

The Commonwealth of Massachusetts
Department of the State Treasurer
Alcoholic Beverages Control Commission
Boston, Massachusetts 02114

Deborah B. Goldberg
Treasurer and Receiver General

NOTICE OF SUSPENSION

Kim J. Gainsboro, Esq.
Chairman

April 11, 2016

RUGBY'S INCORPORATED D/B/A SLATTERY'S BACK ROOM
106 LUNENBURG ST.
FITCHBURG, MA 01420
LICENSE#: 039400023
VIOLATION DATE: 12/17/2015
HEARD: 03/29/2015

After a hearing on March 29, 2016, the Commission finds Rugby's Incorporated d/b/a Slattery's Back Room violated 204 CMR 2.05 (2) Permitting an illegality on the licensed premises, to wit: M.G.L. c. 138, §34C- Possession of an alcoholic beverage by a person under twenty-one (21) years of age (4 counts).

Therefore Commission **suspends the license for a period of twelve (12) days of which (2) days will be served, and ten (10) days will be held in abeyance for a period of two (2) years provided no further violations of Chapter 138 or Commission Regulations occur.**

The suspension shall commence on Wednesday, June 1, 2016 and terminate on Thursday, June 2, 2016. The license will be delivered to the Local Licensing Board or its designee on Wednesday, June 1, 2016 at 9:00 A.M. It will be returned to the licensee on Friday, June 3, 2016.

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



Kim S. Gainsboro
Chairman

This document is important and should be translated immediately.
Este documento es importante y debe ser traducido inmediatamente.
Este documento é importante e deve ser traduzido imediatamente.
Ce document est important et devrait être traduit immédiatement.
Questo documento è importante e dovrebbe essere tradotto immediatamente.
Το έγγραφο αυτό είναι σημαντικό και θα πρέπει να μεταφραστούν αμέσως.
这份文件是重要的，应立即进行翻译。

cc: Local Licensing Board
Frederick G. Mahony, Chief Investigator
Christopher Temple, Investigator
Mark Kenny, Investigator
John E. Coyne, Esq. via facsimile 617-523-5612
Administration
File



The Commonwealth of Massachusetts
Department of the State Treasurer
Alcoholic Beverages Control Commission
Boston, Massachusetts 02114

Deborah B. Goldberg
Treasurer and Receiver General

Kim J. Gainsboro, Esq.
Chairman

DECISION

RUGBY'S INCORPORATED D/B/A SLATTERY'S BACK ROOM
106 LUNENBURG ST.
FITCHBURG, MA 01420
LICENSE#: 039400023
VIOLATION DATE: 12/17/2015
HEARD: 03/29/2015

Rugby's Incorporated d/b/a Slattery's Back Room (the "Licensee") holds an alcohol license issued pursuant to M.G.L. c. 138, §12. The Alcoholic Beverages Control Commission (the "Commission") held a hearing on Tuesday, March 29, 2016, regarding an alleged violation of 204 CMR 2.05 (2) Permitting an illegality on the licensed premises, to wit: M.G.L. c. 138, §34C-Possession of an alcoholic beverage by a person under twenty-one (21) years of age (4 counts), which occurred on December 17, 2015, according to Investigator Temple's Report.

The following documents are in evidence:

1. Investigator Temple's Investigative Report dated December 17, 2015.
 - A. Licensee's Surveillance Video with Summary Sheet.

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

The Commission took Administrative Notice of the Licensee's record.

FACTS

1. On Thursday, December 17, 2015, at approximately 10:50 p.m., Investigators Kenny and Temple ("Investigators") conducted an investigation of the business operation of Rugby's Incorporated d/b/a Slattery's Back Room.
2. Investigators entered the licensed premises and observed two youthful appearing individuals, who were seated at a booth to the left of the entrance, in possession of alcoholic beverages.
3. Investigators identified themselves and asked to see proof of legal age.

4. Underage #1, actual date of birth 8/12/1995 (age 20) was in possession of a Jack and Coke [whiskey and cola] cocktail. He stated that he did not present any identification when he entered the licensed premises.
5. Underage #2, actual date of birth 5/19/1995 (age 20) was in possession of a Coors Light beer. He stated that he did not present any identification when he entered the licensed premises.
6. Investigators observed two more youthful appearing individuals, who were seated to the right of the entrance, in possession of alcoholic beverages.
7. Underage #3, actual date of birth 4/26/1995 (age 20), was in possession of a vodka soda mixed drink. Underage #3 presented Investigators a false Maryland driver's license, and stated that she was not asked for identification when she entered the establishment.
8. Underage #4, actual date of birth 3/17/1995 (age 20), was in possession of a rum and Coke mixed drink. Underage #4 presented Investigators a Massachusetts driver's license, in another person's name.
9. Investigators determined that the identification provided was not the individual before them. Underage #4 was of smaller stature with a much rounder and shorter face.
10. Investigators identified both individuals to the manager on duty, Garry Farr.
11. Investigators informed Mr. Farr of the violation and that a report would be filed with the Chief Investigator for further action.

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 Commission may make regulations for "clarifying, carrying out, enforcing and preventing violation of" statutory provisions for the "method of carrying on the business of any licensee," and "for the proper and orderly conduct of the licensed business." M. G.L. c. 138, §24. The Commission has exercised this authority through the promulgation of regulations that are codified at chapter 204 of the Code of Massachusetts Regulations ("CMR"). The Commission also has comprehensive powers of supervision over licensees and has the statutory authority under M.G.L. c. 138, § 64 to revoke or suspend a license for violation of a regulation. Aristocratic Restaurant of Massachusetts, Inc. v. Alcoholic Beverages Control Comm'n, 374 Mass. 547 (1978); Connolly, 334 Mass. at 617.

A Commission regulation promulgated at 204 CMR 2.05(2) provides that "[n]o licensee for the sale of alcoholic beverages shall permit any disorder, disturbance or illegality of any kind to take place in or on the licensed premises. . . ." The law is well-settled that "under the regulation, [204 CMR 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.'" Rico's of the Berkshires, Inc. v. Alcoholic Beverages Control Comm'n, 19 Mass. App. Ct. 1026, 1027 (1985) (quoting Commonwealth v. Gould, 158 Mass. 499, 507 (1893)). The Licensee violated this regulation by permitting illegalities on its premises on December 17, 2015.

The Licensee was charged with a violation of 204 CMR 2.05 (2) to wit: c. 138, §34C - Possession of an Alcoholic Beverage by a Person Under Twenty-One (21) Years of Age, four (4) counts. 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." Tobin v. Norwood Country Club, Inc., 422 Mass. 126, 133-134 (1996); accord Fran's Lunch, Inc. v. Alcoholic Beverages Control Comm'n, 45 Mass. App. Ct. 663, 664 (1998). General Laws chapter 138, §34C states, in pertinent part, that: "[w]hoever, being under twenty-one years of age and not accompanied by a parent or legal guardian, knowingly possesses any alcohol or alcoholic beverages, shall be punished."

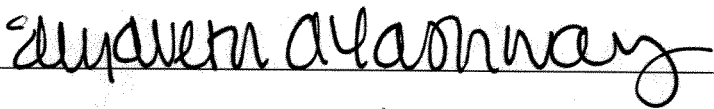
On December 17, 2015, four individuals who were twenty years of age were inside the licensed premises in possession of alcoholic beverages.

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. c. 138, §34C- Possession of an alcoholic beverage by a person under twenty-one (21) years of age (4 counts). Therefore the Commission **suspends the license for a period of twelve (12) days of which (2) days will be served, and ten (10) days will be held in abeyance for a period of two (2) years provided no further violations of Chapter 138 or Commission Regulations occur.**

ALCOHOLIC BEVERAGES CONTROL COMMISSION

Elizabeth A. Lashway, Commissioner



Kathleen McNally, Commissioner



Dated: April 11, 2016

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.

This document is important and should be translated immediately.
Este documento es importante y debe ser traducido inmediatamente.
Este documento é importante e deve ser traduzido imediatamente.
Ce document est important et devrait être traduit immédiatement.
Questo documento è importante e dovrebbe essere tradotto immediatamente.
Το έγγραφο αυτό είναι σημαντικό και θα πρέπει να μεταφραστούν αμέσως.
这份文件是重要的，应立即进行翻译。

cc: Local Licensing Board
Frederick G. Mahony, Chief Investigator
Christopher Temple, Investigator
Mark Kenny, Investigator
John E. Coyne, Esq. via facsimile 617-523-5612
Administration, File