



*Commonwealth of Massachusetts
Alcoholic Beverages Control Commission
239 Causeway Street
Boston, Massachusetts 02114
Tel. (617) 727-3040
Fax: (617) 727-1510*

Jean M. Lorizio, Esq.
Chairman

AMENDED
NOTICE OF SUSPENSION

December 18, 2018

**LCRC, INC. D/B/A DUDLEY'S
19 MERRIMACK ST.
LOWELL, MA 01852
LICENSE#: 1226-00357
VIOLATION DATE: 10/06/2018
HEARD: 12/11/2018**

After a hearing on December 11, 2018, the Commission finds LCRC, Inc. d/b/a Dudley's 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 (1 count).

The Commission suspends the license for a period of three (3) days of which one (1) day will be served, and Two (2) days will be held in abeyance for a period of two (2) years provided no further violations of Chapter 138 or Commission Regulations occur.

By decision dated September 12, 2018, the Commission had previously ordered a three (3) day suspension to be held in abeyance for a period of two (2) years provided no further violations of Chapter 138 or Commission Regulations occur. Based on the violation found above, the Licensee violated the conditions of that 3-day suspension being held in abeyance. The Commission hereby orders that suspension to be served on and after the 1-day suspension. The Licensee will serve a total of four (4) days.

The suspension shall commence on Wednesday, February 6, 2019 and terminate on Saturday, February 9, 2019. The license will be delivered to the Local Licensing Board or its designee on Wednesday, February 6, 2019 at 9:00 A.M. It will be returned to the Licensee on February 10, 2019.

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



Jean M. Lorizio
Chairman

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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
Michael Teehan, Investigator
Lisa Watson, Investigator
Michael Zaim, Esq. via facsimile 978-970-0521
Administration, File



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DECISION**

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HEARD: 12/11/2018**

LCRC, Inc. d/b/a Dudley's (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, December 11, 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, § 34C- Possession of an alcoholic beverage by a person under twenty-one (21) years of age (1 count), which occurred on October 6, 2018, according to Investigator Di Cicco's Report.

The following documents are in evidence:

1. Investigator Di Cicco's Investigative Report; and
2. Photocopy of Fraudulent Driver's Licenses.

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

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

FINDINGS OF FACT

1. On Saturday, October 6, 2018, at approximately 12:20 a.m., Investigators Keefe, Teehan, Watson, and Di Cicco ("Investigators"), conducted an investigation of the business operation of LCRC, Inc. d/b/a Dudley's to determine the manner in which its business was being conducted. (Exhibit 1)
2. While inside the licensed premises, Investigators observed two youthful appearing individuals in possession of alcoholic beverages. Investigators identified themselves and asked to see proof of legal age. (Exhibit 1)

3. Underage #1, actual date of birth 3/22/1998 (age 20) was in possession of a mixed drink, Malibu rum and Sprite® soda. She presented to Investigators a fraudulent Maine driver's license bearing the name of another person, which she stated she used to gain entry to the premises. (Exhibits 1, 2)
4. Underage #2, actual date of birth 7/13/2000 (age 18) was in possession of a mixed drink, a vodka and cranberry [juice]. She presented to Investigators a fraudulent Massachusetts driver's license. (Exhibits 1, 2)
5. Investigators observed another youthful appearing individual in possession of an alcoholic beverage and asked to see proof of legal drinking age. (Exhibits 1, 2)
6. Underage #3, actual date of birth 8/11/1998 (age 20) was in possession of a mixed drink, a vodka and cranberry [juice]. She presented to Investigators a fraudulent Massachusetts driver's license in her name but with a false date of birth. (Exhibits 1, 2)
7. As Investigators were speaking with Underage #3, another youthful appearing individual made contact with her. Investigators asked her for proof of legal age. (Exhibits 1, 2)
8. Underage #4, actual date of birth 6/16/1998 (age 20) informed Investigators that she gained entry to the premises using a fraudulent Massachusetts driver's license in her own name with a false date of birth. (Exhibits 1, 2)
9. Investigators observed a youthful appearing male individual in possession of a bottle of Corona beer. They approached the male and asked for proof of legal drinking age. (Exhibits 1, 2)
10. Underage #5, actual date of birth 3/24/1999 (age 19) presented to Investigators a fraudulent Massachusetts driver's license in his own name with a false date of birth. (Exhibits 1, 2)
11. Investigators made contact with a bartender on duty, Abby Murphy, who identified himself as the manager on duty. (Exhibit 1)
12. Investigators informed Murphy of the violations and that a report would be filed with the Chief Investigator for review. (Exhibit 1)
13. Investigators only charged the Licensee with regard to Underage #1. (Testimony)

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: Chapter 138, § 34C- Possession of an alcoholic beverage by a person under twenty-one (21) years of age. 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 take 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.” Commonwealth v. Gould, 158 Mass. 499, 507 (1893); Burlington Package Liquors, Inc. v. Alcoholic Beverages Control Comm’n, 11 Mass. App. Ct. 785, 788 (1981). 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). A licensee is responsible for illegalities that occur on the licensed premises. See id.

Massachusetts General Laws, Chapter 138, § 34C states, in pertinent part, that: “Whoever, 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.” M.G.L. c. 138, § 34C.

A Massachusetts driver’s license which purports to show that a patron is 21 years of age or older is not an affirmative defense available for the statutory violation of permitting an illegality of a minor in possession of alcoholic beverages pursuant to Section 34C. 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 four (4) pieces 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. Section 34B refers only to the activities of delivery and sale, and it omits any reference to the act of possession. See id. Consequently, Section 34B offers no relief from liability for allowing possession of alcoholic beverages in violation of Section 34C.

The Commission is persuaded by the evidence that Underage #1 was younger than 21 years of age and was in possession of an alcoholic beverage in the licensed premises. 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, § 34C- Possession of an alcoholic beverage by a person under 21 years of age (1 count).

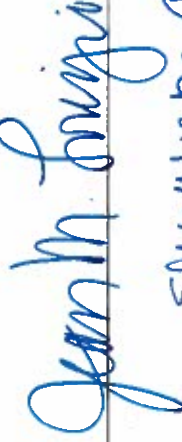
CONCLUSION

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, § 34C- Possession of an alcoholic beverage by a person under twenty-one (21) years of age (1 count). Therefore, the Commission suspends the license for a period of Two (2) days of which one (1) day will be served, and three (3) days will be held in abeyance for a period of two (2) years provided no further violations of Chapter 138 or Commission Regulations occur.

By decision dated September 12, 2018, the Commission had previously ordered a three (3) day suspension to be held in abeyance for a period of two (2) years provided no further violations of Chapter 138 or Commission Regulations occur. Based on the violation found above, the Licensee violated the conditions of that 3-day suspension being held in abeyance. The Commission hereby orders that suspension to be served on and after the 1-day suspension. The Licensee will serve a total of four (4) days.

ALCOHOLIC BEVERAGES CONTROL COMMISSION

Jean M. Lorzio, Chairman



Elizabeth A. Lashway, Commissioner



Dated: December 18, 2018

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