



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

Jean M. Lorizio, Esq.
Chairman

DECISION

**FATCHOPS LLC D/B/A FATCHOPS SPORTSBAR
225 CANTERBURY STREET
WORCESTER, MA 01603
LICENSE#: 06053-GP-1508
VIOLATION DATE: 2/02/2023
HEARD: 5/09/2023**

Fatchops LLC d/b/a Fatchops Sportsbar (the "Licensee") holds an alcohol license issued pursuant to M.G.L. c. 138, § 12. The Alcoholic Beverages Control Commission (the "Commission") held a remote hearing via Microsoft Teams on Tuesday, May 9, 2023, regarding an alleged violation of 204 CMR 2.05 (2) Permitting an Illegality on the licensed premises, to wit: M.G.L. c. 138, § 23- Sale of alcoholic beverages other than those purchased under § 18 or § 19 or from a holder of a special permit under § 22A (1 Count).

The following documents are in evidence:

1. Investigator Gould's Report;
 2. ABCC Licensing Authority Certification, New License Approved, 5/14/2021;
 3. Photographs of Alcoholic Beverages;
 4. Photographs of Receipts.
- A. Hourly Sales Charts, 2/1/2023 – 2/12/2023.

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

FINDINGS OF FACT

1. On Thursday, February 2, 2023, at approximately 8:25 p.m., Investigators Keefe, Quinn, and Gould ("Investigators") along with Worcester Police Officer Patrick Harrington, inspected Fatchops LLC d/b/a Fatchops Sportsbar to determine the way the business was being conducted, and to investigate a complaint filed with this Commission. (Testimony, Exhibit 1)
2. Investigators and Officer Harrington entered the licensed premises, identified themselves to the bartender and advised him of the complaint. Id.
3. Investigators asked to see the alcohol inventory and the bartender directed them to a walk-in cooler as well as a storage closet. Id.

4. The bartender informed Investigators that the alcohol in the storage closet had been purchased from a package store. Id.
5. The bartender stated that the owner was out of state and he was working as a bartender to help his friend. He advised Investigators that he makes no decisions for the business and does not have any operational control. Id.
6. Investigator Keefe spoke to the Licensee, John Brower, via telephone. Mr. Brower stated to Investigator Keefe that "he had fallen behind with the wholesalers and was unaware that you could not purchase alcohol from a package store to sell." Id.
7. Investigators were directed to the receipts for the alcoholic beverages which were kept in a bucket at the licensed premises. (Testimony, Exhibits 1, 4)
8. Investigator Keefe advised Mr. Brower that they would remove the alcohol purchased from a package store from the licensed premises. Investigators confiscated:
 - One 1-liter bottle of Seagram's VO Canadian whisky;
 - One 1.75-liter bottle of Seagram's 7 Crown Blended whiskey;
 - One 1.75-liter bottle of Jose Cuervo tequila;
 - One 1.75-liter bottle of Makers Mark Bourbon whisky;
 - Two 1.75-liter bottles of Tito's vodka;
 - One 1-liter bottle of Dr. McGuillicuddy's liqueur;
 - One 1-liter bottle of Crown Royal Peach whisky;
 - One 1.75-liter bottle of Jack Daniels Tennessee whiskey;
 - One 1.75-liter bottle of Canadian Club whisky;
 - One 1.75-liter bottle of Stoli[®] vodka;
 - One 1.75-liter bottle of Kahlua liqueur;
 - Two 1.75-liter bottles of Sweet Eddy vodka [correct name is Deep Eddy];
 - Two 1-liter bottles of Southern Comfort whiskey liqueur;
 - One 1.75-liter bottle of Myers rum;
 - One 1.75-liter bottle of Jameson Irish whiskey;
 - One 1.75-liter bottle of Arrow Coffee brandy;
 - One 1.75-liter bottle of Jim Beam Bourbon whiskey;
 - One 1-liter bottle of Vermouth Limoncello [fortified wine with liqueur];
 - One 1-liter bottle of Taaka gin;
 - One 1.75-liter bottle Jack Daniels Tennessee Honey whiskey;
 - One 1.75-liter bottle of Absolut vodka;
 - One 1-liter bottle of Martini & Rossi [vermouth];
 - One 1.75-liter bottle of Captain Morgan's Spiced rum;
 - One 1.75-liter bottle of Tanqueray gin;
 - One 750-milliliter bottle of Ram's Point Peanut Butter whiskey.

(Testimony, Exhibits 1, 3)

9. Investigators observed four kegs which had stickers affixed to them indicating they had been purchased from a § 15 package store. Investigators did not seize the kegs but rather informed the bartender that the kegs must be returned to the package store. He stated he would return the kegs the following morning. (Testimony, Exhibit 1)
10. Investigators informed the bartender and Mr. Brower of the violation and that a report would be filed with the Chief Investigator for further review. Id.
11. John Brower, Licensee and Manager of Record, appeared at the Commission hearing and testified he had been unaware that he could not purchase alcoholic beverages for his establishment from a retail package store. He stated that once he was made aware, he closed his business for several days and rectified the situation. (Testimony, Exhibits 1, A)
12. The Licensee has held a license under M.G.L. c. 138, § 12 since 2021 with no prior violations.

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.

Here the Licensee is charged with a violation of M.G.L. c. 138, § 23 – Sale of alcoholic beverages other than those purchased under § 18 or § 19 or from a holder of a special permit under § 22A.

No license issued under section twelve, fourteen or fifteen, and no certificate of fitness issued under section thirty shall authorize the sale of any alcoholic beverages other than those purchased from a licensee under section eighteen, nineteen or 19F or nineteen C or from a holder of a special permit to sell issued under section twenty-two A; provided, that the holder of a license under section twelve or fifteen may sell alcoholic beverages acquired as the result of the purchase of a warehouse receipt for such beverages if the said receipt was purchased from the holder of a license under section eighteen, nineteen, 19F or nineteen C or from a broker registered under chapter one hundred and ten A who is authorized thereunder to deal in warehouse receipts for alcoholic beverages; and provided, further, that nothing contained in this section shall be construed to authorize a licensee under section twelve or fifteen to import alcoholic beverages into the commonwealth except through the holder of a license issued under section eighteen or 19F. M.G.L. c. 138, § 23

The Licensee admitted that he did, in fact, purchase alcoholic beverages for his § 12 licensed premises from a § 15 retail package store. (Testimony) The bottles of alcohol seized by

Investigators were on shelves in a storage room, with many of them partially full and one with a pouring device inserted into the spout. The kegs found on the licensed premises had stickers on them indicating the name of the retail package store where they were purchased. (Testimony, Exhibits 1, 3) In addition, the Licensee provided receipts documenting the purchase of the alcoholic beverages from a retail package store. (Testimony, Exhibits 1, 4) The Commission is persuaded by the evidence that a violation of M.G.L. c. 138, § 23 – Sale of alcoholic beverages other than those purchased under § 18 or § 19 or from a holder of a special permit under § 22A, did occur.

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. c. 138, § 23- Sale of alcoholic beverages other than those purchased under §18 or §19 or from a holder of a special permit under § 22A (1 Count). As a result, the Commission issues a **WARNING**.

ALCOHOLIC BEVERAGES CONTROL COMMISSION

Jean M. Lorizio, Chairman

Crystal Matthews, Commissioner

Deborah A. Baglio, Commissioner

Dated: June 12, 2023

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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2023-000038-ad-enf

cc: Local Licensing Board
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Kyle E. Gill, Esq., Associate General Counsel
Brian Gould, Investigator
Dennis Keefe, Investigator
Katelyn Quinn, Investigator
Officer Patrick Harrington, Worcester Police Dept.
Administration, File