



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

*Commonwealth of Massachusetts  
Department of the State Treasurer  
Alcoholic Beverages Control Commission  
239 Causeway Street  
Boston, MA 02114  
Telephone: 617-727-3040  
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**NOTICE OF SUSPENSION**

August 1, 2018

**TOP SERVICES INC. D/B/A SUPER LIQUORS  
35 SOUTH BROADWAY  
LAWRENCE, MA 01843  
LICENSE#: 0594-00117  
VIOLATION DATE: 4/06/2018  
HEARD: 6/19/2018**

After a hearing on June 19, 2018, the Commission finds Top Services Inc. d/b/a Super Liquors violated 204 CMR 2.05 (2) Permitting an Illegality on the Licensed Premises, to wit: Ch. 138, §34 Sale or delivery of an alcoholic beverage to a person under twenty-one years of age (5 counts).

**The Commission suspends the license for twenty-one (21) days of which seven (7) days will be served and fourteen (14) 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, September 5, 2018 and terminate on Tuesday, September 11, 2018.** The license will be delivered to the Local Licensing Board or its designee on Wednesday, September 5, 2018 at 9:00 A.M. It will be returned to the Licensee on September 12, 2018.

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**

A handwritten signature in cursive script, reading "Jean M. Lorizio".

Jean M. Lorizio  
Chairman

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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  
Joseph Di Cicco, Investigator  
Dennis Keefe, Investigator  
Raymond T. Weicker, Esq. via facsimile 978-244-1452  
Administration, File



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## **DECISION**

**TOP SERVICES INC. D/B/A SUPER LIQUORS  
35 SOUTH BROADWAY  
LAWRENCE, MA 01843  
LICENSE#: 0594-00117  
VIOLATION DATE: 4/06/2018  
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 (5 counts), which occurred on April 6, 2018, according to Investigator Di Cicco’s report.

The following documents are in evidence:

1. Investigator Di Cicco’s Investigative Report; and
  2. Photocopies of Fraudulent Driver’s Licenses.
- A. Licensee’s ID Scanner Printout for March – 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 Friday, April 6, 2018, Investigators Keefe and Di Cicco (“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, and to investigate a complaint filed with this Commission.
2. At approximately 6:45 p.m., Investigators observed a youthful-appearing individual enter the licensed premises and shortly thereafter exit the premises carrying a large cardboard box which he placed inside a sports utility vehicle (“SUV”).

3. When Investigators approached the vehicle, they observed the cardboard box contained alcoholic beverages. Investigators identified themselves and asked to see proof of legal age.
4. Underage #1, actual date of birth 9/12/2000 (age 17) presented to Investigators a fraudulent Maine driver's license. The underage stated that he had purchased three 1.75-liter bottles of Rubinoff vodka; two cans of Four Loko malt beverage; and a 6-pack of Mike's Hard Mango malt beverage.
5. Investigators observed that there were two other occupants in the vehicle, who informed Investigators that each was 17 years of age. Investigators then called the parents of each underage individual and informed them of what had occurred.
6. Investigators then observed two youthful appearing individuals in possession of alcoholic beverages. Investigators identified themselves and asked to see proof of legal age.
7. Underage #2, actual date of birth 2/09/2000 (age 18), presented to Investigators a fraudulent Maine driver's license. The passenger in the vehicle, actual date of birth 3/26/2000 (age 18), presented to Investigators a fraudulent Maine driver's license. Both underage females were in possession of three bottles of Barefoot wine.
8. Investigators then observed a silver sedan occupied by five youthful appearing individuals, of which three individuals entered the licensed premises.
9. Investigators observed the three individuals exit the premises separately with paper bags of alcoholic beverages. They placed the alcoholic beverages in the trunk and in the passenger area of the vehicle.
10. Investigators identified themselves and asked to see proof of legal age.
11. Underage #3, actual date of birth 12/1/1997 (age 20), presented to Investigators a fraudulent Maine driver's license in another's name. He stated to Investigators that he had purchased a 6-pack of Twisted Tea malt beverage and Four Loko malt beverage.
12. Underage #4, actual date of birth 12/1/1997 (age 20), presented to Investigators a fraudulent Maine driver's license. He stated to Investigators that he had purchased a 6-pack of Smirnoff Ice malt beverage; 1 bottle of Mike's Hard Lemonade malt beverage; a Four Loko malt beverage; and a 30-pack of Coors Light beer.
13. Underage #5, actual date of birth 6/22/1998 (age 19), presented to Investigators a fraudulent Maine driver's license. He stated to Investigators that he had purchased five cans of Four Loko malt beverage and a 36-pack of Natural Ice beer.
14. The two other occupants in the silver sedan informed Investigators that one was 19 years of age and the other was 20 years of age.
15. Investigators entered the licensed premises and spoke to Mana Song, who stated that he was a corporate officer and the manager on duty.
16. Investigators informed Mr. Song of the violations 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 (5 counts). 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 persons who were under twenty-one years of age. The fact that the minors presented false out-of-state identifications 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 (5 counts).

### CONCLUSION

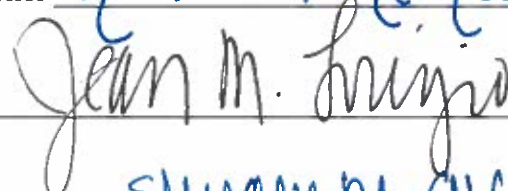
Based on the evidence, the Commission finds the Licensee violated 204 CMR 2.05 (2) Permitting an illegality on the licensed premises, to wit: M.G.L. c. 138, § 34 Sale or delivery of an alcoholic beverage to a person under twenty-one years of age (5 counts). Therefore, the Commission **suspends the license for a period of twenty-one (21) days of which seven (7) days will be served and fourteen (14) 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**

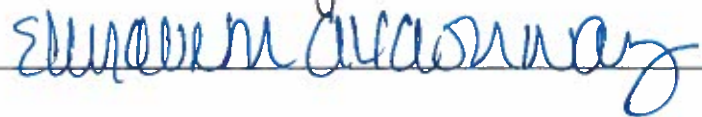
Kathleen McNally, Commissioner



Jean M. Lorizio, Chairman



Elizabeth A. Lashway, Commissioner



Dated: August 1, 2018

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