



The Commonwealth of Massachusetts
Department of the State Treasurer
Alcoholic Beverages Control Commission
Boston, Massachusetts 02114

Deborah B. Goldberg
Treasurer and Receiver General

NOTICE OF SUSPENSION

Kim L. Gainsboro, Esq.
Chairman

January 27, 2017

SHANAYA CORP. D/B/A COOLIDGE LIQUORS
608 MT AUBURN ST
WATERTOWN, MA 02472
LICENSE#: 133600052
VIOLATION DATE: 09/02/2016
HEARD: 01/10/2017

After a hearing on January 10, 2017, the Commission finds Shanaya Corp. d/b/a Coolidge Liquors violated:

- 1) 204 CMR 2.05 (2)- Permitting an illegality on the licensed premises, to wit: c. 138, § 34 Sale or delivery of an alcoholic beverage to a person under twenty-one (21) years of age (2 Counts); and
- 2) M.G.L. c. 138, § 22 - Transporting Alcoholic Beverages without a permit.

On the first charge, 204 CMR 2.05 (2), M.G.L. c. 138, § 34 (2 counts), the Commission **suspends the license for a period of nine (9) days of which four (4) days will be served, and five (5) days will be held in abeyance for a period of two (2) years provided no further violations of Chapter 138 or Commission Regulations occur.**

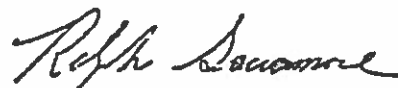
On the second charge, M.G.L. c. 138, § 22, the Commission **suspends the license for a period of one (1) day of which one (1) day will be held in abeyance for a period of two (2) years provided no further violations of Chapter 138 or Commission Regulations occur. This 1 day suspension held in abeyance to run concurrently with the one above.**

The suspension shall commence on Wednesday, March 29, 2017 and terminate on Saturday, April 1, 2017. The license will be delivered to the Local Licensing Board or its designee on Wednesday, March 29, 2017 at 9:00 A.M. It will be returned to the licensee on Sunday, April 2, 2017.

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



Ralph Sacramone
Executive Director

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cc: Local Licensing Board
Frederick G. Mahony, Chief Investigator
Joseph Di Cicco, Investigator
Jan Kujawski, Investigator
Karen Simão, Esq. via facsimile 617-946-4624
Administration, File



The Commonwealth of Massachusetts
Department of the State Treasurer
Alcoholic Beverages Control Commission
Boston, Massachusetts 02114

Deborah B. Goldberg
Treasurer and Receiver General

DECISION

Kim J. Gainsboro, Esq.
Chairman

SHANAYA CORP. D/B/A COOLIDGE LIQUORS
608 MT AUBURN ST
WATERTOWN, MA 02472
LICENSE#: 133600052
VIOLATION DATE: 09/02/2016
HEARD: 01/10/2017

Shanaya Corp. d/b/a Coolidge Liquors (the "Licensee") holds an alcohol license issued pursuant to M.G.L. c. 138, § 15. The Alcoholic Beverages Control Commission (the "Commission") held a hearing on Tuesday, January 10, 2017, regarding alleged violations of:

- 1) 204 CMR 2.05 (2)- Permitting an illegality on the licensed premises, to wit: c. 138, § 34 Sale or delivery of an alcoholic beverage to a person under twenty-one (21) years of age (4 Counts);
- 2) M.G.L. c. 138, § 22 - Transporting Alcoholic Beverages without a permit;
- 3) 204 CMR 2.05 (2) Permitting an illegality on the licensed premises, to wit: M.G.L. Ch. 138 § 23- Sale of alcoholic beverages other than those purchased from a licensee under § 18 or § 19 or from a holder of a special license under § 22A.

The above captioned occurred on September 2, 2016, according to Investigator Di Cicco's report.

The following documents are in evidence:

1. Investigator Di Cicco's Investigative Report;
 2. Fraudulent Rhode Island Driver's License of Underage # 1; and
 3. Fraudulent Rhode Island Driver's License of Underage # 2.
- A. Order Packet from Augustus Busch Company; and
B. Order Packet from Burke Distributing Company.

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

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

FINDINGS OF FACT

1. On Friday, September 2, 2016, Investigators Kujawski and DiCicco ("Investigators") conducted an investigation of the business operation of Shanaya Corp. d/b/a Coolidge Liquors to determine the manner in which their business was being conducted.
2. At approximately 5:45 p.m., Investigators observed three youthful individuals exiting the licensed premises with multiple alcoholic beverages. Investigators observed the youthful individuals place the alcoholic beverages in a vehicle with a youthful appearing individual in the driver's seat.
3. Investigators approached the group, identified themselves, and asked to see proof of legal age.
4. Two of the individuals presented Investigators with fraudulent licenses.
5. Underage #1 actual date of birth 5/24/1997 (age 19) stated he used his fraudulent Rhode Island driver's license to purchase the alcohol. (Exhibit 2)
6. Underage #2 actual date of birth 6/27/1996 (age 20) was in possession of a fraudulent Rhode Island driver's license and informed Investigators that he used his Rhode Island fake identification in the store. (Exhibit 3)
7. Underage #3, actual date of birth 8/11/1996 (age 19) stated that he was not carded in the store. The remaining individual in the vehicle was Underage #4, actual date of birth 9/5/1996 (age 19).
8. The underage individuals were in possession of five Budweiser Light 30-packs of beer and one 1.75 liter bottle of Fire Ball Cinnamon Whisky.
9. At approximately 6:00 p.m., Investigators observed an additional three youthful appearing individuals who parked a motor vehicle near the licensed premises.
10. Investigators observed one individual enter the premises and exit a few minutes later with multiple large bottles of alcoholic beverages, and enter the motor vehicle.
11. Investigators approached the group, identified themselves, and asked to see proof of legal age.
12. Underage #5 actual date of birth 3/09/1998 (age 18) was in possession of five 1.75 liter bottles of Old Amsterdam flavored vodka, (3 bottles Red Berry and 2 bottles Mango). He stated that he was not asked for identification when he purchased the alcoholic beverages.
13. The other individuals in the car were Underage #6, actual date of birth 7/3/1998 (age 18) and Underage #7, actual date of birth 7/9/1997 (age 19).
14. Investigator DiCicco testified before the Commission that he did not witness the actual sales of alcoholic beverages inside the premises. He witnessed the individuals exiting the store.
15. While conducting the enforcement, Investigators observed a black Jaguar pull up to the front of the licensed premises where the driver unloaded cases of alcoholic beverages.
16. Investigators approached the driver of the black Jaguar and identified themselves, and asked if he had a permit to transport or distribute alcohol. The driver identified himself as Jigar Patel, the owner and license manager of the licensed premises.

17. Mr. Patel stated he had brought the alcoholic beverages from his other licensed premises in Shirley, MA. Patel admitted that he did not have a transportation permit, nor was he an authorized distributor.
18. Mr. Patel had transported the following alcoholic beverages from his other premises:
 - o Five 30-packs Miller Lite beer;
 - o Five 18-packs Bud Light beer;
 - o Five 18-packs Budweiser beer.
19. Mr. Patel could not provide Investigators with any documentation or invoices to show the alcoholic beverages had been purchased from an authorized distributor.
20. Investigators informed Mr. Patel about the underage individuals who had purchased alcoholic beverages from the licensed premises, and also made contact with the clerk on duty who had sold the alcoholic beverages to the underage individuals.
21. Mr. Patel stated that the store scans identification but Investigators informed him that one individual was not asked for proof of age.
22. Mr. Patel showed the scanner to Investigators, but when he tried to demonstrate its use, discovered the scanner was not plugged in.
23. Investigators advised Mr. Patel that one of the underage individuals had used a fraudulent license, and one underage individual, who did not have any identification, told Investigators that he had purchased alcohol from the establishment in the past.
24. Investigators informed Mr. Patel about the violations and that a report would be submitted to the Chief Investigator for review.

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 M.G.L. c. 138.

M.G.L. c. 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) (emphasis supplied). The Commission is given “comprehensive powers of supervision over licensees.” Connolly, 334 Mass. at 617.

The law is well-settled that 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., 7 Mass. App. Ct. 186, 190 (1979). 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).

General Laws chapter 138, § 34B provides, in pertinent part, that “[a]ny licensee, or agent or employee thereof, under this chapter, who reasonably relies on such a liquor purchase

identification card, or an identification card issued under section 8E of chapter 90, or motor vehicle license issued pursuant to said section eight, for proof of a person's identity and age shall be presumed to have exercised due care in making such delivery or sale of alcohol or alcoholic beverages to a person under twenty-one years of age. Such presumption shall be rebuttable."

M.G.L. c. 138, § 34B offers protection from license revocation or criminal penalties to license holders who reasonably rely on one (1) of four (4) pieces of identification specified in the statute, including a valid Massachusetts driver's license. The Commission has established that to obtain the protection accorded to a license holder under § 34B, a license holder must obtain proof of age prior to the purchase of alcoholic beverages and also must obtain proof of age on the day of the alleged sale to a minor. The Appeals Court has reviewed this Commission interpretation and upheld it as reasonable. Howard Johnson Company v. Alcoholic Beverages Control Comm'n, 24 Mass. App. Ct. 487 (1987); In Re: Alan C. Dinh d/b/a Juliano's Beer & Wine (ABCC Decision April 8, 2005).

The Licensee was charged with a violation of 204 CMR 2.05 (2) to wit: c. 138, § 34 – Sale or delivery of an Alcoholic Beverage to a Person Under Twenty-One (21) Years of Age, (4) counts. General Laws chapter 138, § 34 provides, in part, that "[w]hoever makes a sale or delivery of any alcoholic beverage or alcohol to any person under 21 years of age, either for his own use or for the use of his parent or any other person, ... shall be punished." The Appeals Court has stated that "the purpose of the statute [is] to protect the welfare of children from the danger of alcohol." Tobin v. Norwood Country Club, Inc., 422 Mass. 126, 133-134 (1996); accord Fran's Lunch, Inc. v. Alcoholic Beverages Control Comm'n, 45 Mass. App. Ct. 663, 664 (1998). General Laws chapter 138, §34C states, in pertinent part, that: "[w]hoever, 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."

Investigator DiCicco testified that he observed three individuals exit the licensed premises carrying alcoholic beverages. Investigator DiCicco testified that he was not inside the premises and did not witness the actual sale of the alcohol, and did not check with the employee/clerk to determine if there was one sale transaction for the alcohol, or three separate sales. Underage #1 (age 19) admitted to Investigator DiCicco that he presented a fraudulent Rhode Island driver's license to purchase the alcoholic beverages. (Exhibit 2) Underage #2 (age 20) admitted the same. Given that the Commission cannot determine whether there was one, two, or three sales, the Commission finds only one count of sale to a minor with regard to the first three youths. The Licensee accepted a fraudulent Rhode Island identification and sold alcohol to a minor. The Commission advises the Licensee there is no protection afforded pursuant to M.G.L. c. 138, when accepting out of state identifications. In addition, the scanner normally used by the Licensee was unplugged and not operational.

Furthermore, Underage #5 (age 18) stated that he was not asked for identification to purchase the alcohol. This underage patron was found in possession of five bottles of vodka, which he stated that he purchased at the licensed premises. Therefore, the Commission finds a second count of sale to a minor with regard to Underage #5.

Consequently, the Commission finds that the Licensee committed the violations of 204 CMR 2.05 (2) - Permitting an illegality on the licensed premises, to wit: c. 138, § 34 Sale or delivery of an alcoholic beverage to a person under twenty-one (21) years of age (2 Counts). The Commission

advises the Licensee that it is responsible for determining proof of legal age **prior** to the sale and delivery of alcoholic beverages at its licensed premises.

Investigators observed Mr. Patel transporting a large amount of alcoholic beverages in his motor vehicle without the appropriate transportation permit. As a result, the Commission finds the Licensee in violation of M.G.L. c. 138, § 22 - Transporting Alcoholic Beverages without a permit.

Based on the evidence, the Commission does not find the Licensee committed the violation of 204 CMR 2.05 (2) Permitting an illegality on the licensed premises, to wit: M.G.L. Ch. 138 §23- Sale of alcoholic beverages other than those purchased from a licensee under §18 or §19 or from a holder of a special license under §22A. The evidence before the Commission was that Investigators observed a black Jaguar pull up to the front of the licensed premises where the Licensee unloaded cases of alcoholic beverages. The Commission does not find that there was any evidence that the cases of alcohol were sold, only that the Licensee unloaded them. As a result, the Commission does not find that the Licensee committed this violation.

CONCLUSION

Based on the evidence, the Commission finds there was no violation of 204 CMR 2.05 (2) Permitting an illegality on the licensed premises, to wit: M.G.L. Ch. 138 §23- Sale of alcoholic beverages other than those purchased from a licensee under §18 or §19 or from a holder of a special license under §22A.

Based on the evidence, the Commission finds the Licensee violated:

- 1) 204 CMR 2.05 (2)- Permitting an illegality on the licensed premises, to wit: c. 138, § 34 Sale or delivery of an alcoholic beverage to a person under twenty-one (21) years of age (2 Counts); and
- 2) M.G.L. c. 138, § 22 - Transporting Alcoholic Beverages without a permit.

On the first charge, 204 CMR 2.05 (2), M.G.L. c. 138, §34 (2 counts), the Commission **suspends the license for a period of nine (9) days of which four (4) days will be served, and five (5) days will be held in abeyance for a period of two (2) years provided no further violations of Chapter 138 or Commission Regulations occur.**

On the second charge, M.G.L. c. 138, § 22, the Commission **suspends the license for a period of one (1) day of which one (1) day will be held in abeyance for a period of two (2) years provided no further violations of Chapter 138 or Commission Regulations occur. This 1 day suspension held in abeyance to run concurrently with the one above.**

ALCOHOLIC BEVERAGES CONTROL COMMISSION

Kathleen McNally, Commissioner

Elizabeth A. Lashway, Commissioner

Dated: January 27, 2017

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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