



*Commonwealth of Massachusetts
Alcoholic Beverages Control Commission
95 Fourth Street, Suite 3
Chelsea, Massachusetts 02150-2358*

Jean M. Lorizio, Esq.
Chairman

DECISION

**CASA TEQUILA SALEM MA LLC D/B/A CASA TEQUILA
300 DERBY STREET
SALEM, MA 02148
LICENSE#: 04377-RS-1064
VIOLATION DATE: 10/23/2020
HEARD: 11/2/21**

Casa Tequila Salem MA LLC d/b/a Casa Tequila (the "Licensee") holds an alcohol license issued pursuant to M.G.L. c. 138, § 12. The Alcoholic Beverages Control Commission ("ABCC" or "Commission") held a remote hearing via Microsoft Teams on Tuesday, November 2, 2021, regarding an alleged violation of 204 CMR 2.05 (2) Permitting an Illegality on the Licensed Premises, to wit: M.G.L. Ch. 138, § 34C Possession of an alcoholic beverage by a person under twenty-one years of age (5 Counts).

The following documents are in evidence:

1. Investigator Di Cicco's Report;
2. ABCC Application Summary Review, 12/7/2018;
3. Fraudulent Driver's Licenses.

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

FINDINGS OF FACT

1. On Friday, October 23, 2020, at approximately 7:15 p.m., Investigators Gould, Keefe, and Di Cicco ("Investigators"), conducted an inspection of the business operation of Casa Tequila Salem MA LLC d/b/a Casa Tequila to determine the manner in which its business was being conducted.
2. Investigators spoke with the manager, Gilberto Reyes and reviewed the COVID-19 guidelines and Sector Specific Safety Standards for Restaurants with him.
3. While on the licensed premises, Investigators observed a table occupied by three (3) youthful appearing male individuals in possession of what appeared to be alcoholic beverages. Investigators identified themselves and asked to see proof of legal age. One of the male individuals was of legal drinking age and the other two admitted to Investigators they were under the age of 21.

4. Underage #1, actual date of birth 7/01/2001 (age 19), was in possession of a Margarita mixed drink. He informed Investigators he was not asked for identification when he ordered the alcoholic beverage. This was later confirmed by Underage #1's server.
5. Underage #2, actual date of birth 6/25/2000 (age 20), was in possession of a vodka and soda mixed drink. He informed Investigators that he was not asked for identification when he ordered the alcoholic beverage. This was later confirmed by Underage #2's server.
6. Investigators observed another table occupied by youthful appearing individuals in possession of what appeared to be alcoholic beverages. Investigators approached the table, identified themselves, and then asked for proof of legal age.
7. Underage #3, actual date of birth 11/30/2001 (age 18), was in possession of a Margarita mixed drink. She provided to Investigators a fraudulent Rhode Island driver's license in her own name with a different birth date. Underage #3 stated she was not asked for identification when she ordered the alcoholic beverage.
8. Underage #4, actual date of birth 5/15/2001 (age 19), was in possession of a Dos Equis beer. When asked for identification, he stated he was under the age of 21. He provided to Investigators a fraudulent Connecticut driver's license in his own name with a different birth date. He informed Investigators that he was not asked for identification when he ordered the alcoholic beverage.
9. Underage #5, actual date of birth 2/13/2002 (age 18), was in possession of a Dos Equis beer. He informed Investigators that he was not asked for identification when he purchased the alcoholic beverage. He provided to Investigators a fraudulent Connecticut driver's license in his own name with a different birth date.
10. Mr. Reyes later informed Investigators the server for Underage Nos. 3, 4 and 5 informed him she had requested identification from them.
11. Investigators advised Mr. Reyes of the violations and that a report would be filed with the Chief Investigator for further review.
12. Mr. Reyes appeared at the Commission hearing and testified reiterating that the employee who served Underage Nos. 3, 4 and 5 told him she had, in fact, requested identification from all of them. In addition, the Commission was informed as to steps taken to prevent future violations. These steps include having all employees go through a refresher TIPS course and plans to purchase an identification scanner to assist in assessing identifications.
13. The Licensee has held a license under M.G.L. c. 138, § 12 since 2018 with no prior violations.

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 (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 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. Direct evidence was presented through the testimony of Investigator Keefe regarding five individuals under the age of 21 found to be in possession of alcoholic beverages on the licensed premise.

As to three of the patrons under the age of 21 found to be in possession of alcoholic beverages, the Licensee asserted his employee had requested, examined, and relied upon identifications presented by the underage patrons.

The patrons had presented out of state licenses from Connecticut and Rhode Island. Neither a Connecticut nor a Rhode Island driver's license which purports to show that a patron is 21 years of age or older is 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.

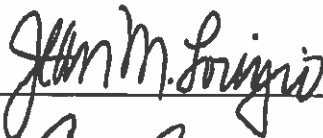
The Commission is persuaded by the evidence that the five patrons were younger than 21 years of age and in possession of alcoholic beverages in the licensed premises. The Commission finds that the Licensee committed a violation of 204 CMR 2.05 (2) - Permitting an illegality on the licensed premise, to wit: M.G.L. c. 138, § 34C- Possession of an alcoholic beverage by a person under 21 years of age (5 counts).

CONCLUSION

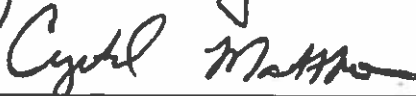
Based on the evidence, the Commission finds the Licensee violated 204 CMR 2.05 (2) Permitting an Illegality on the Licensed Premises, to wit: M.G.L. Ch. 138, § 34C Possession of an alcoholic beverage by a person under twenty-one years of age (5 Counts). Therefore, the Commission **suspends the license for a period of 7 days which are hereby deemed served.**

ALCOHOLIC BEVERAGES CONTROL COMMISSION

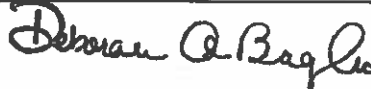
Jean M. Lorizio, Chairman



Crystal Matthews, Commissioner



Deborah A. Baglio, Commissioner



Dated: February 4, 2022

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
Kyle E. Gill, Esq., Associate General Counsel
Dennis Keefe, Investigator
Brian Gould, Investigator
Chad Colarusso, Esq.
Administration, File