



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

Jean M. Lorizio, Esq.
Chair

NOTICE OF SUSPENSION

January 16, 2020

**DAVESTER LLC D/B/A EMBARGO
453 MAIN ST
BARNSTABLE, MA 02601
LICENSE#: 0070-00244
VIOLATION DATE: 7/26/2019
HEARD: 1/14/2020**

After a hearing on January 14, 2020, the Commission finds Davester LLC d/b/a Embargo violated 204 CMR 2.05 (2) Permitting an Illegality on the licensed premises, to wit: M.G.L. c. 138, §69-Sale or delivery of an alcoholic beverage to an intoxicated person (2 Counts).

The Commission **suspends the license for 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.**

By decision dated March 22, 2018, the Commission had previously ordered a four (4) day license suspension with one (1) day to be served and three (3) days to be held in abeyance for a period of two (2) years provided no further violations of Chapter 138 or Commission Regulations occur. Based on the violation found above, the Licensee violated the condition of suspension held in abeyance. The Commission, in its discretion, orders that 3-day suspension to be served. The Licensee will serve a total of five (5) days.

The suspension shall commence on Monday, March 9, 2020 and terminate on Friday, March 13, 2020. The license will be delivered to the Local Licensing Board or its designee on Monday, March 9, 2020 at 9:00 A.M. It will be returned to the licensee Saturday, March 14, 2020.

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
Nicole Smith, Investigator
Robert Gardner, Investigator
Nicholas Velez, Investigator
Robert Bianchi, Esq.
Administration, File



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

Jean M. Lorizio, Esq.
Chair

DECISION

**DAVESTER LLC D/B/A EMBARGO
453 MAIN ST
BARNSTABLE, MA 02601
LICENSE#: 0070-00244
VIOLATION DATE: 7/26/2019
HEARD: 1/14/2020**

Davester LLC d/b/a Embargo (the "Licensee") holds an all alcohol license issued pursuant to M.G.L. c. 138, §12. The Alcoholic Beverages Control Commission (the "Commission" or "ABCC") held a hearing on Tuesday, January 14, 2020 regarding an alleged violation of 204 CMR 2.05 (2) Permitting an Illegality on the licensed premises, to wit: M.G.L. c. 138, § 69- Sale or delivery of an alcoholic beverage to an intoxicated person (1 count). Prior to the commencement of the hearing, the Licensee stipulated to the violation in Investigator Smith's report.

The following documents are in evidence:

1. Investigator Smith's Report;
 2. Licensee's Stipulation of Facts;
 3. Copy of New License Approval, 5/15/2007;
 4. ABCC Decision, 3/22/2018.
- A. Licensee's Hearing Outline;
B. Licensee's Employee Handbook.

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

FINDINGS OF FACT

1. On Friday, July 25, 2019, Investigators Smith and Gardner ("Investigators") investigated the business operation of Davester LLC d/b/a Embargo to determine the manner in which their business was being conducted.
2. At approximately 11:30 p.m., Investigators entered the licensed premises.
3. At approximately 12:09 a.m., Investigators' attention was drawn to youthful appearing female and male individuals standing near the bar.

4. Investigators observed the unidentified female ("UF1") was in possession of a Michelob Ultra beer and the unidentified male ("UM1") was in possession of a Corona beer. Investigators observed that both individuals had difficulty standing and were leaning on each other for balance. Investigators observed each individual had glassy, bloodshot, and watery eyes.
5. At approximately 12:11 a.m., Investigators observed the UF1 and UM1 order shots of tequila, with lime and salt, and consume them. Investigators observed the UF1 grab a napkin and then roughly wipe the face of another patron seated at the bar. The UF1 then stuck her fingers in the mouth of the other patron and picked at her teeth. Investigators observed the other patron appeared to be annoyed at the behavior of the UF1 and pulled her head back in an attempt to get away from the UF1. The UF1 then hugged the patron in an uncoordinated fashion in what appeared to be an attempt to hold herself up.
6. A short moment later, Investigators moved closer to observe both individuals. At this point, the UF1 was seated at the bar and the UM1 was standing next to her and leaning on the bar. Investigators observed both individuals swaying back and forth, and their movements were uncoordinated.
7. Investigators observed the UF1 get up from her seat several times to dance. Investigators observed the UF1 and UM1 kissing and dancing in a provocative manner.
8. At approximately 12:15 a.m., Investigators observed the UF1 stumble and bump into the bar. She then attempted to get onto a bar stool, bumping into it and almost knocking it over. The UF1 appeared unsteady on her feet. The UM1 and UF1 remained in view of the bartender during the course of the night.
9. Based on their training and experience, Investigators formulated the opinion that the UF1 and UM1 were intoxicated.
10. At approximately 12:28 a.m., Investigators observed the UM1 and UF1 order another shot of tequila, with lime and salt. Investigators observed the bartender, Luis Martinez, deliver the two shots of tequila to the UF1 and UM1. Investigators observed the UF1 and UM1 take possession of the tequila shots and consume them.
11. At approximately 12:30 a.m., Investigators then contacted Investigator Velez to come to the licensed premises and assist them. Investigator Velez identified himself at the door.
12. Investigator Velez observed the UF1 and UM1 both had bloodshot, glassy, and watery eyes. Investigator Velez observed the individuals swaying as they stood near the bar. They appeared to lean on the bar for support. Investigator Velez formulated the opinion that the UF1 and UM1 were intoxicated.
13. Investigator Velez requested to speak to the owner of the establishment.
14. Investigators identified themselves to the owner, David Noble. Investigators advised Mr. Noble of the violation, and that security had escorted the UM1 and UF1 from the establishment.
15. Investigators advised Mr. Noble of the violation and that a report would be filed with the Chief Investigator for further action.

16. The Licensee has held a license under M.G.L. c. 138, § 12 since 2007 with one prior violation.
17. David Noble, principle of the License LLC and manager of record appeared at the Commission hearing and testified that after the incident he arranged for the Licensing Officer from the Barnstable Police Department to meet with his staff regarding the safe service of alcohol.

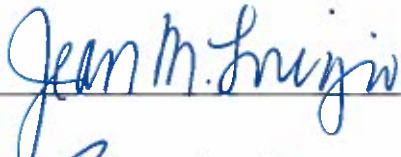
CONCLUSION

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, § 69 - Sale or delivery of an alcoholic beverage to an intoxicated person (2 counts). Therefore, the Commission **suspends the license for 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.**

By decision dated March 22, 2018, the Commission had previously ordered a four (4) day license suspension with one (1) day to be served and three (3) days to be held in abeyance for a period of two (2) years provided no further violations of Chapter 138 or Commission Regulations occur. Based on the violation found above, the Licensee violated the condition of suspension held in abeyance. The Commission, in its discretion, orders that 3-day suspension to be served. The Licensee will serve a total of five (5) days.

ALCOHOLIC BEVERAGES CONTROL COMMISSION

Jean M. Lorizio, Chairman



Crystal Matthews, Commissioner



Dated: January 16, 2020

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
Nicole Smith, Investigator
Robert Gardner, Investigator
Nicholas Velez, Investigator
Robert Bianchi, Esq.
Administration, File