



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

Jean M. Lorizio, Esq.
Chairman

DECISION

**OM MARUTI INC. D/B/A OXBOW VARIETY
3 OXBOW ROAD
CHARLTON, MA 01507
LICENSE#: 89213-PK-0190
VIOLATION DATE: 5/25/2022
HEARD: 8/09/2022**

Om Maruti Inc. d/b/a Oxbow Variety ("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, August 9, 2022, 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 above-mentioned occurred on May 25, 2022, according to Investigator Terasconi's report.

The following documents are in evidence:

1. Investigator Terasconi's Compliance Check Field Report;
2. ABCC Application Summary Review, Transfer of License Approved, 12/7/2017;

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

FINDINGS OF FACT

1. On Wednesday, May 25, 2022, at approximately 4:54 p.m., Investigators Temple and Terasconi ("Investigators") inspected the business operation of Om Maruti Inc. d/b/a Oxbow Variety.
2. An underage operative, working with Investigators, purchased an alcoholic beverage, one can of Bud Light beer for three dollars and twenty-five cents (\$3.25). The underage operative was not asked for identification.
3. Hiral Swadia, the owner appeared at the Commission hearing and testified that she was sick with COVID and not on the premises when the compliance check occurred. The clerk filling-in for her was inexperienced and had not worked at the register prior to the night of the Investigator's visit.

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 the investigator's testimony of the sale and delivery of an alcoholic beverage to an underage operative 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. Therefore, the Commission issues a **WARNING**.

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.

Deborah A. Baglio, Commissioner



Dated: August 29, 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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2022-000096-ad-enf

cc: Local Licensing Board
Frederick G. Mahony, Chief Investigator
Kyle E. Gill, Esq., Associate General Counsel
Nicole Terasconi, Investigator
Christopher Temple, Investigator
Administration, File