

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

Jean M. Lorizio, Esq.
Chairman

DECISION

**NORTHSIDERS LLC D/B/A SUNSET CANTINA
916 COMMONWEALTH AVENUE
BROOKLINE, MA 02215
LICENSE#: 04397-RS-0148
VIOLATION DATE: 9/10/2020
HEARD: 12/14/2021**

Northsiders LLC d/b/a Sunset Cantina ("Licensee" or "Sunset Cantina") 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, December 14, 2021, regarding alleged violation of 204 CMR 2.05 (2) Permitting an Illegality on the Licensed Premises, to wit: M.G.L. Ch. 138, § 34C – Possession of an alcoholic beverage by a person under twenty-one years of age (13 Counts).

The following documents are in evidence:

1. Investigator Di Cicco's Report;
2. ABCC Application Summary Review, License Transfer Approval, 10/4/2018;
3. Photograph of Fraudulent Identifications Confiscated.

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

FINDINGS OF FACT

1. On Friday September 10, 2021, Investigators Anderson, Bolcome, Cutter, Fleming, Gardner, Terasconi, Velez, and Di Cicco ("Investigators") conducted an inspection of Northsiders LLC d/b/a Sunset Cantina ("Licensee" or "Sunset Cantina") to determine the manner in which its business was being conducted.
2. At approximately 7:15 p.m., Investigators, along with Brookline Police Officer Sullivan, entered the licensed premises. Investigators observed multiple youthful appearing individuals in possession of alcoholic beverages or what appeared to be alcoholic beverages. Investigators identified themselves and asked to see proof of legal age.
3. Underage #1, actual date of birth 12/26/2002 (age 18) was in possession of a Margarita mixed drink. He presented to Investigators a fraudulent Wisconsin driver's license in his own name with a different birth date.

4. Underage #2, actual date of birth 8/24/2003 (age 18) was in possession of a High Noon hard seltzer vodka drink. He presented to Investigators a fraudulent Missouri driver's license in his own name with a different birth date.
5. Underage #3, actual date of birth 9/10/2003 (age 18) was in possession of a vodka mixed drink. She presented to Investigators a fraudulent Connecticut driver's license in her own name with a different birth date.
6. Underage #4, actual date of birth 4/01/2003 (age 18) was in possession of a vodka mixed drink. She presented to Investigators a fraudulent Connecticut driver's license in the name of another and with a different birth date.
7. Underage #5, actual date of birth 10/16/2003 (age 17) was in possession of a vodka mixed drink. She presented to Investigators a fraudulent Connecticut driver's license in her own name with a different birth date.
8. Underage #6, actual date of birth 4/01/2003 (age 18) was in possession of a Corona beer. He presented to Investigators a fraudulent Connecticut driver's license in his own name with a different birth date.
9. Underage #7, actual date of birth 5/27/2003 (age 18) was in possession of a bottle of Corona beer. He stated to Investigators that he was not asked for identification when he ordered the beer.
10. Underage #8, actual date of birth 3/23/2003 (age 18) was in possession of a bottle of Corona beer. He told Investigators he was not asked for identification when he ordered the beer.
11. Underage #9, actual date of birth 3/27/2003 (age 18) was in possession of a bottle of Michelob Ultra beer. He told Investigators he was not asked for identification when he ordered the beer.
12. Underage #10, actual date of birth 4/17/2002 (age 19) was in possession of a Margarita mixed drink. He stated to Investigators that he was not asked for identification when he ordered the alcoholic beverage.
13. Underage #11, actual date of birth 8/23/2002 (age 19) was in possession of a Margarita mixed drink. He told Investigators he was not asked for identification when he ordered the alcoholic beverage.
14. Underage #12, actual date of birth 12/27/2001 (age 19) was in possession of a Margarita mixed drink. He told Investigators he was not asked for identification when he ordered the alcoholic beverage.
15. Underage #13, actual date of birth 1/10/2001 (age 20) was in possession of a Margarita mixed drink. She presented to Investigators a fraudulent Michigan driver's license in her own name with a different birth date. She stated that she was not asked for identification when she ordered the alcoholic beverage.

16. Investigators identified the underage individuals to Ian Lynch, an employee of the Licensee, and advised Mr. Lynch that a report would be submitted to the Chief Investigator for review.
 17. William J. McCarthy, Licensee and Manager of Record, appeared at the Commission hearing with Oran McGonagle, Director of Operations. The Commission was informed of steps taken to ensure minors do not procure alcoholic beverages at the licensed premises, including hiring additional security personnel, purchasing an advanced identification scanner, and retraining staff.
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18. The Licensee has held a license under M.G.L. c. 138, § 12 since 2018 with no prior violations.

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

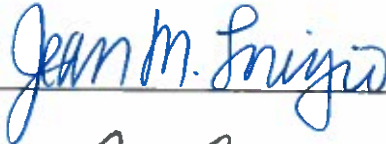
The Commission is persuaded by the evidence that the thirteen patrons were younger than 21 years of age and were in possession of an alcoholic beverage in the licensed premises. The Commission finds that the Licensee committed a violation of 204 CMR 2.05 (2) - Permitting an illegality on the licensed premise, to wit: M.G.L. c. 138, § 34C – Possession of an alcoholic beverage by a person under 21 years of age (13 counts).

CONCLUSION

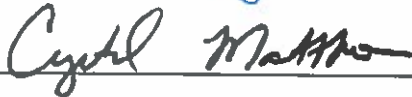
Based on the evidence, the Commission finds the Licensee violated 204 CMR 2.05 (2) Permitting an Illegality on the Licensed Premises, to wit: M.G.L. Ch. 138, § 34C – Possession of an alcoholic beverage by a person under twenty-one years of age (13 Counts). Therefore, the Commission **suspends the license for a period of 18 days of which 13 days are deemed served and 5 days will be held in abeyance for two (2) years provided no further violations of Chapter 138 or Commission regulations occur.**

ALCOHOLIC BEVERAGES CONTROL COMMISSION

Jean M. Lorizio, Chairman



Crystal Matthews, Commissioner



Deborah Baglio, Commissioner



Dated: February 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
Melissa Anderson, Investigator
David Bolcome, Investigator
Alicia Cutter, Investigator
Sean Fleming, Investigator
Robert Gardner, Investigator
Nicole Terasconi, Investigator
Nicholas Velez, Investigator
Administration, File
