



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

Sтивен Grossman
Treasurer and Receiver General

Kim S. Gainsboro, Esq.
Chairman

NOTICE OF SUSPENSION

April 9, 2014

ANDY & BETTY CORPORATION DBA MEE KING GARDEN
33 MAIN STREET
BRIDGEWATER, MA 02324
LICENSE#: 013600056
VIOLATION DATE: 12/05/2013
HEARD: 03/18/2014

After a hearing on March 18, 2014, the Commission find Andy & Betty Corporation dba Mee King Garden in 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 (1 Count).

The Commission **suspends the licensee's license for a total of seven (7) days to be served. The suspension shall commence on Wednesday, May 28, 2014, and terminate on Tuesday, June 3, 2014.** The license will be delivered to the Local Licensing Board or its designee on Wednesday, May 28, 2014 at 9:00 A.M. It will be returned to the licensee Wednesday, June 4, 2014.

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. All checks must be certified and accompanied by 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

cc: Local Licensing Board
Frederick G. Mahony, Chief Investigator
Rosemary Bailey, Investigator
Jack Carey, Investigator
John Creedon, Esq. via facsimile 508-584-7760
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File

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The Commonwealth of Massachusetts
Department of the State Treasurer
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Steven Grossman
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DECISION

ANDY & BETTY CORPORATION DBA MEE KING GARDEN
33 MAIN STREET
BRIDGEWATER, MA 02324
LICENSE#: 013600056
VIOLATION DATE: 12/05/2013
HEARD: 03/18/2014

Andy & Betty Corporation dba Mee King Garden (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, April 1, 2014, 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 (1 Count). The above captioned occurred on December 5, 2013, according to Investigator Bailey's Report.

The following documents are in evidence:

1. Investigator Bailey's Violation Report dated December 5, 2013;
2. MA Driver's License for S. Anderson; and
3. MA RMV Printout for C. Parrella.

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

FACTS

1. On Thursday, December 5, 2013, at approximately 11:35 p. m., Investigators Carey and Bailey conducted an investigation of the business operation of Andy & Betty Corporation dba Mee King Garden to determine the manner in which its business was being conducted.
2. Investigators entered the licensed premises and observed a group of youthful looking individuals seated at a table in the dining area of the restaurant. Investigators counted seventeen individuals at the table of which all but one person was in possession of alcoholic beverages.
3. Investigators approached the table with neck badges visible, identified themselves, and asked to see proof of age.
4. A female, later identified as Catherine Parrella, stated her date of birth was [REDACTED] (age 21). Ms. Parrella presented investigators with identification in the name of Nicole Shelby, date of birth [REDACTED] (age 22).
5. Investigators observed that Ms. Parrella was in possession of a scorpion bowl.

6. After further conversation, Ms. Parrella admitted that the identification she presented was not hers but that of her friend, [Ms. Shelby], who was also seated at the table.
7. Ms. Parrella's actual date of birth was [REDACTED] (age 20).
8. Ms. Parrella identified the waitress who had asked her for identification and served her the alcohol.
9. Investigators spoke with the waitress, Kayla Sample, as well as with the manager/bartender on duty, Andrew Yung.
10. Investigators informed Mr. Yung of the violation and that a report would be filed with the Chief Investigator for further action.

DISCUSSION

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 Commission, 11 Mass. App. Ct. 785, 788 (1981). 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, section 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 Licensee argues that the minor presented an identification before she was served and possessed alcoholic beverages at the Mee King Garden, presenting an identification which purports to show that the patron is 21 years of age, or older than 21 years of age, is not an affirmative defense available for the statutory violation of a minor in possession of alcoholic beverages pursuant to M.G.L. Chapter 138, section 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.)

M.G.L. c. 138, §34B offers protection from license revocation or criminal penalties to license holders who reasonably rely on one (1) 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 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.)

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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 [emphasis supplied] of alcohol or alcoholic beverages to a person under twenty-one years of age. By its plain language, without the need for construction or interpretation, the relief from liability available to a licensee under Section 34B is limited to the accusation that the licensee delivered or sold alcoholic beverages to a person under the age of 21. 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, Section 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 Catherine Parrella, was younger than 21 years of age and was in possession of an alcoholic beverages in the licensed premises of Mee King Garden.

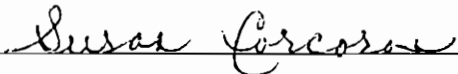
The Commission finds that the Licensee committed violations of 204 CMR 2.05 (2) - Permitting an illegality on the licensed premise, to wit: M.G.L. c. 138, §34C- Possession of an alcoholic beverage by a person under 21 years of age. On the date of this offense, the above mentioned under-aged patron of Mee King Garden was 20 years old.

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 six (6) days of which four (4) 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.**

By decision dated February 8, 2012, the Commission had previously ordered a three (3) day license suspension but had held the suspension 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 three (3) day suspension being held in abeyance. The Commission hereby orders that suspension to be served on and after the four (4) day suspension. The licensee will serve a total seven (7) days.

ALCOHOLIC BEVERAGES CONTROL COMMISSION

Susan Corcoran, Commissioner 

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

Kathleen McNally, Commissioner 

Dated: April 9, 2014

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.

cc: Local Licensing Board
Frederick G. Mahony, Chief Investigator
Rosemary Bailey, Investigator
Jack Carey, Investigator
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