



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

Steven Grossman
Treasurer and Receiver General

NOTICE OF SUSPENSION

Kim S. Gainsboro, Esq.
Chairman
December 3, 2012

MARCOLE CORP DBA COMMUNITY PACKAGE STORE
45 BAY ROAD
HAMILTON, MA 01936
LICENSE#: 048600008
VIOLATION DATE: 07/10/2012
HEARD: 11/20/2012

After a hearing on November 20, 2012, the Commission finds Marcole Corp dba Community Package Store in violation of:

1. 204 CMR 2.05 (2) Permitting an illegality on the licensed premises, to wit: M.G.L. Ch. 138 §15 Sale of Alcoholic beverages to be drunk off premises (3 Counts); and
2. 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 (21) years of age (1 Count).

The Commission suspends the licensee's license for a total of ten (10) days to be served. The suspension shall commence on Wednesday, January 9, 2013 and terminate on January 18, 2013. The license will be delivered to the Local Licensing Board or its designee on Wednesday, January 9, 2013 at 9:00 A.M. It will be returned to the licensee Saturday, January 19, 2013.

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. All checks must be certified and accompanied by the enclosed form, which must be signed by 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

cc: Local Licensing Board
Frederick G. Mahony, Chief Investigator
Caroline Wilichoski, Investigator
Administration
File

2772 1878



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

Steven Grossman
Treasurer and Receiver General

Kim J. Gainsboro, Esq.
Chairman

DECISION

MARCOLE CORP DBA COMMUNITY PACKAGE STORE
45 BAY ROAD
HAMILTON, MA 01936
LICENSE#: 048600008
VIOLATION DATE: 07/10/2012
HEARD: 11/20/2012

Marcole Corp dba Community Package Store (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, November 20, 2012, regarding an alleged violation of:

1. 204 CMR 2.05 (2) Permitting an illegality on the licensed premises, to wit: M.G.L. Ch. 138 §15 Sale of Alcoholic beverages to be drunk off premises (3 Counts); and
2. 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 (21) years of age (1 Count).

Prior to the hearing the licensee stipulated to the facts detailed in Investigator Wilichoski's report.

The following document is in evidence:

1. Licensee's Stipulation of Facts;
2. Investigators Return of Deliver Receipt dated October 12, 2012; and
3. Investigator Wilichoski's Investigative Report.

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

FACTS

1. This following reporting is as a result of an investigation that was originally conducted by the Hamilton Police Department.
2. On Tuesday, July 10, 2012, Officer Andrew O'Neill was on foot patrol in the down town area of Hamilton, Massachusetts.
3. At approximately 3:00 a.m., Officer O'Neill looked inside of the above licensed premises and observed individuals ducking behind the counter.
4. The officer believed felonious acts were being conducted.
5. A motor vehicle (the "MV") parked in the parking lot in front of the store had a warm engine and the owner of the MV had a lengthy criminal history.
6. Officer O'Neill made contact with one (1) of the male persons inside the store.
7. The Officer asked the male to unlock the door and come out and speak with him.
8. The male later identified as [REDACTED], said he was the owner's son and had permission to be inside the store.

9. He refused the officers request to open the door and exit the licensed premises.
10. On duty Sergeant Karen Wallace was called to the licensed premises.
11. Upon checking [REDACTED] lengthy criminal record, the officers became concerned for the youthful looking female that was inside the store with the two (2) males.
12. The three (3) individuals were later identified as:
 - [REDACTED] 7 Periwinkle Lane, Ipswich, MA, 01938, D.O.B.: 4/15/1989 (age twenty-three (23));
 - [REDACTED] 37 Linebrook Road, Ipswich, MA, 01938, D.O.B.: 7/9/1994 (age eighteen (18)); and
 - [REDACTED] 85 Essex Road, Ipswich, MA, 01938, D.O.B.: 6/10/1988 (age twenty-four (24)).
13. [REDACTED] refused repeated attempts by the officers to open the door and exit the premises and told the officers that they needed a warrant.
14. Sgt. Wallace contacted the Hamilton Fire Department for assistance in opening the door.
15. As the fire department personal approached the door, [REDACTED] opened the door from the inside.
16. No forced entry was made.
17. On July 11, 2012, Investigator Wilichoski was contacted by Sgt. Wallace of the Hamilton Police Department.
18. Sgt. Wallace advised her of possible liquor violations at this location.
19. On July 11, 2012 at approximately 5:15 p.m., Investigator Wilichoski went to the licensed premises with the assistance of Officer Joe Achadina.
20. Investigator Wilichoski identified herself to an employee identified as Paul Mulry.
21. Investigator Wilichoski advised him that she wanted to speak with the owner Mr. Drew Marc-Aurele.
22. A telephone call was made by this employee to him.
23. Investigator Wilichoski spoke to Mr. Marc-Aurele in the presence of Officer Achadina.
24. Investigator Wilichoski advised the owner that she was conducting an investigation into his business operation.
25. Investigator Wilichoski observed three (3) camera's inside the store.
26. She told him she wanted a copy of the recordings from closing time July 9, 2012 to 6:00 a.m. of July 10, 2012.
27. He said was not familiar with the system and he would have "the tech" guy do it.
28. On July 11, 2012, Investigator Wilichoski got a cell phone text from Attorney Nicole Reilly. Attorney Reilly said she was representing the licensee and would assist in this administrative matter.
29. Investigator Wilichoski told her that she was requesting a copy of the recording for July 9, 2012 into July 12, 2012 at 6:00 a.m.
30. On July 12, 2012, Investigator Wilichoski was able to pick up a flash drive of the recording from an employee at the licensed premises.
31. She immediately reviewed the recording and could see that all three (3) were actually consuming alcoholic beverages.
32. The video was missing approximately ten (10) crucial minutes of one (1) camera angle (Channel 3) that was left off the flash drive.
33. Investigator Wilichoski contacted Attorney Reilly and advised her that she wanted the ten (10) minutes from Channel 3 that were missing.
34. Investigator Wilichoski gave her the time frame of 2:25 a.m. to 2:35 a.m.
35. On July 13, 2012 Investigator Carey and Investigator Wilichoski conducted an onsite visit.
36. Investigator Wilichoski wanted to take certain pictures of areas that she had observed on the recordings for my report.

37. On 7/25/2012 Attorney Reilly advised her that the full recordings were ready for pick up at the license premises.
38. Investigator Wilichoski picked them up on this date.
39. After reviewing the recordings, Investigator Wilichoski observed the following:
40. All reported times are approximate:
- 2:26 a.m. [REDACTED], [REDACTED] and [REDACTED] enter the licensed premises via the front door.
 - 2:27 a.m. [REDACTED] walks behind counter and grabs a pint of Bacardi Rum ("Bacardi"). (It should be noted the licensee provided the information of the actual alcoholic beverage that was used.)
 - 2:28 a.m. [REDACTED] walks to back corner of premises where the soda cooler is and returns to the counter area with three (3), sixteen (16) oz. bottles of diet coke.
 - 2:30 a.m. [REDACTED] drinks from bottle of Bacardi. All three (3) are drinking from diet coke bottles.
 - 2:31 a.m. [REDACTED] pours some of the alcohol from the bottle of Bacardi into the diet coke then swirls the bottle.
 - 2:32 a.m. [REDACTED] (underage) standing behind counter [REDACTED] slides bottle of diet coke containing the Bacardi on the counter in her vicinity.
 - 2:33 a.m. [REDACTED] hands the bottle of Bacardi to [REDACTED] and he pours it into his diet coke bottle. He swirls same bottle. He is viewed drinking from the bottle of diet coke containing the Bacardi.
 - 2:36 a.m. [REDACTED] is viewed picking up bottles of nips on counter and viewing them.
 - 2:37 a.m. [REDACTED] is viewed drinking from the diet coke bottle containing the Bacardi.
 - 2:55 a.m. Hamilton Police arrive at premises.
41. In early September 2012, Investigator Wilichoski was contacted by Attorney Frederick Riley.
42. He advised me he is new counsel for this licensee.

CONCLUSION

Based on the evidence, the Commission finds the licensee violated:

1. 204 CMR 2.05 (2) Permitting an illegality on the licensed premises, to wit: M.G.L. Ch. 138 §15 Sale of Alcoholic beverages to be drunk off premises (3 Counts); and
2. 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 (21) years of age (1 Count).

Therefore, the Commission **suspends the license for fifteen (15) days of which ten (10) days will be served and five (5) 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

Susan Corcoran, Commissioner *Susan Corcoran*

I, the undersigned, hereby certify that I have reviewed the hearing record and concur with the above decision.

Kim S. Gainsboro, Chairman *[Signature]*

Dated: December 3, 2012

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.

- cc: Local Licensing Board
- Frederick G. Mahony, Chief Investigator
- Caroline Wilichoski, Investigator
- Administration
- File