



*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**

**Mui T. Tran dba Cedar Street Market**  
**100 East Main Street**  
**Milford, MA. 01757**  
**License #:070600054**  
**Heard: November 17, 2010**

This is an appeal of the action of the Milford Licensing Board ("the Board") in suspending the M.G.L. c. 138, §15 all alcoholic beverages license of Mui T. Tran dba Cedar Street Market (the "Licensee") for a period of five (5) days. The Licensee timely appealed the Board's decision to the Alcoholic Beverages Control Commission (the "Commission") and a hearing was held on November 17, 2010.

The following exhibits are in evidence:

1. Commission Notice of Hearing;
2. Milford Police Report dated July 6, 2010;
3. Milford Police Report dated July 1, 2010;
4. Local Board Decision dated July 27, 2010;
5. Front Photo;
6. Side Photo; and
7. RMV Identification Printout.

A. Licensee's BARS Program Test Result.

There is one (1) tape of this hearing.

**FACTS**

1. On July 1, 2010, as a part of a Milford Police Department operation, Milford Police Officers sent a twenty (20) year old male into fifteen (15) establishments in Milford licensed to sell alcoholic beverage not to be drunk on the premises.
2. At approximately 7:05 P.M. on that date the twenty (20) year old under-aged operative, a male, entered the Cedar Street Market in Sunoco Gas Station.
3. This twenty (20) year old under-aged operative purchased a six (6) pack of Coors Light and was not asked for identification.
4. In addition, while monitoring the under-aged operative conducting the police operation, two (2) Milford detectives stopped two (2) individuals who had just left the premises, one with a twelve (12) pack of Corona and the other with a six (6) pack of Bud Light Lime, both nationally known brands of alcoholic beverages.

5. Investigation determined that these two (2) males were both eighteen (18) years of age.
6. These two young males were searched and the only identification in their possession showed their age to be eighteen (18).

### DISCUSSION

The Commission has previously decided how a compliance check (or "sting") for sales to under aged persons must be conducted. The Commission has ruled that "while the failure to use the ABCC Guidelines does not constitute entrapment *per se*, the absence of any written sting guidelines creates a rebuttable presumption of entrapment that a local licensing authority may rebut only with credible evidence demonstrating the fairness of a sting operation." *In re: Assinippi Liquors, Inc.*, Wareham (ABCC Decision dated June 4, 2008), page 4.

In applying this principle in a decision issued in 2007, the Commission also held and acknowledged that "if a local police department were pursuing their routine investigations or leads, there was nothing to prevent them from using a police officer to work undercover and purchase an alcoholic beverage from a licensee. But the purpose for using underage operatives in 'stings' is not to enhance the effectiveness of police undercover work; rather, the purpose of 'stings' is to educate the licensee in the value of responsible retailing. [citing] *In Re: Epicure Package Store, Inc.*, Foxborough (ABCC Decision dated March 28, 2007)." *In re: Hinoelia Rivera d.b.a El Coqui Liquor*, Wareham (ABCC Decision dated June 4, 2008), page 4.

In this case, there was no evidence that the local board adopted written guidelines under which this underage compliance checks or so-called "sting" operation would be conducted. There was also no evidence that the police department itself adopted written guidelines or operated with the Commission's written guidelines. Thus, the burden was on the local board to rebut the presumption of entrapment with credible evidence. *In Re: Assinippi Liquors, Inc.*, Wareham (ABCC Decision dated June 8, 2004).

In this case, the local board presented some information on how this police operation was conducted. But the information given to the Commission was limited. Based on the limited information that was given, the Commission could be persuaded that the police operation was conducted fairly. However, this issue is not reached where, as here, no information was submitted to the Commission that there was any notice to the industry that such underage compliance checks would be conducted.

The ABCC guidelines state that, "[n]otification that a compliance check will be taking place will be made in the media prior to the start date." *In Re: Epicure Package Store, Inc.*, Foxborough (ABCC Decision dated March 28, 2007).<sup>1</sup> In the *Epicure* case, the Commission ruled that there is no legal defect or unfairness when a licensee receives

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<sup>1</sup> The notice issued by the ABCC investigators is general and perhaps, to the inattentive, innocuous. The ABCC notification of a "sting" merely states that the ABCC Investigators "will be conducting minimum age purchase law compliance checks throughout [the year, e.g. 2010 or 2011]." See, e.g., *Massachusetts Beverage Business*, September 2007 ed., page 445.

actual notice that a compliance check will be conducted. The Commission has recently addressed issues arising out of the failure to give this notification.

In *Re: BBRG Massachusetts Restaurants Inc. dba Papa Razzi*, Burlington (ABCC Decision dated May 21, 2007) the Commission found that "[t]he failure to notify in the media, the first guideline, jeopardizes the entire compliance check." In *Papa Razzi*, the Commission found this failure alone made the conduct of the "sting" operation unfair and resulted in the Commission disapproving the action of the local licensing authority.

In this case of Cedar Street Market, there is no evidence that the police department placed any notification in the media prior to the start date that a "sting" or compliance check would be conducted. There is also no evidence that the licensee was provided with any actual written notice prior to the start date that a "sting" or compliance check would be conducted. This case of Cedar Street Market is like the *Papa Razzi* case in which the "[t]he failure to notify in the media, the first guideline, jeopardizes the entire compliance check." *Fay et al v. Jenkins et al*, Memorandum of Decision and Order, Suffolk Superior Court (Muse, J.), C.A. No. 2007-02652.

Thus the Commission does not approve the action of the local board in finding that the licensee violated the law by selling to the under aged operative conducting the police operation.

The licensee claimed the under aged operative used by the Milford Police Department was not the same individual to whom she sold the six (6) pack of Coors Light. She told the Commission she had surveillance equipment but did not save the tape from this surveillance equipment. This tape would clearly indicate who she served and whether she asked for identification not only for the sale to the under aged operative but also to the two (2) 18-year olds who were seen by the police to be in possession of alcoholic beverages right outside the Cedar Street Market. Police Lieutenant Falvey testified their under aged operative did not carry identification.

The Commission does not find it credible that the licensee would not use the videotape if it could substantiate her story. Thus the Commission approves the action of the Local Board in finding the licensee violated the law by furnishing alcoholic beverages to the two (2) 18-year olds, as furnishing is defined in M.G.L. c. 138, § 34.

Further testimony regarding the penalties given to this licensee who thrice failed comply with the law by selling, delivering, or furnishing alcoholic beverages to a person under the age of 21 years old persuade the Commission that this penalty of a 5 day suspension is reasonable.

#### CONCLUSION

Based on the testimony and the exhibits entered at the Commission hearing, the Commission APPROVES the action of the Local Board in finding the licensee violated

M.G.L. c. 138 §64. The Commission also APPROVES the action of the Local Board in suspending the license for a period of five (5) days.

**ALCOHOLIC BEVERAGES CONTROL COMMISSION**

Robert H. Cronin, Commissioner

Robert H. Cronin

Susan Corcoran, Commissioner

Susan Corcoran

Dated: April 14, 2011

You have the right to appeal this decision to the Superior Court under the provisions of Chapter 30A of the Massachusetts General Laws within thirty (30) days of receipt of this decision.

cc: Dennis A. Benzan, Esq. via Facsimile 617-491-3299  
Gerald M. Moody, Esq. via Facsimile 508-634-2324  
File