



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

Jean M. Lorizio, Esq.
Chairman

DECISION

**WORCESTER RANDELL PACKAGE STORE INC.
108 CANTERBURY STREET
WORCESTER, MA 01603
LICENSE#: 00293-PK-1508
VIOLATION DATE: 1/30/2020
HEARD: 10/5/2021**

Worcester Randell Package Store Inc. (the "Licensee") holds an alcohol license issued pursuant to M.G.L. c. 138, § 15. The Alcoholic Beverages Control Commission ("ABCC" or "Commission") held a remote hearing via Microsoft Teams on Tuesday, October 5, 2021, regarding alleged violations of:

- 1) 204 CMR 2.05 (2) Permitting an illegality on the licensed premises, to wit: Ch. 138, § 34 – Sale or delivery of an alcoholic beverage to a person under 21 years of age. (2 counts)
- 2) 204 CMR 2.05 (2)- Permitting an illegality on the licensed premises, to wit: M.G.L. c. 270, § 6 Sale or provision of tobacco product to person under 21 years of age.¹

The following documents are in evidence:

1. Investigator Di Cicco's Report;
2. ABCC Form 43, License Transfer Approval 1/13/2016;
3. Photocopy of Fraudulent Identification Confiscated;
4. Receipts;
5. Photocopy of Genuine and Fraudulent Identifications;
6. Email with List of City of Worcester Violations submitted by Officer Harrington.

At the beginning of the hearing, Attorney Gill clarified that the alleged violation of tobacco sales should be correctly identified as a violation of M.G.L. c. 270, § 6 (b) No person shall sell or provide tobacco product to a person under 21-years of age.

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

¹ The Commission makes no finding as to the alleged violation of 204 CMR 2.05 - Permitting an illegality on the licensed premises, to wit: M.G.L. c. 270, § 6 Sale or provision of tobacco product to person under 21 years of age.

FINDINGS OF FACT

1. On Thursday, January 30, 2020, Investigators Keefe and Di Cicco ("Investigators") along with Officer Patrick Harrington of the Worcester Police Department Alcohol Unit, conducted an inspection of the business operation of Worcester Randell Package Store Inc. to determine the manner in which its business was being conducted.
2. At approximately 7:25 p.m., Investigators observed a vehicle, occupied by two youthful appearing individuals, enter the parking lot. Investigators observed one youthful appearing female individual exit the vehicle and enter the establishment. Minutes later, Investigators observed the same individual exit the premises carrying alcoholic beverages and get into the front passenger seat of the motor vehicle.
3. Officer Harrington contacted the Worcester Police Department ("WPD") and requested a marked police vehicle pull over the motor vehicle away from the package store.
4. Officer Harrington and Investigator Di Cicco then approached the motor vehicle pulled over by WPD, identified themselves, and asked to see proof of legal age.
5. Underage #1, actual date of birth, 3/25/2001 (age 18), admitted she was under 21 years of age and was in possession of a fraudulent New York identification. She was found to be in possession of:
 - one 1.5 liter bottle Yellow Tail wine;
 - one 50 milliliter bottle New Amsterdam Mango vodka;
 - one 50 ml bottle New Amsterdam Red Berry vodka;
 - one 50 ml bottle Smirnoff Raspberry vodka;
 - one 50 ml bottle Smirnoff Passion Fruit vodka;
 - one 50 ml bottle Fireball whiskey.

Underage #1 provided to Investigators the fraudulent New York driver's license in her own name with a different birth date. Underage #1 advised Investigators she was not asked to produce identification when she purchased the alcoholic beverages.

6. Investigators entered the licensed premises and spoke to staff members. Investigators reviewed the surveillance footage and observed Underage #1 purchase the alcoholic beverages without presenting any proof of legal age.
7. The staff member who sold the alcoholic beverages to the Underage #1 confirmed that he had not asked her for identification.
8. While Investigators were inside the establishment, they observed a youthful appearing individual bring multiple alcoholic beverages to the counter for purchase. Investigators observed the individual present what appeared to be an out of state identification to purchase the alcoholic beverages. Investigators observed the individual take the alcoholic beverages to a motor vehicle.

Investigators approached the motor vehicle, identified themselves, and asked to see proof of legal age. The individual admitted he was under 21 years of age and presented Investigators with a fraudulent Illinois driver's license.

9. Underage #2, actual date of birth 1/17/2001 (age 19) was in possession of:

- one 1.5 liter bottle Yellow Tail Rose wine;
- one 1.5 liter bottle Yellow Tail Red wine;
- one 750 milliliter bottle Jack Daniels Honey whiskey;
- one 750 ml bottle Proper Twelve whiskey;
- one 12-pack Angry Orchard hard cider;
- one 12-pack Guinness beer;
- two 40-ounce bottles Miller High Life beer;
- one package American Indian cigarettes.

10. Investigators returned to the licensed premises, informed staff of the incident, and identified the employee who sold the alcoholic beverages to Underage #2.

11. The employee stated that he scanned the identification presented by Underage #2 and it registered as legitimate.

12. Investigators then reviewed with staff M.G.L. Ch. 138, § 34B regarding approved identifications and provided staff members with some information on how to recognize fraudulent identifications.

13. Investigators informed staff members that a violation report would be submitted to the Chief Investigator for review.

14. Mr. Satish Patel, Licensee, appeared at the Commission hearing with his son. They acknowledged the violation. Mr. Patel testified they are new to the business but have since become TIPS certified. He stated the employees who served the underage individuals have been terminated.

15. The Licensee has been licensed under M.G.L. c. 138, § 15 since 2014 with no prior ABCC 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.

The Licensee is charged with a violation of 204 CMR 2.05 (2) - Permitting an illegality on the licensed premises, to wit: chapter 138, § 34 - Sale or delivery of an alcoholic beverage to 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, §34 states, in pertinent part, that: “[w]hoever makes a sale or delivery of any alcoholic beverage or alcohol to any person under twenty-one years of age ... shall be punished by a fine of not more than \$2,000 or by imprisonment for not more than one year or both.” M.G.L. c. 138, § 34. 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 the types 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. A false out-of-state identification provides no such defense.

The Commission is persuaded by the evidence that Worcester Randell Package Store, Inc. sold alcoholic beverages to two people who were under twenty-one years of age. 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, § 34 - Sale or delivery of an alcoholic beverage to a person under twenty-one (21) years of age (2 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: Ch. 138, § 34 – Sale or delivery of an alcoholic beverage to a person under 21 years of age. (2 counts) Therefore, the Commission **suspends the license for a period of 4 days which are hereby deemed served.**

ALCOHOLIC BEVERAGES CONTROL COMMISSION

Deborah A. Baglio, Commissioner

Deborah A. Baglio

Jean M. Lorizio, Chairman

Jean M. Lorizio

Crystal Matthews, Commissioner

Crystal Matthews

Dated: May 31, 2022

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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cc: Local Licensing Board
Frederick G. Mahony, Chief Investigator
Kyle E. Gill, Esq., Associate General Counsel
Dennis Keefe, Investigator
Officer Patrick Harrington, Worcester Police Department
Administration, File