

Jean M. Lorizio, Esq.
Chairman

Commonwealth of Massachusetts
Department of the State Treasurer
Alcoholic Beverages Control Commission
239 Causeway Street
Boston, MA 02114
Telephone: 617-727-3040
Facsimile: 617-727-1510

NOTICE OF SUSPENSION

June 8, 2018

**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**

After a hearing on May 22, 2018, 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 (3 counts).

The Commission suspends the license for a period of eleven (11) days of which six (6) days will be served, and five (5) 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, July 25, 2018 and terminate on Monday, July 30, 2018. The license will be delivered to the Local Licensing Board or its designee on Wednesday, July 25, 2018 at 9:00 A.M. It will be returned to the Licensee on July 31, 2018.

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, appearing to read "Jean M. Lorizio".

Jean M. Lorizio
Chairman

This document is important and should be translated immediately.
Este documento es importante y debe ser traducido inmediatamente.
Este documento é importante e deve ser traduzido imediatamente.
Ce document est important et devrait être traduit immédiatement.
Questo documento è importante e dovrebbe essere tradotto immediatamente.
Το έγγραφο αυτό είναι σημαντικό και θα πρέπει να μεταφραστούν αμέσως.
这份文件是重要的，应立即进行翻译。

cc: Local Licensing Board
Frederick G. Mahony, Chief Investigator
Lisa (Lordan) Watson, Investigator
Jan Kujawski, Investigator
Dennis Keefe, Investigator
Carolyn Conway, Esq. via email
Administration, File



Jean M. Lorizio, Esq.
Chairman

*Commonwealth of Massachusetts
Department of the State Treasurer
Alcoholic Beverages Control Commission
239 Causeway Street
Boston, MA 02114
Telephone: 617-727-3040
Facsimile: 617-727-1510*

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, May 22, 2018, 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 (3 counts), which occurred on October 6, 2017, according to Investigator Lordan's Report.

The following documents are in evidence:

1. Investigator Lordan's Investigative Report.

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, October 6, 2017, at approximately 11:44 p.m., Investigator Kujaswski, Keefe, and Lordan ("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 several youthful looking patrons in possession of alcoholic beverages. Investigators identified themselves and asked to see proof of legal age.
3. Underage #1, actual date of birth 7/22/1998 (age 19) was in possession of a vodka and Red Bull energy drink. He presented Investigators with a counterfeit Connecticut driver's license.

4. Underage #2, actual date of birth 2/24/1998 (age 19) was in possession of a mixed drink, a Long Island iced tea. She presented Investigators with a counterfeit Maine driver's license.
5. Underage #3, actual date of birth 9/26/1997 (age 20) was in possession of a mixed drink, rum and Coca-Cola®. He presented Investigators with a counterfeit Pennsylvania driver's license.
6. Investigators informed the manager on duty of the violations 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.

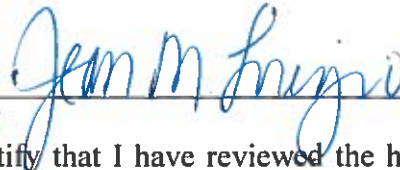
The Commission is persuaded by the evidence that the minors were younger than 21 years of age and were in possession of an alcoholic beverage in the licensed premises of West End Dining LLC d/b/a Causeway. The Commission finds that the Licensee committed a violation of 204 CMR 2.05 (2) - Permitting an 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 (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 by a person under twenty-one (21) years of age (3 counts). The Commission **suspends the license for a period of eleven (11) days of which six (6) days will be served, and five (5) 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



I, the undersigned, hereby certify that I have reviewed the hearing record and concur with the above decision.

Elizabeth A. Lashway, Commissioner



Dated: June 8, 2018

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.

**This document is important and should be translated immediately.
Este documento es importante y debe ser traducido inmediatamente.
Este documento é importante e deve ser traduzido imediatamente.
Ce document est important et devrait être traduit immédiatement.
Questo documento è importante e dovrebbe essere tradotto immediatamente.
Το έγγραφο αυτό είναι σημαντικό και θα πρέπει να μεταφραστούν αμέσως.
这份文件是重要的，应立即进行翻译.**

cc: Local Licensing Board
Frederick G. Mahony, Chief Investigator
Lisa (Lordan) Watson, Investigator
Jan Kujawski, Investigator
Dennis Keefe, Investigator
Carolyn Conway, Esq. via email
Administration, File