



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

Jean M. Lorizio, Esq.
Chairman

NOTICE OF SUSPENSION

June 7, 2022

**AKAR ENTERPRISES INC. D/B/A NEPONSET ST. SUNOCO
702 NEPONSET STREET
CANTON, MA 02021
LICENSE#: 89564-PK-0170
VIOLATION DATE: 7/29/2021
HEARD: 11/16/2021**

After a hearing on November 16, 2021, the Commission finds Akar Enterprises Inc. d/b/a Neponset St. Sunoco violated M.G.L. c. 138, § 34 Sale or Delivery of an alcoholic beverage to a person under twenty-one years of age (1 count). The Commission **suspends the license for a period of one (1) day to be served.**

The suspension shall commence on Monday, July 25, 2022. The license will be delivered to the Local Licensing Board or its designee on Monday, July 25, 2022, at 9:00 A.M. It will be returned to the licensee on Tuesday, July 26, 2022.

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
Kyle E. Gill, Esq., Associate General Counsel
Michael Teehan, Investigator
Brian Gould, Investigator
Administration, File



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DECISION

**AKAR ENTERPRISES INC. D/B/A NEPONSET ST. SUNOCO
702 NEPONSET STREET
CANTON, MA 02021
LICENSE#: 89564-PK-0170
VIOLATION DATE: 7/29/2021
HEARD: 11/16/2021**

Akar Enterprises Inc. d/b/a Neponset St. Sunoco (the "Licensee") holds an alcohol license issued pursuant to M.G.L. c. 138, § 15. The Alcoholic Beverages Control Commission ("ABCC" or "Commission") held a remote hearing via Microsoft Teams on Tuesday, November 16, 2021, regarding an alleged violation of M.G.L. Ch. 138, § 34 Sale or Delivery of an alcoholic beverage to a person under twenty-one years of age (1 count) which occurred on July 29, 2021, according to Investigator Teehan's report.

The following documents are in evidence:

1. Investigator Teehan's Report;
2. ABCC Licensing Authority Certification, New License Approved, 5/14/2019;
3. Photograph of New Jersey Fraudulent Driver's License Confiscated.

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

FINDINGS OF FACT

1. On Thursday, July 29, 2021, Investigators Gould and Teehan ("Investigators"), conducted an inspection of the business operation of Akar Enterprises Inc. d/b/a Neponset St. Sunoco. (Testimony, Exhibit 1)
2. At approximately 8:15 p.m., while outside the licensed premises, Investigators observed a youthful appearing individual exit the store in possession of four 6-packs of Smirnoff Ice. Investigators identified themselves and asked to see proof of legal age. Id.
3. Underage #1, actual date of birth 9/01/2001 (age 19), admitted she was under 21 and stated she presented a fraudulent New Jersey driver's license in her own name with a different birth date to purchase the alcoholic beverages. Id.

4. Investigators informed the clerk on duty of the violations and that a report would be filed with the Chief Investigator for further action. Id.
5. Mr. Walid Akar, the Licensee and Manager of Record, appeared at the Commission hearing. Mr. Akar testified as to his policy wherein out of state identifications are not accepted, as well as describing signs posted on the door of the licensed premises stating its policy. He acknowledged the sale took place and that his employee, on the night of the Investigators' visit, did not follow the policy when presented with a fraudulent New Jersey identification. Mr. Akar stated he continues to reinforce the policy with his employees and added they scan most identifications presented. (Testimony)
6. The Licensee has held a license under M.G.L. c. 138, § 15 since 2019 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, § 34 - Sale or delivery of an alcoholic beverage to 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).

Evidence was presented, through the testimony of the Investigator, as to the underage patron purchasing alcoholic beverages at the licensed premises. The Licensee acknowledged the sale took place and testified to his employee's failure to follow proper policy regarding identification.

The Commission is persuaded by the evidence that Akar Enterprises Inc. d/b/a Neponset St. Sunoco sold alcoholic beverages to a person who was under twenty-one years of age. The Commission finds that the Licensee committed 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 (21) years of age (1 count).

CONCLUSION

Based on the evidence, the Commission finds the Licensee violated M.G.L. Ch. 138, § 34 Sale or Delivery of an alcoholic beverage to a person under twenty-one years of age (1 Count). Therefore, the Commission **suspends the license for a period of one (1) day.**

ALCOHOLIC BEVERAGES CONTROL COMMISSION

Crystal Matthews, Commissioner



Deborah A. Baglio, Commissioner



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

Jean M. Lorizio, Chairman



Dated: June 7, 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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