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Chairman

*Commonwealth of Massachusetts
Department of the State Treasurer
Alcoholic Beverages Control Commission
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DECISION

**TOP SERVICES INC. D/B/A SUPER LIQUORS
35 SOUTH BROADWAY
LAWRENCE, MA 01843
LICENSE#: 0594-00117
VIOLATION DATE: 3/01/2018
HEARD: 6/19/2018**

Top Services Inc. d/b/a Super Liquors (the "Licensee" or "Super Liquors") holds an alcohol license issued pursuant to M.G.L. c. 138, § 15. The Alcoholic Beverages Control Commission (the "Commission" or "ABCC") held a hearing on Tuesday, June 19, 2018, regarding an alleged 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 (1 count), which occurred on March 1, 2018, according to Investigator Kenny's report.

The following documents are in evidence:

1. Investigator Kenny's Investigative Report.
 - A. Photocopy of Fraudulent Driver's License;
 - B. Licensee's ID Scanner Printout for March – April 2018; and
 - C. Compact Disc containing Scanner Date for January – April 2018.

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

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

FINDINGS OF FACT

1. On Thursday, March 1, 2018, at approximately 8:45 p.m., Investigators Teehan and Kenny ("Investigators") conducted an investigation of the business operation of Top Services Inc. d/b/a Super Liquors to determine the manner in which its business was being conducted.
2. Investigators observed a youthful looking female individual enter the store and shortly thereafter exit the premises carrying alcoholic beverages.
3. Investigators identified themselves and asked to see proof of legal age.
4. Underage #1, actual date of birth 9/03/1997 (age 20), was in possession of a 16-pack of Mikes Hard Lemonade malt beverage; a 24-ounce Twisted Tea malt beverage; a 24-ounce Angry Orchard hard cider; a 6-pack of Bud Light beer; and 5 assorted vodka nips.

5. The Underage presented to Investigators a fraudulent Maine driver's license. She was in possession of two fraudulent Maine licenses.
6. Investigators entered the licensed premises and spoke to the manager on duty, Davy Mam. Investigators informed Mr. Mam 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 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 Licensee is charged with a violation of 204 CMR 2.05 (2) Permitting an illegality on the licensed premises, to wit: c 138, § 34 Sale or delivery of an alcoholic beverage to a person under twenty-one (21) years of age (1 count). A Commission regulation promulgated at 204 CMR 2.05(2) provides in pertinent part, that "[n]o licensee for the sale of alcoholic beverages shall permit any disorder, disturbance or illegality of any kind to the place in or on the licensed premises. The licensee shall be responsible therefore, whether present or not." The law is well-settled that "under the regulation, [204 C.M.R. 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)). "It is, thus, quite possible for a licensee to offend the regulatory scheme without scienter." Id. The licensee is responsible for illegalities that occur on the licensed premises.

Massachusetts General Laws, Chapter 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. Massachusetts General Laws, Chapter 138, § 34B offers protection from license suspension or revocation or criminal penalties to license holders who reasonably rely on one of the types of identification specified in the statute, including a valid Massachusetts driver's license, Massachusetts liquor identification card, Massachusetts identification card, a United States passport, or a passport issued by the government – recognized by the United States – of a foreign country, a passport card for a U.S. passport, or a valid U.S. military identification card. See M.G.L. c. 138, § 34B. A false out-of-state identification provides no such defense.

The Commission is persuaded by the evidence that Top Services Inc. d/b/a Super Liquors sold alcoholic beverages to a person who was under twenty-one years of age. The fact that the minor presented a false out-of-state identification provides no defense to the Licensee. The Commission finds that the Licensee committed a violation of 204 CMR 2.05 (2) - Permitting an illegality on the licensed premise, 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. c. 138, § 34 Sale or delivery of an alcoholic beverage to a person under twenty-one years of age (1 count). Therefore, the Commission **suspends the license for a period of three (3) days which 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



Jean M. Lorizio, Chairman



Dated: August 1, 2018

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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cc: Local Licensing Board
Frederick G. Mahony, Chief Investigator
Mark Kenny, Investigator
Michael Teehan, Investigator
Raymond T. Weicker, Esq. via facsimile 978-244-1452
Administration, File