

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
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NOTICE OF SUSPENSION

September 19, 2017

**CASSEYSGRIDIRON CORP. D/B/A CASSEYS GRIDIRON SPORTS BAR
220 O'NEIL BLVD.
ATTLEBORO, MA 02703
LICENSE#: 0050-00119
VIOLATION DATE: 05/12/2017
HEARD: 09/12/2017**

After a hearing on September 12, 2017, the Commission finds Casseysgridiron Corp. d/b/a Casseys Gridiron Sports Bar violated M.G.L. c. 138, § 69 – Sale or delivery of an alcoholic beverage to an intoxicated person (1 Count).

The Commission suspends the license for a period of four (4) days of which two (2) days will be served, and two (2) days 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, November 1, 2017 and terminate on Thursday, November 2, 2017. The license will be delivered to the Local Licensing Board or its designee on Wednesday, November 1, 2017 at 9:00 A.M. It will be returned to the licensee on Friday, November 3, 2017.

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.

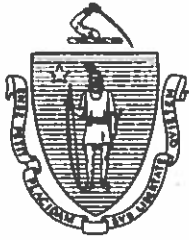
ALCOHOLIC BEVERAGES CONTROL COMMISSION

A handwritten signature in cursive script, appearing to read "Jean M. Lorizio".

Jean M. Lorizio
Chairman

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cc: Local Licensing Board
Frederick G. Mahony, Chief Investigator
Michael Teehan, Investigator
Jack Carey, Investigator
Administration, File



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DECISION

**CASSEYSGRIDIRON CORP. D/B/A CASSEYS GRIDIRON SPORTS BAR
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LICENSE#: 0050-00119
VIOLATION DATE: 05/12/2017
HEARD: 09/12/2017**

Cassey'sgridiron Corp. d/b/a Cassey's Gridiron Sports Bar (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, September 12, 2017, regarding an alleged violation of M.G.L. c. 138, § 69 – Sale or delivery of an alcoholic beverage to an intoxicated person (1 Count). Prior to the start of the hearing, the Licensee stipulated to the violation in Investigator Teehan's report.

The following documents are in evidence:

1. Investigator Teehan's Investigative Report.

There is one (1) audio recording of this hearing, and one (1) witness testified.

The Commission took Administrative Notice of the Licensee's record.

FINDINGS OF FACT

1. On Friday, May 12, 2017, Investigators Carey and Teehan ("Investigators") conducted an investigation of the business operation of Cassey'sgridiron Corp. d/b/a Cassey's Gridiron Sports Bar to determine the manner in which its business was being conducted.
2. At approximately 8:10 p.m., Investigators entered the licensed premises.
3. While inside the premises, Investigators observed an individual, Mark Plick, who appeared to be intoxicated and in possession of a bottle of Budweiser beer.
4. Investigators had observed Plick enter the premises with a male and a female individual at approximately 9:55 p.m.
5. Investigators observed Plick to be unsteady on his feet and staggering throughout the bar area. His speech was slurred and his eyes were glassy.

6. On a few separate occasions, Investigators observed Plick bother other patrons who were playing a game of pool. At one point during the Celtics [basketball] game, Plick started to remove his shirt until a female individual stepped in and prevented him from doing so.
7. Based on their training and experience, Investigators determined Plick was intoxicated.
8. At approximately 10:48 p.m., Investigators observed that Plick was served a bottle of Budweiser beer by a male bartender on duty, and Plick drank it. Investigator Carey called Attleboro Police Department for assistance, and police officers arrived a short time later to the licensed premises.
9. Investigators identified themselves to the manager of record, Corey Monte, who had an opportunity to observe Plick's state of intoxication. Plick was provided safe transport home by the individuals who had arrived with him.
10. Investigators informed Mr. Monte of the violation and that a report would be filed with the Chief Investigator for further action.

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 M.G.L. c. 138.

M.G.L. c. 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) (emphasis supplied). The Commission is given "comprehensive powers of supervision over licensees." Connolly, 334 Mass. at 617.

The Licensee is charged with service to an intoxicated person in violation of M.G.L. c. 138, § 69. "No alcoholic beverage shall be sold or delivered on any premises licensed under this chapter to an intoxicated person." M.G.L. c. 138, § 69. "[A] tavern keeper does not owe a duty to refuse to serve liquor to an intoxicated patron unless the tavern keeper knows or reasonably should have known that the patron is intoxicated." Vickowski v. Polish Am. Citizens Club of Deerfield, Inc., 422 Mass. 606, 609 (1996) (quoting Cimino v. Milford Keg, Inc., 385 Mass. 323, 327 (1982)). "The negligence lies in serving alcohol to a person who already is showing discernible signs of intoxication." Id. at 610; accord McGuiggan v. New England Tel. & Tel. Co., 398 Mass. 152, 161 (1986).

To prove this violation, the following must be shown: (1) that an individual was intoxicated on the licensed premises; (2) that an employee of the licensed premises knew or reasonably should have known that the individual was intoxicated; and (3) that after the employee knew or reasonably should have known the individual was intoxicated, the employee sold or delivered an alcoholic beverage to the intoxicated individual. Vickowski, 422 Mass. at 609. There must be some evidence that "the patron in question was exhibiting outward signs of intoxication by the time he was served his last alcoholic drink." Rivera v. Club Caravan, Inc., 77 Mass. App. Ct. 17, 20 (2010). As explained in Vickowski,

The imposition of liability on a commercial establishment for the service of alcohol to an intoxicated person . . . , often has turned, in large part, on evidence of obvious intoxication at the time a patron was served. See Cimino, 385 Mass. at 325, 328 (patron was “totally drunk”; “loud and vulgar”); Gottlin v. Graves, 40 Mass. App. Ct. 155, 158 (1996) (acquaintance testified patron who had accident displayed obvious intoxication one hour and twenty minutes before leaving bar); Hopping v. Whirlaway, Inc., 37 Mass. App. Ct. 121 (1994) (sufficient evidence for jury where acquaintance described patron who later had accident as appearing to feel “pretty good”). Contrast Makynen v. Mustakangas, 39 Mass. App. Ct. 309, 314 (1995) (commercial establishment could not be liable when there was no evidence of obvious intoxication while patron was at bar); Kirby v. Le Disco, Inc., 34 Mass. App. Ct. 630, 632 (1993) (affirming summary judgment for defendant in absence of any evidence of obvious intoxication); Wiska v. St. Stanislaus Social Club, Inc., 7 Mass. App. Ct. 813, 816-817 (1979) (directed verdict in favor of commercial establishment affirmed when there was no evidence that patron was served alcohol after he began exhibiting obvious signs of intoxication).

Vickowski, 422 Mass. at 610.

That an individual is intoxicated may be shown “by direct evidence, circumstantial evidence, or a combination of the two.” Douillard v. LMR, Inc., 433 Mass. 162, 165 (2001). “[S]ervice [to a patron] of a large number of strong alcoholic drinks [would be] sufficient to put [a licensee] on notice that it was serving a [patron] who could potentially endanger others.” Cimino, 385 Mass. at 328. It is proper to infer from evidence a patron’s excessive consumption of alcohol, “on the basis of common sense and experience, that [a] patron would have displayed obvious outward signs of intoxication while continuing to receive service from the licensee.” Vickowski, 422 Mass. at 611; accord P.J. Liacos, Massachusetts Evidence § 4.2, at 118-119; § 5.8.6, at 242-244 (6th ed. 1994 & Supp. 1994).

The Commission relies on the facts, as testified by the Investigator. Investigator Teehan testified that before patron Plick was served the Budweiser beer, Plick had glassy eyes, was unsteady on his feet, and was staggering throughout the bar area. See Exhibit 1; Testimony. The Commission therefore finds that (1) that Plick was intoxicated on the licensed premises; (2) that an employee of the licensed premises, in particular the male bartender, reasonably should have known that Plick was intoxicated; and (3) that after the bartender reasonably should have known the individual was intoxicated, he delivered a beer to Plick. See Vickowski, 422 Mass. at 609; Baywatch Inc. of Stoughton, Stoughton (ABCC Decision Jan. 31, 2008) (licensee knew or reasonably should have known patron was intoxicated where patron had bloodshot, glassy eyes and stumbled when getting up from chair prior to being served a beer); Westerback v. Harold F. LeClair Co., Inc., 50 Mass. App. Ct. 144, 144-145 (patron served despite having difficulty walking, falling down, appearing depressed and sleepy, and having slurred speech).

CONCLUSION

Based on the evidence, the Commission finds the Licensee violated M.G.L. c. 138, § 69- Sale or delivery of an alcoholic beverage to an intoxicated person (1 Count). Therefore, the Commission **suspends the license for a period of four (4) days of which two (2) days will be served, and two (2) 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 A. Lashway, Commissioner



Kathleen McNally, Commissioner



Dated: September 19, 2017

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