

The Commonwealth of Massachusetts
Department of the State Treasurer
Alcoholic Beverages Control Commission
Boston, Massachusetts 02114

Steven Grossman
Treasurer and Receiver General

Kim S. Gainsboro, Esq.
Chairman

NOTICE OF SUSPENSION

October 30, 2012

BOSTON BALLROOM CORPORATION D/B/A ROYALE
279 TREMONT STREET
BOSTON, MA 02116
LICENSE#: 011600760
HEARD 2/21/2012

After a hearing on February 21, 2012 the Commission finds Boston Ballroom Corporation d/b/a Royale in violation of 204 CMR 2.05 (2), to wit: M.G.L. c. 138 §69-Sale or Delivery of an Alcoholic Beverage to an Intoxicated Person (1 Count).

The Commission suspends the licensee's license for a total of seven (7) days to be served. The suspension shall commence on Wednesday, December 19, 2012 and terminate on Tuesday, December 25, 2012. The license will be delivered to the Local Licensing Board or its designee on Wednesday, December 19, 2012 at 9:00 A.M. It will be returned to the licensee Wednesday, December 26, 2012.

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. All checks must be certified and accompanied by the enclosed form, which must be signed by 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.

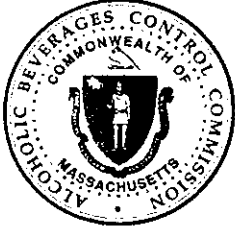
ALCOHOLIC BEVERAGES CONTROL COMMISSION

Kim S. Gainsboro
Chairman

cc: Local Licensing Board
Frederick G. Mahony, Chief Investigator
Jack Carey, Investigator
✓ Evan T. Lawson, Esq., via facsimile
✓ Administration
File

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The Commonwealth of Massachusetts
Department of the State Treasurer
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DECISION

BOSTON BALLROOM CORPORATION D/B/A ROYALE
279 TREMONT STREET
BOSTON, MA 02116
LICENSE#: 011600760
HEARD 2/21/2012

Boston Ballroom Corporation d/b/a Royale (the "Licensee") holds an all alcohol license issued pursuant to M.G.L. c. 138, §12. The Alcoholic Beverages Control Commission (the "Commission") held a hearing on Tuesday, February 21, 2012, regarding an alleged violation of 204 CMR 2.05 (2), to wit: M.G.L. c. 138 §69-Sale or Delivery of an Alcoholic Beverage to an Intoxicated Person (1 Count) which occurred on December 17, 2011 according to Investigator Carey's Investigative Report.

The following document is in evidence:

1. Investigator Carey's Investigative Report dated December 17, 2011.

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

FACTS

1. On Saturday, December 17, 2011, at approximately 12:55 a. m., Chief Investigator Mahony with Investigators Bailey, Kujawski, and Carey investigated the business operation of Boston Ballroom Corporation d/b/a Royale to determine the manner in which their business was being conducted.
2. At approximately 1:00 a. m., Investigators Kujawski and Carey observed a female patron, later identified as Ms. Jessica Ramos Santos, next to one of the side bars in the main room.
3. Investigators observed that Ms. Santos appeared intoxicated, as she was extremely unsteady on her feet and had slurred speech.
4. At approximately 1:15 a. m., investigators observed a male companion holding Ms. Santos up as they both approached the bar.
5. Investigators observed that Ms. Santos grabbed onto the bar to hold herself up.
6. Investigators observed Ms. Santos and the male companion both ordered Long Island Iced Teas, and were served by the bartender on duty.
7. Investigators approached the bar and identified themselves to the bartender on duty, Ms. Adrianna M. Trainor.
8. Investigators asked Ms. Trainor, "Do you think this person [Ms. Santos] has had enough to drink already?"
9. Ms. Trainor looked away, shrugged her shoulders, and did not answer the question.

10. Investigators then requested identification from Ms. Santos.
11. Ms. Santos presented a Nevada Driver's License in the name of Miller Young Jin.
12. Investigators questioned Ms. Santos further which was challenging due to a language barrier.
13. Ms. Santos stated she had lost her own identification, but supplied her correct information: date of birth February 10, 1990, age twenty-one (21) years.
14. Investigators informed the manager of record, Mr. Brig Dauber, and the head of security, Mr. Mac Dauber, of the violation.
15. Mr. Dauber immediately removed the bartender, Ms. Trainor, from her services at the bar for the evening.
16. Mr. Dauber called a cab, and paid for the safe transport of Ms. Jessica Santos to her home.
17. Investigators informed Mr. Brig Dauber and Mr. Mac Dauber that a report would be submitted to the Commission for further review.
18. At the hearing, Counsel for the Licensee told the Commission that the licensee cooperated with the Investigators and that the bartender Ms. Trainor, who served Ms. Santos that evening, was terminated.

DISCUSSION

M.G.L. c.138, s.69 provides that "[n]o alcoholic beverage shall be sold or delivered on any premises licensed under this chapter to an intoxicated person." To prove this violation, there must be evidence that the licensee served alcohol to an individual when it knew or should have known that that he was intoxicated. See Bennett v. Eagle Brook Country Store, Inc., 408 Mass 355, 358 (1990); Cimino v. Milford Keg, Inc., 385 Mass. 323, 327 (1982).

Massachusetts' courts have held that negligence cases provide "some guidance" as to what must be proven "to show a violation of the statute [G.L. c. 138, s.69]." Ralph D. Kelly, Inc. v. ABCC, Middlesex Superior Court C.A. No. 99-2759 (McEvoy, J.) (May 23, 2000) cited in Royal Dynasty, Inc. v. ABCC, Suffolk Superior Court C.A. No. 03-1411 (Billings, J.) (December 9, 2003). The Superior Court has also held that to prove a claim of negligent service to an intoxicated person, evidence must be presented that a license holder sold or delivered alcoholic beverages to a person at a time when a reasonable person in the position of that defendant would have known that [the patron] was intoxicated. See Bennett v. Eagle Brook Country Store, Inc., 408 Mass. 355, 358 (1990); Cimino v. The Milford Keg, Inc., 385 Mass. 323, 327 (1982). To meet that burden, "a plaintiff must come forward with some evidence that the patron's intoxication was apparent at the time he was served by the defendant [emphasis added]." Douillard v. LMR, Inc., 433 Mass. 162, 164-165 (2001). "The negligence lies in serving alcohol to a person who already is showing discernible signs of intoxication." Vickowkki v. Polish American Citizens Club, 422 Mass. 406, 610 (1996), and cases cited.

The Commission heard evidence and finds that it was approximately 1:00 a. m., and ABCC Investigators Carey, Bailey, and Kujawski observed a patron identified as Ms. Jessica Ramos Santos, who appeared intoxicated. They observed that she was extremely unsteady on her feet and had slurred speech. This conduct by this patron was open and obvious in an area in which it was readily and easily observable. At approximately 1:15 a. m., Investigators observed a male companion holding Ms. Santos up as they both approached the bar. This conduct by these patrons was open and obvious in an area in which it was readily and easily observable. Investigators then observed that Ms. Santos needed to grab onto the bar to hold herself upright. This conduct by this patron was still open and obvious in an area in which it was readily and easily observable. Investigators observed that Ms. Santos and the male companion both ordered Long Island Iced Teas, and were served these drinks by the bartender on duty, Ms. Trainor.

Counsel for the Licensee argues that there were hundreds of people inside the premises that evening, and that the male patron with Ms. Santos, paid the bartender for the drinks. Therefore, the bartender may not have known that the patron, Ms. Santos, was intoxicated.

The law is well-settled that it is 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." Commonwealth v. Gould, 158 Mass. 499, 507 (1893). Burlington Package Liquors, Inc. v. Alcoholic Beverages Control Commission, 7 Mass. App. Ct. 186, 190 (1979). It is, thus, quite possible for a licensee to offend the regulatory scheme without scienter. Rico's of the Berkshires, Inc., v. ABCC, 19 Mass. App. Ct. 1026, 1027 (1985) (rescript).

The Commission considered the testimony of the Investigators and finds that the patron, Ms. Santos, was intoxicated and was exhibiting obvious signs of intoxication as she approached, and as she was at the bar, where she was served alcohol by Ms. Trainor.

The evidence which was produced before the Commission proves that the patron manifested objective, observable signs of intoxication while inside the licensed premises, and was sold or delivered alcoholic beverages after manifesting such signs of intoxication.

The Commission finds that given the evidence and the testimony presented during the course of the hearing, the bartender knew, or should have known, that this patron was intoxicated. The Commission finds that this patron was obviously intoxicated and the licensee's employee served her alcoholic beverages. The Commission finds that there was a clear violation of 204 CMR 2.05 (2), to wit, M.G.L. c. 138 §69.

CONCLUSION

Based on the evidence, the Commission finds the licensee violated 204 CMR 2.05 (2), to wit: 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 ten (10) days of which seven (7) days 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.

ALCOHOLIC BEVERAGES CONTROL COMMISSION

Kathleen McNally, Commissioner *Kathleen McNally*

I, the undersigned, hereby certify that I have reviewed the hearing record and concur with the above decision.

Susan Corcoran, Commissioner *Susan Corcoran*

Dated: October 30, 2012

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.

cc: Local Licensing Board
Frederick G. Mahony, Chief Investigator
John Carey, Investigator
Evan T. Lawson, Esq.
Administration
File