



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

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

**DECISION**

**MPG CORP. D/B/A RAPID REFILL**  
**498 GROTON ROAD**  
**WESTFORD, MA 01886**  
**LICENSE#: 00034-PK-1442**  
**HEARD: 4/05/2023**

This is an appeal of the action of the Town of Westford Board of Selectmen ("Local Board" or "Westford") in suspending the M.G.L. c. 138, § 15 annual wines and malt beverages retail package store license of MPG Corp. d/b/a Rapid Refill ("Licensee" or "Rapid Refill") located at 498 Groton Road, Westford, Massachusetts for three (3) days. The Licensee timely appealed the Local Board's decision to the Alcoholic Beverages Control Commission ("Commission" or "ABCC"), and a remote hearing via Microsoft Teams was held on Wednesday, April 5, 2023.

The following documents are in evidence as exhibits:

1. Local Board's Notice of Hearing, 1/12/2023;
2. Westford Police Department Incident Report# 22-3589-OF, 12/21/2022;
3. Westford Police Detective Furlong's Letter to Deputy Chief Paulauskas, 12/29/2022;
4. Local Board's Decision, 2/22/2023;
5. Local Board's Prior Decisions on Sale of Alcohol to Persons Under 21 Years of Age:
  - a) Excerpt from Local Board Meeting Minutes, 7/10/2018;
  - b) Excerpt from Local Board Meeting Minutes, 9/14/2021;
  - c) Excerpt from Local Board Meeting Minutes, 10/26/2021;
6. Local Board's Administrative Penalties for Violation of Alcoholic Beverages Sales to Minors Policy, 2/23/2010;
7. Purchase Receipt;
8. ID Scan;
9. Licensee's Video Surveillance, 12/21/2022.

There is one (1) audio recording of this hearing, and four (4) witnesses testified.

## FINDINGS OF FACT

The Commission makes the following findings based on the evidence presented at the hearing:

1. MPG Corp. d/b/a Rapid Refill ("Licensee" or "Rapid Refill") holds a retail package store wine and malt beverages license and operates a business at 498 Groton Road, Westford, Massachusetts. The Licensee has held a license since 2008. (Commission Records)
2. On Wednesday, December 21, 2022, at approximately 6:45 p.m., Westford Police Detective Matthew Furlong was at Rapid Refill. Detective Furlong had just finished filling his car with gas when he observed a motor vehicle pull into the parking lot and park in front of the licensed premises. Det. Furlong, through the Massachusetts Registry of Motor Vehicles ("RMV") obtained information as to the owner of the vehicle, including his name, date of birth and address, as well as a photograph. (Testimony, Exhibits 2, 3, 9)
3. A youthful appearing male ("YM") exited the motor vehicle and entered the licensed premises. YM was the same person depicted in the RMV photograph. From outside of the store, in his motor vehicle, Det. Furlong had a clear view into the licensed premises and observed YM enter Rapid Refill, take a right towards the store's refrigerated section, carry a package to the register, put it on the counter, and produce what appeared be an identification to the clerk. Det. Furlong observed the clerk take what he believed to be an identification, look at it and hand it back to YM. YM exited the establishment carrying one 18-pack of Bud Light beer, which he placed in his vehicle, and then drove out of the lot. Id.
4. Detective Furlong followed the vehicle, given the registered owner's information indicated YM under 21 years of age. Det. Furlong stopped the vehicle, approached and identified himself, and then informed YM of the reason for the stop. Det. Furlong requested to see YM's license & registration and informed him that he had seen him at the licensed premises. (Testimony, Exhibits 2, 3)
5. Detective Furlong retrieved the 18-pack of Bud Light beer from the floor of the vehicle behind the driver's seat. Id.
6. YM provided Det. Furlong with his Massachusetts driver's license which indicated he was 19-years of age. The driver's license was in a vertical format indicating the holder was under 21-years of age and it also had "Under 21" stamped on it. The information on the license matched the information Det. Furlong obtained from the RMV. (Testimony, Exhibit 2)
7. Det. Furlong asked YM if the Massachusetts license he provided was the identification he used to purchase the beer and YM stated to the Detective that he was not asked for identification when he purchased the beer. When the Detective informed YM that he had observed the clerk examining an item at the store, he claimed he had used his true driver's license to purchase the alcoholic beverages. (Testimony, Exhibits 2, 3)
8. Detective Furlong and Officer Short ("Officers") proceeded to Rapid Refill and spoke with C. Roy, the clerk who sold the beer to the Underage Individual. Mr. Roy remembered selling the 18 pk of Bud Light and informed Officers that he believed the YM presented a Rhode Island driver's license with a birth year of 2001. Mr. Roy manually scanned YM's identification

because he was purchasing alcoholic beverages. Mr. Roy provided Officers with a receipt from the transaction. Id.

9. On Thursday, December 22, 2021, Detective Furlong contacted the District Manager of Rapid Refill to obtain video surveillance footage of the alcohol purchase. In the video footage, Detective Furlong observed YM had presented an identification to the clerk. The driver's license presented prior to purchase was in a horizontal format and in a lighter color than that of the Underage's Massachusetts driver's license. (Testimony, Exhibits 2, 3, 9)
10. On January 24, 2023, the Local Board held a remote hearing "...to consider a report of the Westford Police Department for an alleged violation which occurred on December 21, 2022" and to determine if the licensee has "...violated the provisions of M.G.L. c. 138 or the state and local regulations issued thereunder in that alcoholic beverages were sold by you or one of your agents to a person or persons under twenty-one years of age." (Exhibit 1)
11. By written decision dated February 22, 2023, the Local Board found the License violated M.G.L. Ch. 138, § 34 – Sale of Alcoholic Beverage to a Person under 21-years of age. The Board voted to suspend its license for three (3) days to be served. (Exhibit 4)

### DISCUSSION

Pursuant to M.G.L. c. 138, § 67, "[t]he ABCC is required to offer a de novo hearing, that is to hear evidence and find the facts afresh. As a general rule the concept of a hearing de novo precludes giving evidentiary weight to the findings of the tribunal from whose decision an appeal was claimed." Dolphino Corp. v. Alcoholic Beverages Control Comm'n, 29 Mass. App. Ct. 954, 955 (1990). The findings of a local licensing board are "viewed as hearsay evidence, [and] they are second-level, or totem pole hearsay, analogous to the non-eyewitness police reports in Merisme v. Board of Appeals on Motor Vehicle Liab. Policies and Bonds, 27 Mass. App. Ct. 470, 473 – 476 (1989)." Dolphino, 29 Mass. App. Ct. at 955.

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).

Both the Local Board and the Commission have the authority to grant, revoke, and suspend licenses. Their powers were authorized "to serve the public need and ... to protect the common good." M.G.L. c. 138, § 23, as amended through St. 1977. C. 929, § 7. "The Commission has comprehensive powers of supervision over licensees," Boston Licensing Bd. v. Alcoholic Beverages Control Comm'n, 367 Mass. 788, 795 (1975), as well as broad authority to issue regulations. The Local Board has authority to enforce Commission regulations. New Palm Gardens, Inc. v. Alcoholic Beverages Control Comm'n, 11 Mass. App. Ct. 785, 788 (1981).

The Commission's decision must be based on substantial evidence. See Embers of Salisbury, Inc. v. Alcoholic Beverages Control Comm'n, 401 Mass. 526, 528 (1988). "Substantial evidence" is "such evidence as a reasonable mind might accept as adequate to support a conclusion." Id. Evidence from which a rational mind might draw the desired inference is not enough. See Blue Cross and Blue Shield of Mass. Inc. v. Comm'r of Ins., 420 Mass 707, 710 (1995).

In the present case, the Licensee is charged with a violation of M.G.L. c. 138, § 34 which prohibits the sale or delivery of alcoholic beverages to persons under 21 years of age.

The Licensee admits to a violation of M.G.L. c. 138, § 34 but argues the Local Board's decision to suspend the license for 3 days was arbitrary and capricious. "The burden is on the Licensee to prove the penalty imposed should not be approved." Metrowest Tropical Foods, Inc. (ABCC Decision, September 20, 2006). The Licensee argues that the Board failed to follow its own policy and instead, simply imposes a 3-day suspension for all instances of a violation of M.G.L. c. 138, § 34, without considering specific circumstances.

The Licensee asserts the Board should consider as a mitigating factor, the Licensee's request for identification from the person under twenty-one years of age, and the examination of said identification. The Commission is not persuaded by this argument.

The Licensee did, in fact, request identification and inspect said identification. However, the identification presented was a Rhode Island license.

M.G.L. c. 138, § 34B states "[a]ny person who shall have attained age twenty-one and does not hold a valid operator's license issued by the registry of motor vehicles, pursuant to section eight of chapter ninety, may apply for a liquor purchase identification card." M.G.L. c. 138, § 34B. Said section goes on to state that "[a]ny licensee or agent or employee thereof, under this chapter who reasonably relies on such a liquor purchase identification card or motor vehicle license issued pursuant to section eight of chapter ninety, or on a valid passport issued by the United States government, or by the government, recognized by the United States government, of a foreign country, or a valid United States military identification card, for proof of a person's identity and age shall not suffer any modification, suspension, revocation or cancellation of such license, nor shall he suffer any criminal liability, for delivering or selling alcoholic beverages to a person under twenty-one years of age. Any 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." M.G.L. c. 138, § 34B.

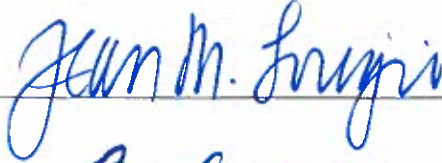
An out of state license does not afford a licensee a defense to a violation of M.G.L. c. 138, § 34.

The Local Board's Administrative Penalties for Violation of Alcoholic Beverage Sales to Minors Policy states "[i]n determining penalties for selling alcohol to minors the Board shall use the following guidelines: 1<sup>st</sup> Offense Three-day suspension." The Policy goes on to state "[d]epending on the circumstances of the offense the Board of Selectman may deviate from and adjust the above guidelines." (Exhibit 6) While the Board *may* deviate from the above-referenced policy, here the Commission finds the imposition of a three-day suspension was a reasonable exercise of its lawful discretion.

Based on the evidence, the Commission **APPROVES** the action of the Town of Westford Select Board in finding that MPG Corp. d/b/a Rapid Refill violated M.G.L. c. 138, § 34 and suspending the license for a period of three days.

**ALCOHOLIC BEVERAGES CONTROL COMMISSION**

Jean M. Lorizio, Chairman



Crystal Matthews, Commissioner



Deborah Baglio, Commissioner



Dated: September 30, 2024

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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αμέσως.

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2023-000011-ad-enf

cc: Louis A. Cassis, Esq.,  
Greg J. Corbo, Esq.  
Local Licensing Board  
Frederick G. Mahony, Chief Investigator  
Administration, File