

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

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

**DECISION**

**110 ISLAND POND ROAD LLC D/B/A NATHAN BILLS  
108-110 ISLAND POND RD.  
SPRINGFIELD, MA 01118  
LICENSE#: 00274-RS-1226  
VIOLATION DATE: 9/21/2019  
HEARD: 3/10/2020**

110 Island Pond Road LLC d/b/a Nathan Bills (the "Licensee") holds an alcohol license issued pursuant to M.G.L. c. 138, § 12. The Alcoholic Beverages Control Commission ("Commission" or "ABCC") held a hearing on Tuesday, March 10, 2020, 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 (1 count), which occurred on September 21, 2019 according to Investigator Temple's Report.

The following documents are in evidence:

1. Investigator Temple's Investigative Report;
2. Copy of License Transfer Approval, 4/12/2013;
3. Copy of Fraudulent driver's license.

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

**FINDINGS OF FACT**

1. On Saturday, September 21, 2019, at approximately 12:02 a.m., Investigators Gould, Keefe, Kujawski and Temple ("Investigators") conducted an investigation of the business operation of 110 Island Pond Road LLC d/b/a Nathan Bills to determine the manner in which its business was being conducted.
2. Investigators observed two (2) youthful appearing females, in possession of alcoholic beverages, in the middle of the dance floor. Investigators identified themselves and asked to see proof of legal age.
3. Underage #1, actual date of birth 10/16/1998 (age 20), was in possession of a vodka and soda. She presented to Investigators a fraudulent Florida driver's license in her name but with a different birth date which she had used to gain entry to the premises.

4. Underage #2, actual date of birth 8/09/1999 (age 20), was in possession of a vodka and lemonade. She presented to Investigators a fraudulent Massachusetts driver's license in her name but with a different birth date. Investigators determined that the Licensee reasonably relied on this identification and therefore, they did not charge for an additional violation.
5. Investigators identified the underage patrons to the manager, Christian Leeds. Leeds asked Underage #1 if she had presented the fraudulent Florida driver's license to the doorman. Underage #1 answered in the affirmative.
6. Investigators informed Mr. Leeds of the violation and that a report would be filed with the Chief Investigator for further action. Investigators warned Mr. Leeds about the fraudulent Massachusetts driver's license and advised him how he could determine if the license was fraudulent.
7. The Licensee, Robert Gossman, testified at the Commission hearing that he has three (3) employees at the door checking identifications. Two employees utilize a scanner and a hologram flashlight while inspecting identification, while the third employee searches social media sites for information to assist in confirming a person's age.
8. The Licensee has held a license under M.G.L. c. 138, § 12 since 2013 with no prior violations.

## DISCUSSION

Licenses to sell alcohol 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. B. 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 (1983); 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.


The Commission is persuaded by the evidence that the patron was younger than 21 years of age and was in possession of an alcoholic beverage on the licensed premise. 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

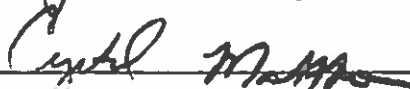
Based on the evidence, the Commission finds the Licensee violated of 204 CMR 2.05 (2) Permitting an Illegality on the Licensed Premises, to wit: M.G.L. Ch. 138, § 34C Possession of an alcoholic beverage by a person under twenty-one years of age (1 count). The Commission issues a **WARNING**.

### **ALCOHOLIC BEVERAGES CONTROL COMMISSION**

Crystal Matthews, Commissioner



Jean M. Lorizio, Chairman



Dated: April 15, 2020

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  
Christopher Temple, Investigator  
Brian Gould, Investigator  
Dennis Keefe, Investigator  
Jan Kujawski, Investigator  
Daniel Kelly, Esq.  
Administration, File