

Jean M. Lorizio, Esq.
Chairman

*Commonwealth of Massachusetts
Department of the State Treasurer
Alcoholic Beverages Control Commission
239 Causeway Street
Boston, MA 02114
Telephone: 617-727-3040
Facsimile: 617-727-1510*

NOTICE OF SUSPENSION

February 21, 2018

**SEVEN HILLS BAY STATE INC. D/B/A CANAL RESTAURANT
65 WATER STREET
WORCESTER, MA 01608
LICENSE#: 1508-00554
VIOLATION DATE: 10/27/2017
HEARD: 2/20/2018**

After a hearing on February 20, 2017, the Commission finds Seven Hills Bay State Inc. d/b/a Canal Restaurant violated 204 CMR 2.05 (2) Permitting an Illegality on the Licensed Premises, to wit: Ch. 138 § 34C - Possession of an alcoholic beverage by a person under twenty-one (21) years of age (10 counts).

The Commission **suspends the license for forty-three (43) days of which (15) days will be served and twenty-eight (28) days will be held in abeyance for a period of will be held in abeyance for a period of two (2) years provided no further violations of Chapter 138 or Commission Regulations occur.**

The suspension shall commence on Wednesday, April 11, 2018 and terminate on Wednesday, April 25, 2018. The license will be delivered to the Local Licensing Board or its designee on Wednesday, April 11, 2017 at 9:00 A.M. It will be returned to the Licensee on Thursday, April 26, 2018.

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.

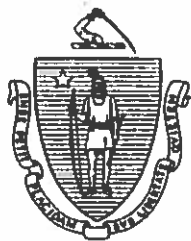
You are advised that you have the right to appeal this decision under M.G.L. c. 30A to Superior Court within thirty (30) days upon receipt of this notice.

ALCOHOLIC BEVERAGES CONTROL COMMISSION

Jean M. Lorizio
Chairman

This document is important and should be translated immediately.
Este documento es importante y debe ser traducido inmediatamente.
Este documento é importante e deve ser traduzido imediatamente.
Ce document est important et devrait être traduit immédiatement.
Questo documento è importante e dovrebbe essere tradotto immediatamente.
Το έγγραφο αυτό είναι σημαντικό και θα πρέπει να μεταφραστούν αμέσως.
这份文件是重要的，应立即进行翻译。

cc: Local Licensing Board
Frederick G. Mahony, Chief Investigator
Dennis Keefe, Investigator
Joseph Di Cicco, Investigator
Administration, File



Jean M. Lorizio, Esq.
Chairman

*Commonwealth of Massachusetts
Department of the State Treasurer
Alcoholic Beverages Control Commission
239 Causeway Street
Boston, MA 02114
Telephone: 617-727-3040
Facsimile: 617-727-1510*

DECISION

**SEVEN HILLS BAY STATE INC. D/B/A CANAL RESTAURANT
65 WATER STREET
WORCESTER, MA 01608
LICENSE#: 1508-00554
VIOLATION DATE: 10/27/2017
HEARD: 2/20/2018**

Seven Hills Bay State Inc. d/b/a Canal Restaurant (the "Licensee") holds an alcohol license issued pursuant to M.G.L. c. 138, §12. The Alcoholic Beverages Control Commission (the "Commission") held a hearing on Tuesday, February 20, 2018, regarding an alleged violation of 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 (10 counts). Prior to the commencement of the hearing, the Licensee stipulated to the violation alleged in Investigator Keefe's Report.

The following documents are in evidence:

1. Investigator Keefe's Investigative Report;
2. Licensee's Stipulation of Facts; and
3. Photocopies of False Driver's Licenses.

A. Email Correspondence between Worcester Police Lt. Johnson and E. Courtney, 10/20/2017.

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, October 27, 2017, at approximately 12:30 a.m., Investigators Keefe and Di Cicco ("Investigators") conducted an investigation of the business operation of Seven Hills Bay State Inc. d/b/a Canal Restaurant to determine the manner in which its business was being conducted.

2. Investigators observed multiple youthful appearing individuals in possession of alcoholic beverages.
3. Investigators identified themselves and asked to see proof of legal age.
4. Underage #1, actual date of birth 9/30/1997 (age 20) was in possession of a Bud Light draft beer. He presented to Investigators with a false Maine driver's license.
5. Underage #2, actual date of birth 4/21/1999 (age 18) was in possession of a Bud Light draft beer. She presented Investigators with a New York driver's license that was not her own.
6. Underage #3, actual date of birth 3/24/1999 (age 18) was in possession of a mixed drink, rum and cola. He presented Investigators with a false Pennsylvania driver's license.
7. Underage #4, actual date of birth 8/9/1999 (age 18) was in possession of a Bud Light draft beer. He presented Investigators with a false Pennsylvania driver's license.
8. Underage #5, actual date of birth 4/12/1997 (age 20) was in possession of a mixed drink, vodka and cranberry juice. He presented Investigators with a false New Jersey driver's license.
9. Underage #6, actual date of birth 6/18/1998 (age 19) was in possession of two Bud Light draft beers. He presented Investigators with a false New York driver's license.
10. Underage #7, actual date of birth 11/22/1998 (age 18) was in possession of a mixed drink, vodka and cranberry juice. She presented Investigators with a false Illinois driver's license.
11. Underage #8, actual date of birth 8/17/1999 (age 18) was in possession of a Bud Light beer. She presented Investigators with a false Connecticut driver's license.
12. Underage #9, actual date of birth 9/14/1998 (age 19) was in possession of a mixed drink, rum and cola. He presented Investigators with a false Michigan driver's license.
13. Underage #10, actual date of birth 5/16/1999 (age 18) was in possession of a Bud Light beer. He presented Investigators with a false Connecticut driver's license.
14. Investigators informed the owner, Elaine Courtney, of the violations and that a report would be filed with the Chief Investigator for further 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 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 the 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.” Burlington Package Liquors, Inc. v. Alcoholic Beverages Control Comm’n, 11 Mass. App. Ct. 785, 788 (1981); Commonwealth v. Gould, 158 Mass. 499, 507 (1893). It is, thus, quite possible for a licensee to offend the regulatory scheme without scienter. The licensee is responsible for illegalities that occur on the licensed premises. Rico’s of the Berkshires, Inc. v. Alcoholic Beverages Control Comm’n, 19 Mass. App. Ct. 1026, 1027 (1985).

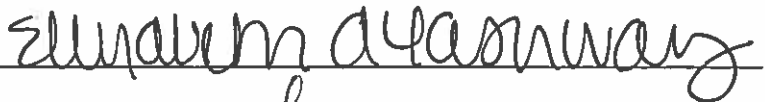
Massachusetts General Laws, Chapter 138, §34C states, in pertinent part, that: “Whoever, being under twenty-one years of age and not accompanied by a parent or legal guardian, knowingly possesses any alcohol or alcoholic beverages, shall be punished.” M.G.L. c. 138, §34C. A Massachusetts driver’s license 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. While 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, Section 34B refers only to the activities of delivery and sale, and it omits any reference to the act of possession. See M.G.L. c. 138, §34B. Consequently, Section 34B offers no relief from liability for allowing possession of alcoholic beverages in violation of Section 34C.

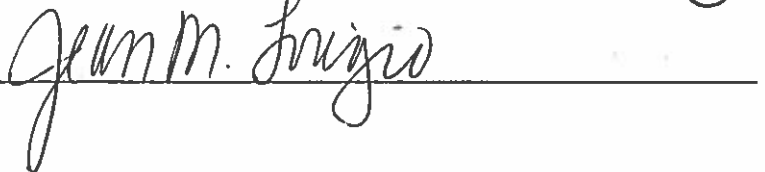
The Commission is persuaded by the evidence that the minors were younger than 21 years of age and were in possession of an alcoholic beverages in the licensed premises of Seven Hills Bay State Inc. d/b/a Canal Restaurant. The Commission finds that the Licensee committed a violation of 204 CMR 2.05 (2) - 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 (10 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. c. 138, § 34C- Possession of an alcoholic beverage by a person under twenty-one (21) years of age (10 counts). The Commission **suspends the license for a period of for forty-three (43) days of which (15) days will be served and twenty-eight (28) days will be held in abeyance for a period of two (2) years provided no further violations of Chapter 138 or Commission Regulations occur.**

ALCOHOLIC BEVERAGES CONTROL COMMISSION

Elizabeth Lashway, Commissioner 

Jean M. Lorizio, Chairman 

Dated: February 21, 2018

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.

This document is important and should be translated immediately.
Este documento es importante y debe ser traducido inmediatamente.
Este documento é importante e deve ser traduzido imediatamente.
Ce document est important et devrait être traduit immédiatement.
Questo documento è importante e dovrebbe essere tradotto immediatamente.
Το έγγραφο αυτό είναι σημαντικό και θα πρέπει να μεταφραστούν αμέσως.
这份文件是重要的，应立即进行翻译。

cc: Local Licensing Board
Frederick G. Mahony, Chief Investigator
Dennis Keefe, Investigator
Joseph Di Cicco, Investigator
Administration, File