

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

Jean M. Lorizio, Esq.
Chairman

NOTICE OF SUSPENSION

July 28, 2021

**APPLE NEW ENGLAND LLC
D/B/A APPLEBEE'S NEIGHBORHOOD GRILL & BAR
2 ELM STREET
WOBURN, MA 01801
LICENSE#: 00062-RS-1498
VIOLATION DATE: 3/06/2020
HEARD: 12/03/2020**

After a hearing on December 3, 2020, the Commission finds Apple New England LLC d/b/a Applebee's Neighborhood Grill & Bar violated 204 CMR 2.05 (2) Permitting an illegality on the licensed premises, to wit: M.G.L. c. 138, § 34C – Possession of an alcoholic beverage by a person under twenty-one (21) years of age (3 counts). The Commission **suspends the license for a period of three (3) days to be served.**

The suspension shall commence on Monday, September 13, 2021 and terminate on Wednesday, September 15, 2021. The license will be delivered to the Local Licensing Board or its designee on Monday, September 13, 2021 at 9:00 A.M. It will be returned to the Licensee on September 16, 2021.

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.

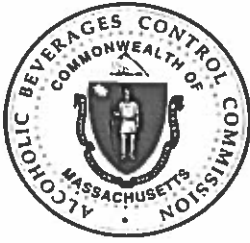
You are advised that you have the right to appeal this decision under M.G.L. c. 30A to Superior Court within thirty (30) days upon receipt of this notice.

ALCOHOLIC BEVERAGES CONTROL COMMISSION

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cc: Local Licensing Board
Frederick G. Mahony, Chief Investigator
Kyle E. Gill, Esq., Associate General Counsel
Katelyn Quinn, Investigator
Dennis Keefe, Investigator
John Connell, Esq.
Administration, File



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DECISION

**APPLE NEW ENGLAND LLC
D/B/A APPLEBEE'S NEIGHBORHOOD GRILL & BAR
2 ELM STREET
WOBURN, MA 01801
LICENSE#: 00062-RS-1498
VIOLATION DATE: 3/06/2020
HEARD: 12/03/2020**

Apple New England LLC d/b/a Applebee's Neighborhood Grill & Bar (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 Thursday, December 3, 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 (3 Counts). The above-mentioned occurred on March 6, 2020, according to Investigator Quinn's Report.

The following documents are in evidence:

1. Investigator Quinn's Investigative Report¹;
2. Copy of ABCC Form 43 Transfer of License Approval, 10/19/2011;
3. Copy of Genuine Driver's Licenses;
4. Copy of Fraudulent Driver's Licenses;
5. Bar Receipt, 3/6/2020.

A. Apple American Group's Manager Guide 2020.

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

¹ At the hearing Attorney Gill clarified there is a typographical error in the violation charged in the Investigative Report and should read: "204 CMR 2.05(2) Permitting an illegality on the licensed premise, to wit; M.G.L. Ch. 138, § 34C Possession of an alcoholic beverage by a person under twenty-one (21) years of age (3 Counts)". An amended Investigative Report citing M.G.L. Ch. 138, § 34C was provided to the Licensee. The Hearing Notice correctly cites M.G.L. Ch. 138, § 34C.

FINDINGS OF FACT

1. On Friday, March 6, 2020, at approximately 10:55 p.m., Investigators Keefe and Quinn ("Investigators") conducted an investigation of the business operation of Apple New England LLC d/b/a Applebee's Neighborhood Grill & Bar in Woburn to determine the manner in which its business was being conducted. (Testimony, Exhibit 1)
2. At approximately 11:00 p.m. while inside the licensed premises, Investigators observed a group of youthful appearing individuals seated at a table, in possession of alcoholic beverages. Investigators identified themselves and asked to see proof of legal age. Id.
3. Underage #1, actual date of birth 10/12/2000 (age 19), was in possession of a mixed drink. He initially provided to Investigators a fraudulent Maine driver's license bearing his name and photograph but with a different birth date. He eventually produced his true Massachusetts driver's license. (Testimony, Exhibits 3, 4)
4. Underage #2, actual date of birth 6/30/2001 (age 18), was in possession of a mixed drink. He initially provided to Investigators a fraudulent Massachusetts driver's license bearing his name and photograph but with a different birth date. Investigators observed the photo on the fraudulent license appeared cropped or photoshopped against the blue colored background. Investigators determined Underage #2 was obviously youthful in appearance and did not look to be over his actual age of 18. The individual eventually produced his true Massachusetts driver's license. Id.
5. Underage #3, actual date of birth 1/15/2001 (age 19), was in possession of a Corona beer. He initially provided to Investigators a fraudulent Massachusetts driver's license bearing his name and photograph but a different birth date. Investigators observed the photo on the fraudulent license appeared cropped or photoshopped against the blue colored background. Investigators determined Underage #3 was obviously youthful in appearance and did not look to be over his actual age of 19. The individual eventually produced his true Massachusetts driver's license. Id.
6. Investigators spoke to the server and advised him that these individuals were under 21 years of age. (Testimony, Exhibit 1)
7. Investigators advised the manager on duty of the violations and that a report would be filed with the Chief Investigator for further review. Id.
8. Brian Horton, General Manager for the Licensee, attended the Commission hearing. He testified staff undergo extensive training and are required to complete the Licensee's "Serving Alcoholic Beverages Responsibly" training annually. Mr. Horton stated he interviewed the server and manager on duty about the underage patrons found to be in possession of alcoholic beverages. He explained that the server requested identification from all patrons and examined the out-of-state driver's license against an ID reference book behind the bar, and believed he was acting reasonably when accepting drink orders. (Testimony, Exhibit A)
9. The Licensee has held a license under M.G.L. c. 138, § 12 since 2011 with no prior violations. (Exhibit 2, Commission Records)

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 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 Quinn as to individuals under the age of 21 found to be in possession of alcoholic beverages. The Licensee argued the employee had requested, examined, and reasonably relied upon the identifications the underage patrons presented.

A Massachusetts driver's license which purports to show that a patron is 21 years of age or older is not 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 three patrons were younger than 21 years of age and were in possession of an alcoholic beverage 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 (3 counts).

CONCLUSION

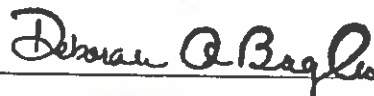
Based on the evidence, the Commission finds the Licensee violated 204 CMR 2.05 (2) Permitting an Illegality on the Licensed Premises, to wit: M.G.L. Ch. 138, § 34C Possession of an alcoholic beverage by a person under twenty-one years of age (3 Counts). Therefore, the Commission **suspends the license for a period of three (3) days to be served.**

ALCOHOLIC BEVERAGES CONTROL COMMISSION

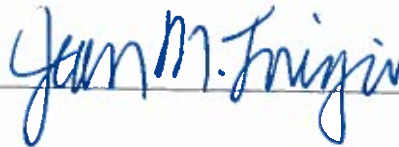
Crystal Matthews, Commissioner



Deborah A. Baglio, Commissioner



Jean M. Lorizio, Chairman



Dated: July 28, 2021

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