



*Commonwealth of Massachusetts
Alcoholic Beverages Control Commission
239 Causeway Street
Boston, Massachusetts 02114
Tel. (617) 727-3040
Fax: (617) 727-1510*

Jean M. Lorizio, Esq.
Chairman

NOTICE OF SUSPENSION

November 1, 2018

**THE MILL STREET TAVERN INC. D/B/A DUCK INN PUB
447 MAIN STREET
BARNSTABLE, MA 02601
LICENSE#: 0070-00321
VIOLATION DATE: 12/15/2017
HEARD: 7/10/2018**

After a hearing on July 10, 2018, the Commission finds The Mill Street Tavern Inc. d/b/a Duck Inn Pub 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 one (1) day will be served, and three (3) 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 December 13, 2016, the Commission had previously ordered a three (3) day license suspension to be held in abeyance for a period of two (2) years provided no further violations occurred. Based on the violation found above, the Licensee violated the conditions of that three (3) day suspension being held in abeyance. The Commission hereby orders that suspension to be served on and after the one-day suspension. The Licensee will serve a total of four (4) days.

The suspension shall commence on Wednesday, January 2, 2019 and terminate on Saturday, January 5, 2019. The license will be delivered to the Local Licensing Board or its designee on Wednesday, January 2, 2019 at 9:00 A.M. It will be returned to the licensee on Sunday, January 6, 2019.

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
Jamie Binienda, Investigator
Jan Kujawski, Investigator
Charles Sabatt, Esq. via facsimile 508-778-4600
Administration, File



*Commonwealth of Massachusetts
Alcoholic Beverages Control Commission
239 Causeway Street
Boston, Massachusetts 02114
Tel. (617) 727-3040
Fax: (617) 727-1510*

Jean M. Lorizio, Esq.
Chairman

DECISION

**THE MILL STREET TAVERN INC. D/B/A DUCK INN PUB
447 MAIN STREET
BARNSTABLE, MA 02601
LICENSE#: 0070-00321
VIOLATION DATE: 12/15/2017
HEARD: 7/10/2018**

The Mill Street Tavern Inc. d/b/a Duck Inn Pub (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, July 10, 2018, regarding an alleged violation of M.G.L. c. 138, § 69 – Sale or delivery of an alcoholic beverage to an intoxicated person (1 Count). The above-captioned occurred December 15, 2017, according to Investigator Binienda's report.

The following documents are in evidence:

1. Investigator Binienda's Investigative Report.

There is one (1) audio recording of this hearing, and four (4) witnesses testified.

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

FINDINGS OF FACT

1. On Friday, December 15, 2017, Investigators Kujawski and Binienda ("Investigators") conducted an investigation of the business operation of The Mill Street Tavern Inc. d/b/a Duck Inn Pub to determine the manner in which its business was being conducted. (Testimony; Exhibit 1)
2. At approximately 9:45 p.m., Investigators entered the licensed premises and noticed a female patron, Roxanne (last name unknown) who appeared to be intoxicated. Id.
3. Investigators observed Roxanne on the patio drinking a mixed drink later identified as a rum and Coke®. Id.
4. Investigators observed Roxanne speaking in a loud voice, and her speech was badly slurred. Roxanne stumbled as she walked the length of the bar, almost knocking over a barstool. She then walked over to a leather chair beyond the bar and sat down. Id.

5. As Roxanne sat in the chair, Investigators observed her bobbing her head with her eyes half-closed, and she appeared to fall asleep. Id.
6. Investigators observed Roxanne then popped her head up and began clapping her hands loudly in an uncoordinated and obnoxious manner. Id.
7. At approximately 10:20 p.m., Investigators observed Roxanne sit up and then walk in an unsteady manner towards the bar. She stood in front of the bar holding onto a chair for balance, in full view of the bartender on duty, Molly. Id.
8. Based on their training and experience, Investigators determined Roxanne was intoxicated.
9. Investigators observed that Roxanne ordered another rum and Coke® and saw Molly deliver the mixed drink to Roxanne. Roxanne took possession of the rum and Coke®, and drank it. Id.
10. Investigators identified themselves to Molly, the bartender, identified Roxanne, and advised her of the violation. Id.
11. Investigators asked Molly if the owner or manager were available. Molly stated the owner, John Green, was seated near the bar and then she pointed him out to Investigators. Id.
12. Investigators identified themselves to Mr. Green and advised him to be sure that Roxanne was provided safe transport home. Id.
13. Investigators informed Mr. Green of the violation and that a report would be filed with the Chief Investigator for further action. Id.
14. Investigators document twelve (12) visible signs of intoxication before they come to the conclusion that a patron is intoxicated, and Investigators did so with regard to Roxanne. (Testimony)

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).

The Commission relies on the facts, as testified by the Investigator. Investigator Binienda testified that before patron Roxanne was served the rum and Coke®, Roxanne had slurred speech, was unsteady on her feet, and was staggering throughout the bar area. See Exhibit 1; Testimony. The Commission therefore finds that (1) Roxanne was intoxicated on the licensed premises; (2) an employee of the licensed premises, in particular the female bartender, reasonably should have known that Roxanne was intoxicated; and (3) after the bartender reasonably should have known that Roxanne was intoxicated, she delivered a rum and Coke® to Roxanne. 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 one (1) day will be served, and three (3) 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 December 13, 2016, the Commission had previously ordered a three (3) day license suspension to be held in abeyance for a period of two (2) years provided no further violations occurred. Based on the violation found above, the Licensee violated the conditions of that three (3) day suspension being held in abeyance. The Commission hereby orders that suspension to be served on and after the one-day suspension. The Licensee will serve a total of four (4) days.

ALCOHOLIC BEVERAGES CONTROL COMMISSION

Elizabeth A. Lashway, Commissioner



I, Kathleen McNally, hereby certify that I reviewed and listened to the hearing record in its entirety and deliberated with Elizabeth Lashway.

Kathleen McNally, Commissioner



Dated: November 1, 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
Jamie Binienda, Investigator
Jan Kujawski, Investigator
Charles Sabatt, Esq. via facsimile 508-778-4600
Administration, File