



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

**Jean M. Lorizio, Esq.**  
*Chairman*

**DECISION**

**REDS DAIRY STORE INC. D/B/A RED'S WINE & SPIRITS  
1500 BRAYTON AVENUE  
FALL RIVER, MA 02721  
LICENSE#: 00149-PK-0388  
VIOLATION DATE: 6/03/2023  
HEARD: 10/03/2023**

Reds Dairy Store Inc. d/b/a Red's Wine & Spirits ("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 3, 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 (1 Count).

The following documents are in evidence:

1. Investigator Keefe's Report;
2. ABCC Form 43, Transfer of License Approval, 10/24/1989;
3. Photocopies (2) of Fraudulent Rhode Island Driver's License Confiscated, Front and Back.

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

**FINDINGS OF FACT**

1. On Saturday, June 3, 2023, at approximately 9:15 p.m., Investigators David and Keefe ("Investigators"), inspected the business operation of Reds Dairy Store Inc. d/b/a Red's Wine & Spirits to determine the manner in which its business was being conducted. (Testimony, Exhibit 1)
2. Investigators observed a youthful appearing male individual exit the licensed premises in possession of alcoholic beverages. Id.
3. Investigators approached the youthful appearing male, identified themselves, and asked to see proof of legal age to purchase and/or possess alcoholic beverages. Id.
4. Underage #1, actual date of birth 4/28/2006 (age 17), was in possession of one 12-pack of Bud Light beer, and one 12-pack of Truly Hard Seltzer. He presented to Investigators a fraudulent Rhode Island driver's license bearing his name but a different birth date. He

stated that he was not asked for identification when he purchased the alcohol. (Testimony, Exhibits 1, 3)

5. Investigators entered the establishment and spoke with the clerk who sold the alcoholic beverages to the underage individual. He confirmed to Investigators that he had not requested any identification from Underage #1. (Testimony, Exhibit 1)
6. Investigators informed the clerk of the violation and that a report would be submitted to the Chief Investigator for further review. Id.
7. Messias Pedro, Licensee, appeared at the Commission hearing along with several employees, including Diane Ferreira, a manager at the licensed premises. (Testimony)
8. Ms. Ferreira testified the Licensee had had policies and procedures in place to prevent sales to underage individuals and after this incident, took further steps to prevent such sales. Ms. Ferreira stated the point-of-sale system now requires a customer's identification be scanned, and all employees have received TIPS training. In addition, the Licensee has revised compliance procedures which are reviewed with employees every 3 months after which employees are required to sign a compliance form. Id.
9. The Licensee has held a license under M.G.L. c. 138, § 15 since 1989, more than thirty years, with no prior violations. (Commission Records)

### 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 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 (21) years of age. M.G.L. c. 138, § 34 states, in pertinent part, that: "[w]hoever

makes a sale or delivery of any alcoholic beverage or alcohol to any person under twenty-one years of age ... shall be punished by a fine of not more than \$2,000 or by imprisonment for not more than one year or both." M.G.L. c. 138, § 34.

In this matter, direct evidence was presented through the investigator's testimony as to his observations outside the licensed premises wherein a person, later determined to be under twenty-one years of age, was observed exiting in possession of alcoholic beverages. In addition, the Licensee acknowledged said sale.

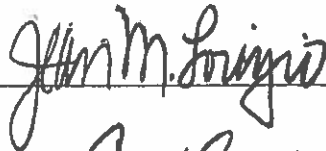
The Commission is persuaded by the evidence that Fall River Reds Dairy Store, Inc., d/b/a Red's Wine & Spirits sold alcoholic beverages to a person under twenty-one years of age. The Commission finds that the Licensee committed a violation of 204 CMR 2.05 (2)- Permitting an illegality on the licensed 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

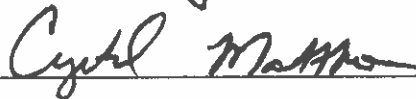
Based on the evidence, the Commission finds the Licensee violated 204 CMR 2.05 (2)- Permitting an illegality on the licensed premises, to wit: M.G.L. Ch. 138, § 34 Sale or Delivery of an alcoholic beverage to a person under twenty-one years of age (1 Count). As a result, the Commission issues a **WARNING**.

#### **ALCOHOLIC BEVERAGES CONTROL COMMISSION**

Jean M. Lorizio, Chairman



Crystal Matthews, Commissioner



Deborah A. Baglio, Commissioner



Dated: January 25, 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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2023-000188-ad-enf

cc: Local Licensing Board  
Frederick G. Mahony, Chief Investigator  
Dennis Keefe, Investigator  
John David, Investigator  
Administration, File