



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

Jean M. Lorizio, Esq.
Chairman

DECISION

**ULSTER INC. D/B/A O'NEILL'S PUB & RESTAURANT
124-126 WASHINGTON STREET
SALEM, MA 01970
LICENSE#: 00035-RS-1064
VIOLATION DATE: 12/01/2023
HEARD: 7/09/2024**

Ulster Inc. d/b/a O'Neill's Pub & Restaurant ("Licensee" or "O'Neill's Pub") 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, July 9, 2024, regarding an alleged violation of 204 CMR 2.05 (2) Permitting an illegality on the licensed premises, to wit: Ch.138 §34C – Possession of an alcoholic beverage by a person under twenty-one (21) years of age (2 Counts).

The following documents are in evidence:

1. Investigative Report of J. Di Cicco;
2. ABCC Form 43 License, Transfer of License Approval, 9/21/1999;
3. ABCC Decision, 1/9/2013;
4. ABCC Decision, 5/20/2014;
5. Photograph of Identifications (3).

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

FINDINGS OF FACT

1. On Friday, December 1, 2023, Special Investigators Fleming, Keefe, and Di Cicco ("Investigators") inspected the business operation of Ulster Inc. d/b/a O'Neill's Pub & Restaurant ("Licensee" or "O'Neill's Pub"). (Testimony, Exhibit 1)
2. At approximately 11:30 p.m., Investigators entered the licensed premises and observed a high-top table occupied by youthful appearing individuals in possession of what appeared to be alcoholic beverages. Id.
3. Investigators approached the table, identified themselves and requested proof of legal age to possess alcoholic beverages. Id.

4. Underage #1, actual date of birth 6/18/2003 (age 20), was in possession of a can of High Noon. Id.
5. Underage #2, actual date of birth 4/15/2003 (age 20), was in possession of a tequila pineapple mixed drink. Id.
6. Investigators spoke with the manager, Shannon Burke, and identified the underage individuals to her. Investigators informed Ms. Burke of the violations and that a report would be filed with the Chief Investigator for review. Id.
7. Mr. Brogan, Licensee, appeared at the Commission hearing and testified that he and his employees do their best. He stated that his door staff are trained but acknowledged these underage individuals got by them that night. (Testimony)
8. The Licensee has held a license under M.G.L. c. 138, § 12 since 1999. (Exhibit 2)

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 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." 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.

Here, direct evidence was presented through the testimony of the Investigator who observed two patrons on the licensed premises who were under the age of twenty-one and in possession of alcoholic beverages. In addition, the Licensee acknowledged the violation. (Testimony)

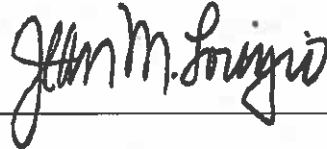
The Commission is persuaded by the evidence and finds that the Licensee committed a violation of 204 CMR 2.05 (2) - Permitting an illegality on the licensed premise, to wit: M.G.L. c. 138, § 34C- Possession of an alcoholic beverage by a person under 21 years of age (2 counts).

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: Ch.138 § 34C – Possession of an alcoholic beverage by a person under twenty-one (21) years of age (2 Counts) As a result, the Commission **suspends the license for a period of two (2) days which will be held in abeyance for a period of two (2) years provided that no further violations of Chapter 138 or Commission Regulations are found by this Commission.**

ALCOHOLIC BEVERAGES CONTROL COMMISSION

Jean M. Lorizio, Chairman



Deborah A. Baglio, Commissioner



Dated: May 1, 2025

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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2024-000008-ad-enf

cc: Local Licensing Board
Frederick G. Mahony, Chief Investigator
Katherine McCormick, Esq., Associate General Counsel
Joseph Di Cicco, Investigator
Sean Fleming, Investigator
Dennis Keefe, Investigator
Administration, File