



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

Jean M. Lorizio, Esq.
Chairman

DECISION

OSCAR'S BURRITOS MEXICAN GRILL INC.
34 MASSACHUSETTS AVENUE
BOXBOROUGH, MA 01719
LICENSE#: 05183-RS-0122
VIOLATION DATE: 5/01/2023
HEARD: 10/10/2023

Oscar's Burritos Mexican Grill Inc. ("Licensee") holds an alcohol license issued pursuant to M.G.L. c. 138, § 12. The Alcoholic Beverages Control Commission ("ABCC" or "Commission") held a remote hearing via Microsoft Teams on Tuesday, October 10, 2023, 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 years of age.

The following documents are in evidence:

1. Investigators Keefe and Quinn's Minimum Purchase Age Compliance Check Field Report, 5/1/23;
2. ABCC Licensing Authority Certification, New License Approved, 9/17/2019.

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

FINDINGS OF FACT

1. On Monday, May 1, 2023, at approximately 4:57 p.m., Investigators Quinn and Keefe ("Investigators") conducted a compliance check at Oscar's Burritos Mexican Grill Inc. (Testimony, Exhibit 1)
2. An underage operative, working under the supervision of Investigators, purchased an alcoholic beverage, a 12-ounce bottle of Corona beer, for two dollars and twenty-five cents (\$2.25). The underage operative was not asked for identification. *Id.*
3. Oscar Garcia, Licensee and Manager of Record appeared at the Commission hearing. Mr. Garcia was not working on the night of the compliance check but later spoke with the employee who made the sale to the underage operative. The employee acknowledged it was a busy night and that he made a mistake by not asking for identification. (Testimony)

4. The Licensee has held a license under M.G.L. c. 138, § 12 since 2019 with no prior violations. (Exhibit 2)

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 law is well-settled that 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, 7 Mass. App. Ct. 186, 190 (1979). 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).

The Licensee is charged with a violation of 204 CMR 2.05(2) Permitting an illegality on the licensed premises, to wit: M.G.L. c. 138, § 34 Sale or Delivery of an alcoholic beverage to a person under twenty-one years of age. 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,” See Tobin v. Norwood Country Club, Inc., 422 Mass. 126, 133-134 (1996); Fran's Lunch, Inc. v. Alcoholic Beverages Control Comm'n, 45 Mass. App. Ct. 663, 664 (1998).

In this matter, direct evidence was presented through Investigator Keefe's testimony as to the compliance check conducted wherein an underage operative, a person under the age of twenty-one, working under his supervision, entered the licensed premises and purchased an alcoholic beverage. The Commission is persuaded by the evidence that the Licensee sold alcoholic beverages to a person under the age of twenty-one years inside 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: M.G.L. Ch. 138, § 34 Sale or Delivery of an alcoholic beverage to a person under twenty-one years of age. As a result, the Commission issues a **WARNING**.

ALCOHOLIC BEVERAGES CONTROL COMMISSION

Deborah A. Baglio, Commissioner _____ *Deborah A. Baglio*

Crystal Matthews, Commissioner _____ *Crystal Matthews*

I, the undersigned, hereby certify that I have reviewed the hearing record.

Jean M. Lorizio, Chairman _____ *Jean M. Lorizio*

Dated: November 3, 2023

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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2023-000113-ad-enf

- cc: Local Licensing Board
- Frederick G. Mahony, Chief Investigator
- Kyle E. Gill, Esq., Associate General Counsel
- Dennis Keefe, Investigator
- Katelyn Quinn, Investigator
- Administration, File