

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

Jean M. Lorizio, Esq.
Chairman

NOTICE OF SUSPENSION

July 1, 2019

**THE MILL STREET TAVERN INC. D/B/A DUCK INN PUB
447 MAIN STREET
BARNSTABLE, MA 02601
LICENSE#: 0070-00321
VIOLATION DATE: 12/22/2018
HEARD: 4/02/2019**

After a hearing on April 2, 2019, 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 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 November 1, 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 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 of three (3) days to be served on and after the two (2) day suspension. The Licensee will serve a total of five (5) days.

The suspension shall commence on Monday, August 19, 2019 and terminate on Friday, August 23, 2019. The license will be delivered to the Local Licensing Board or its designee on Monday, August 19, 2019 at 9:00 A.M. It will be returned to the licensee on Saturday, August 24, 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



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Chairman

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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
Dennis Keefe, Investigator
Nicholas Velez, Investigator
Charles Sabatt, Esq. via facsimile 508-778-4600
Administration, File



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DECISION

**THE MILL STREET TAVERN INC. D/B/A DUCK INN PUB
447 MAIN STREET
BARNSTABLE, MA 02601
LICENSE#: 0070-00321
VIOLATION DATE: 12/22/2018
HEARD: 4/02/2019**

The Mill Street Tavern Inc. d/b/a Duck Inn Pub (the "Licensee" or "Duck Inn Pub") holds an all alcoholic beverages license issued pursuant to M.G.L. c. 138, § 12. The Alcoholic Beverages Control Commission (the "Commission") held a hearing on Tuesday, April 2, 2019, 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 22, 2018, according to Investigator Velez's report.

The following documents are in evidence as exhibits:

1. Investigator Velez's Investigative Report;
2. Licensee's ABCC Decision for violation of M.G.L. c. 138, § 69 (1 count), 11/01/2018;
3. Licensee's ABCC Decision for failure of Compliance Check, 11/29/2016; and
4. Licensee's New License Application Approved 4/11/2012.

A. TIPS Certification for Licensee's Employees.

There is one (1) audio recording of this hearing, and five (5) witnesses testified.

FINDINGS OF FACT

1. On Friday, December 21, 2018, Investigators Binienda, Keefe, and Velez ("Investigators") were assigned to conduct S.I.P. (Service to Intoxicated Patrons) investigations in Hyannis and the surrounding areas on Cape Cod. (Testimony)
2. Investigators conducted an investigation of the business operation of The Mill Street Tavern Inc. d/b/a Duck Inn Pub. (Testimony; Exhibit 1)
3. At approximately 9:50 p.m., Investigator Keefe entered the Duck Inn Pub premises and his attention was drawn to one patron. This individual was a middle-aged male, who was

standing at a table with other patrons. He was wearing a gray sweatshirt and white baseball cap. (Testimony; Exhibit 1)

4. While inside the premises for ten minutes, Investigator Keefe kept this patron in his line of vision and observed that this patron had bloodshot and watery eyes. Investigator Keefe walked within two to three feet of this patron and heard that his speech was slightly slurred. (Testimony, Exhibit 1)
5. Investigator Keefe exited the Duck Inn Pub. While outside the premises he spoke to Investigators Binienda and Velez about his observations of the patron inside the Duck Inn Pub. (Testimony)
6. Later that evening, close to midnight, Investigator Velez entered the Duck Inn Pub in an undercover capacity. He observed a middle-aged male patron wearing a white hat and a gray sweatshirt. Investigator Velez thought this was the same individual that Investigator Keefe had noticed earlier in the evening. (Testimony)
7. Investigator Velez phoned Investigator Keefe and confirmed this patron's identity. (Testimony)
8. Investigator Velez observed this same male patron, identified as Rodman¹ (last name unknown). Investigator Velez while standing right next to Rodman, observed Rodman to have slurred speech, to sway as he was standing near the bar, and to hold onto the bar for support while standing. (Testimony, Exhibit 1)
9. Investigator Velez heard Rodman order an alcoholic beverage from the bartender, Ms. Molly Parmenter. Patron Rodman's speech was badly slurred. (Testimony, Exhibit 1)
10. Investigator Velez observed that Rodney's eyes were watery, bloodshot and glassy, and that he had a blank stare. (Testimony, Exhibit 1)
11. Investigator Velez formed the opinion, based on his training and experience, coupled with his observations of Rodman, that patron Rodman was intoxicated. (Testimony, Exhibit 1)
12. Bartender Parmenter stated to Rodney, "You need to take a break." Ms. Parmenter then spoke to Mr. John Saladino, the assistant manager and other bartender on duty that evening. (Testimony, Exhibit 1)
13. Patron Rodman stated to Parmenter that he was not driving. (Testimony, Exhibit 1)
14. Bartenders Saladino and Parmenter agreed to keep an eye on patron Rodman to ensure that Rodman did not get to the "point of no return." (Testimony)
15. Investigator Velez then observed Bartender Parmenter prepare an alcoholic beverage, a Johnny Walker on the rocks, and deliver the drink to patron Rodman. Investigator Velez saw Rodman consume the alcoholic beverage. (Testimony, Exhibit 1)
16. Investigator Velez then called Investigator Binienda and told Investigator Binienda that patron Rodman was intoxicated. (Testimony)

¹ Referred to during the Commission hearing by the name of "Rodney" when his actual first name is "Rodman" (last name unknown). (Testimony)

17. Investigator Binienda entered the Duck Inn Pub. Investigator Velez pointed out patron Rodman to Investigator Binienda. Investigator Binienda observed patron Rodman with a blank stare. Investigator Binienda also formed the opinion that patron Rodman was intoxicated. (Testimony)
18. Investigators Binienda and Velez identified themselves to Ms. Molly Parmenter, the bartender. The Investigators identified patron Rodman to Ms. Parmenter. The Investigators informed Bartender Parmenter that patron Rodman was intoxicated. (Testimony, Exhibit 1)
19. Bartender Parmenter acknowledged that patron Rodman was intoxicated, and admitted² that she had made a mistake in serving Rodman an alcoholic beverage. (Testimony)
20. Bartender Parmenter stated that patron Rodman's friend Hector would provide safe transport home for Rodman. (Testimony, Exhibit 1)
21. Investigators Velez and Binienda then advised Ms. Parmenter of the violation and that a report would be submitted to the Chief Investigator for further review. (Testimony, Exhibit 1)
22. Mr. John Greene, the license manager and owner of the licensee, was not present at the premises when this incident occurred. (Testimony)
23. In the ABCC Decision of December 13, 2016, the Commission found the Licensee failed a Compliance Check (a violation of M.G.L. c. 138, § 34 – Sale or delivery of an alcoholic beverage to a person under twenty-one (21) years of age.) The Commission suspended its license for three (3) days but held that suspension in abeyance for a period of two years provided no further violation of Chapter 138 or Commission Regulations occur. (Exhibit 3)
24. In the ABCC Decision of November 1, 2018, the Commission found that the Licensee violated M.G.L. c. 138, § 69. The Commission suspended its License for a period of four (4) days with one (1) day to be served and three (3) days held in abeyance for two years. (Exhibit 2)

DISCUSSION

The Licensee is charged with committing the violation of service to an intoxicated person in violation of M.G.L. c. 138, § 69. The statute states “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. To find a violation of this statute, the Commission must be presented with substantial evidence that a violation has occurred. See Embers of Salisbury, Inc. v. Alcoholic Beverages Control Comm’n, 401 Mass. 526, 528 (1988). “Substantial evidence” is “such evidence as a reasonable mind might accept as adequate to support a conclusion.” Id. Evidence from which a rational mind might draw the desired inference is not enough. See Blue Cross and Blue Shield of Mass. Inc., v. Comm’r of Ins., 420 Mass 707, 710 (1995). Disbelief of any particular evidence does not constitute substantial evidence to the contrary. New Boston Garden Corp. v. Bd. of Assessor of Boston, 383 Mass. 456, 467 (1981).

² Bartender Molly Parmenter's actual statement to Investigators was “I fucked up.” (Testimony)

To find a violation of this statute, substantial evidence must be presented that (1) while in or on a licensed premises; (2) a visibly intoxicated patron; (3) was sold or delivered an alcoholic beverage; (4) by an employee of the licensee, who knew or reasonably should have known, that this patron was intoxicated prior to the sale/service/delivery of the alcoholic beverage. 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). 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). “[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).

The evidence presented to the Commission was that three experienced Investigators who were inside the licensed premises, made observations of patron Rodman on the evening of the incident. Patron Rodman was exhibiting signs of the outward manifestation of intoxication (watery, bloodshot eyes, slightly slurred speech), so that Investigator Keefe’s attention was drawn to patron Rodman. (Testimony) Investigator Keefe then communicated his observations about Rodman to Investigators Velez and Binienda.

Less than two hours later that same evening, Investigator Velez, in an undercover capacity, was inside the premises and observed patron Rodman. Investigator Velez observed patron Rodman to be exhibiting outward and obvious signs of intoxication. Investigator Velez observed Rodman to have bloodshot, glassy, watery eyes, a blank stare, to sway as he was standing near the bar, and to hold onto the bar for support. (Testimony) While standing next to Rodman, Velez heard Rodman order an alcoholic beverage, using badly slurred speech. (Testimony) See Westerback v. Harold F. LeClair Co., Inc., 50 Mass. App. Ct. 144, 144-145 (2000) (patron served despite having difficulty walking, falling down, appearing depressed and sleepy, and having slurred speech). At that time based on his observations, training, and experience, Investigator Velez formed the opinion that patron Rodman was intoxicated. (Testimony) While Rodman was exhibiting outward and obvious signs of intoxication, Ms. Parmenter, the licensee’s bartender, was then observed serving patron Rodman an alcoholic beverage, which Rodman then consumed. Investigator Binienda then entered the Duck Inn Pub and observed Rodman. Investigator Binienda noticed Rodman to have a blank stare. (Testimony) Investigator Binienda at this time also formed the opinion that Rodman was intoxicated. (Testimony)

The Commission heard further evidence to support this finding that the licensee bartenders/employees were aware of patron Rodman’s state of intoxication. Bartender Parmenter told Rodman he “needed to take a break;” both bartenders were keeping an eye on Rodman to ensure that he did not reach the “point of no return;” and bartender Parmenter’s admission that she made a mistake.³ (Testimony) Based on the totality of direct evidence in the form of testimony and facts presented, the Commission finds by substantial evidence that an employee of the licensee served an alcoholic beverage to a visibly intoxicated patron inside the Duck Inn Pub resulting in a violation of M.G.L. c. 138 § 69.

³ See Footnote # 2.

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.**

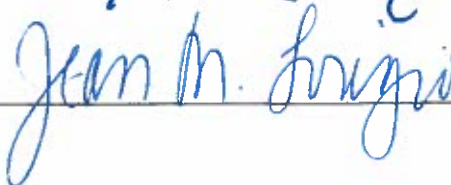
By decision dated November 1, 2018, the Commission had previously ordered a four (4) day license suspension with one (1) day to be served and three (3) days to be held in abeyance for a period of two (2) years provided no further violations occurred. Based on the violation found above, the Licensee violated 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 two (2) day suspension. The Licensee will serve a total of five (5) days.

ALCOHOLIC BEVERAGES CONTROL COMMISSION

Kathleen McNally, Commissioner



Jean M. Lorizio, Chairman



Dated: July 1, 2019

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