



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

Jean M. Lorizio, Esq.
Chairman

DECISION

**CHESTER VILLAGE MARKET INC.
191 ROUTE 20
CHESTER, MA 01011
LICENSE#: 00006-PK-0212
VIOLATION DATE: 5/01/2023
HEARD: 10/10/2023**

Chester Village Market Inc. ("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, 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 Kujawski and Gould's Minimum Purchase Age Compliance Check Field Report;
2. ABCC Form 43, Transfer of License Approval, 6/21/2005.
- A. Licensee's Pricing list.

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

FINDINGS OF FACT

1. On Monday, May 1, 2023, at approximately 5:43 p.m., Investigators Gould and Kujawski ("Investigators") conducted a compliance check at Chester Village Market Inc. (Testimony, Exhibit 1)
2. An underage operative, working under the supervision of Investigators, purchased an alcoholic beverage, a Smirnoff Ice Smash vodka mixed drink. (*Id.*) Mr. David Befford, the Licensee, appeared at the Commission hearing along with the cashier who was on duty on the night of the compliance check. (Testimony)
3. The cashier asked the underage operative for identification and the underage operative responded that she did not have her identification on her. (Testimony)

4. The Licensee has held a license under M.G.L. c. 138, §15 since 2005 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).

Every violation the Commission finds must be based on substantial evidence. See Embers of Salisbury, Inc. v. Alcoholic Beverages Control Comm'n, 401 Mass. 526, 528 (1988). “Substantial evidence” is “such evidence as a reasonable mind might accept as adequate to support a conclusion.” *Id.* Evidence from which a rational mind might draw the desired inference is not enough. See Blue Cross and Blue Shield of Mass. Inc. v. Comm'r of Ins., 420 Mass. 707, 710 (1995). Disbelief of any particular evidence does not constitute substantial evidence to the contrary. New Boston Garden Corp. v. Bd. of Assessor of Boston, 383 Mass. 456, 467 (1981).

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).

The legality of the use of a minor to conduct sting operations was decided in Fran's Lunch, Inc. v. Alcoholic Beverages Control Comm'n, 45 Mass.App.Ct 663 (1998). The Appeals Court held that in permitting a person under twenty-one (21) years of age to purchase alcoholic beverages in a “sting” operation at a licensed premises, neither the Alcoholic Beverages Control Commission nor

a municipal police department, violated M.G.L. c. 138, § 34A, the statute prohibiting a person under the age of twenty-one (21) years old from purchasing alcoholic beverages. The Court's rationale was that the purchase of alcoholic beverages by the under-age operative was made to ferret out violators of the Liquor Control Act, M.G.L. c. 138, and as a result promoted the purpose of the statute. The Appeals Court further held that where a "sting operation was conducted in accordance with published guidelines designed to ensure that such operations were conducted fairly, the commission could properly rely on this evidence." Fran's Lunch, Inc., 45 Mass.App.Ct at 665.

In this matter, direct evidence was presented through the investigator's testimony as to the compliance check conducted on May 1, 2023, wherein an underage operative, a person under the age of twenty-one, working under the supervision of the investigator, was sold alcoholic beverages at the licensed premises. (Testimony, Exhibit 1)

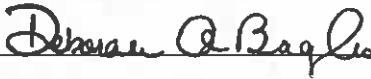
Evidence was also presented through the eye-witness testimony of the cashier on duty who interacted with the underage operative. The Licensee argued that after the underage operative was asked for identification, she did not leave the licensed premises but rather continued to engage with the cashier, stating she did not have her identification with her. (Testimony)

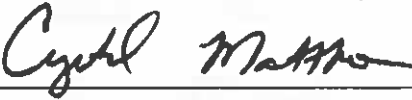
The Commission recognizes the elements of entrapment as laid out in Sorrells v. United States, 287 U.S. 435 (1932). Underage operatives may not use "persuasion, deceitful representation or inducement" to lure a licensee into a violation of M.G.L. c. 138, § 34. See Id. at 445. Entrapment occurs when a licensee violates M.G.L. c. 138, § 34 during a compliance check but would not have done so "except for trickery, persuasion or fraud" of the underage operative. See Id. at 454. Here, the underage operative tricked the Licensee into selling her a Smirnoff Ice malt beverage by engaging in conversation with the cashier after being asked for identification. As a result, the Commission finds the Licensee was entrapped during the compliance check conducted on May 1, 2023.

CONCLUSION

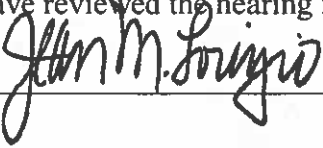
Based on the evidence, the Commission finds **NO VIOLATION** of 204 CMR 2.05 (2) Permitting an illegality on the licensed premises, to wit: M.G.L. Ch. 138, § 34 Sale or Delivery of an alcoholic beverage to a person under twenty-one years of age occurred.

ALCOHOLIC BEVERAGES CONTROL COMMISSION

Deborah A. Baglio, Commissioner _____ 

Crystal Matthews, Commissioner _____ 

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

Jean M. Lorizio, Chairman _____ 

Dated: March 7, 2025.

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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2023-000116-ad-enf

cc: Local Licensing Board
Frederick G. Mahony, Chief Investigator
Kyle E. Gill, Esq., Associate General Counsel
Jan Kujawski, Investigator
Brian Gould, Investigator
Administration, File