



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

Jean M. Lorizio, Esq.
Chairman

DECISION

**BAYPATH LANES LLC D/B/A BOGEY LANES
199 NORTH BROOKFIELD ROAD
EAST BROOKFIELD, MA 01515
LICENSE#: 00016-GP-0310
VIOLATION DATE: 4/19/2023
HEARD: 9/19/2023**

Baypath Lanes LLC d/b/a Bogey Lanes ("Licensee") 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, September 19, 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 Guarino and Fleming's Minimum Purchase Age Compliance Check Field Report, 4/19/2023;
 2. ABCC Form 43, Transfer of License Approval, 2/8/2011;
 3. ABCC 2023 Compliance Check Guidelines.
- A. Employees' TIPS Certificates of Completion.

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

FINDINGS OF FACT

1. On Wednesday, April 19, 2023, at approximately 6:21 p.m., Investigators Fleming and Guarino ("Investigators") conducted a compliance check at Baypath Lanes LLC d/b/a Bogey Lanes. (Testimony, Exhibit 1)
2. An underage operative, working under the supervision of Investigators, purchased an alcoholic beverage, a 12-ounce bottle of Bud Light beer, for three dollars and seventy-five cents (\$3.75). Id.
3. The Licensee's employee mistakenly believed the underage operative had produced identification to another employee. He served the underage operative a beer and processed the sale after which he asked if she had already produced identification. (Testimony)

4. The Licensee has held a license under M.G.L. c. 138, § 12 since 2011 with no prior violations. (Exhibit 2, Commission Records)
5. Daniel and Amy Luksha, Licensees, appeared at the Commission hearing along with their employee who made the sale.

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).

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 insure that such operations were conducted fairly, the commission could properly rely on this evidence.” Fran’s Lunch, 45 Mass. App. Ct. at 665.

In this matter, direct evidence was presented through the investigator’s testimony as to the compliance check conducted in accordance with Commission Guidelines (Exhibit 3) wherein an underage operative, a person under the age of twenty-one, working under the supervision of the investigator, was sold and delivered an alcoholic beverage at the licensed premises. The Licensee’s employee corroborated the fact that the underage operative was served and sold an alcoholic beverage.

The Commission is persuaded by the evidence that the Licensee sold alcoholic beverages to a person under twenty-one years of age 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**.

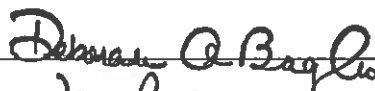
ALCOHOLIC BEVERAGES CONTROL COMMISSION

Crystal Matthews, Commissioner



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

Deborah A. Baglio, Commissioner



Jean M. Lorizio, Chairman



Dated: May 16, 2024

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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2023-000099-ad-enf

cc: Local Licensing Board
Frederick G. Mahony, Chief Investigator
Caroline Guarino, Investigator
Sean Fleming, Investigator
Administration, File