be served.

The suspension shall commence on Monday, January 6, 2020 and terminate on Friday, January 10, 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 11, 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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cc: Local Licensing Board
Frederick G. Mahony, Chief Investigator
Nicholas Velez, Investigator
Christopher Temple, Investigator
Carolyn Conway, Esq. via email
Administration, File



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Chair

DECISION

**WEST END DINING LLC D/B/A CAUSEWAY
65-71 CAUSEWAY ST.
BOSTON, MA 02109
LICENSE#: 0116-00172
VIOLATION DATE: 10/06/2017
HEARD: 5/22/2018**

West End Dining LLC d/b/a Causeway (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, September 3, 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 by a person under twenty-one (21) years of age (1 count), which occurred on May 18, 2019, according to Investigator Velez's Report.

The following documents are in evidence:

1. Investigator Velez's Investigative Report;
2. Licensee's Stipulation of Facts Only;
3. Photocopy of Fraudulent Vermont Driver's License;
4. Licensee's Transfer Application Approved 6/11/2014;
5. ABCC Decision, 3/5/2018;
6. ABCC Decision, 3/7/2018
7. ABCC Decision, 6/8/2018.

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

FINDINGS OF FACT

1. On Saturday, May 18, 2019, at approximately 10:50 p.m., Investigator Temple and Velez ("Investigators") conducted an investigation of the business operation of West End Dining LLC d/b/a Causeway to determine the manner in which its business was being conducted.
2. Investigators observed a female patron in possession of alcoholic beverages. Investigators identified themselves and asked to see proof of legal age.

3. Underage #1, actual date of birth 6/17/1998 (age 20) was in possession of a vodka and cranberry mixed drink. She presented Investigators with a fraudulent Vermont driver's license.
4. When speaking to the underage female, she stated to Investigators that she had called the bouncer, Jordan, and he had allowed her entry into the premises. The underage show Investigators the message conversation on her mobile telephone where Jordan directed her to meet him at the front door.
5. The underage female was provided with safe transportation home.
6. Investigators spoke to the manager on duty, Kevin Maguire. Maguire stated that Jordan was the promoter working the event this evening. Maguire stated he had doorman at every door, so he did not know how Jordan was able to let the minor female in.
7. Tim McCaslan, the license manager, appeared at the Commission hearing and testified that Jordan, the promoter, is no longer working at the licensed premises.
8. Investigators informed Maguire of the violation and that a report would be filed with the Chief Investigator for further action.

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 minor was younger than 21 years of age and was in possession of an alcoholic beverage in the licensed premises of West End Dining LLC d/b/a Causeway. 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).

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). The Commission **suspends the license for a period of one (1) day which will be held in abeyance for a period of two (2) years provided no further violations of Chapter 138 or Commission Regulations occur.**

By decision dated June 8, 2018 the Commission had previously ordered an 11-day license suspension with six (6) days to be served and five (5) days to be held in abeyance for a period of two (2) years provided no further violations occurred. Based on the violation found above, the Licensee violated the conditions of that five (5) day suspension being held in abeyance. The Commission, in its discretion, hereby orders that 5-day suspension to be served.

ALCOHOLIC BEVERAGES CONTROL COMMISSION

Kathleen McNally, Commissioner



Jean M. Lorizio, Chairman



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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