



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

Jean M. Lorizio, Esq.
Chairman

NOTICE OF SUSPENSION

September 23, 2025

**GAME ON FENWAY LLC D/B/A GAME ON SPORTS CAFÉ
72-82 LANSLOWNE STREET
BOSTON, MA 02215
LICENSE#: 00128-RS-0116
VIOLATION DATE: 3/16/2024
HEARD: 7/09/2024**

After a hearing on July 9, 2024, the Commission finds Game on Fenway LLC d/b/a Game On Sports Café violated 204 CMR 2.05 (2) Permitting an illegality on the licensed premises, to wit: M.G.L. Ch. 138, § 34C – Possession of an alcoholic beverage by a person under twenty-one (21) years of age (2 Counts).

The Commission SUSPENDS the license for a period of two (2) days of which one (1) day will be served and one (1) day will be held in abeyance for a period of two (2) years provided no further violations of Chapter 138 or Commission Regulations are found by this Commission.

The suspension shall be served on Monday, November 17, 2025. The license will be delivered to the Local Licensing Board or its designee on Monday, November 17, 2025, at 9:00 A.M. It will be returned to the licensee on November 18, 2025.

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

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2024-000070-ad-enf

cc: Local Licensing Board
Frederick G. Mahony, Chief Investigator
Alicia Cutter, Investigator
Sean Fleming, Investigator
David Bolcome, Investigator
Michael Teehan, Investigator
Christopher Temple, Investigator
Dennis A. Quilty, Esq.
Administration, File



*Commonwealth of Massachusetts
Alcoholic Beverages Control Commission
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DECISION

**GAME ON FENWAY LLC D/B/A GAME ON SPORTS CAFÉ
72-82 LANSDOWNE STREET
BOSTON, MA 02215
LICENSE#: 00128-RS-0116
VIOLATION DATE: 3/16/2024
HEARD: 7/09/2024**

Game on Fenway LLC d/b/a Game On Sports Café (the “Licensee” or “Game On Sports”) holds an alcohol license issued pursuant to M.G.L. c. 138, § 12. The Alcoholic Beverages Control Commission (“ABCC” or “Commission”) held a remote hearing via Microsoft Teams on Tuesday, July 9, 2024, regarding alleged violations of:

- 1) M.G.L. Ch. 138, § 69 – Sale or delivery of an alcoholic beverage to an intoxicated person (1 Count);
- 2) 204 CMR 2.05 (2) Permitting an Illegality on the Licensed Premises, to wit: Ch. 138 § 34C – Possession of an alcoholic beverage by a person under twenty-one (21) years of age (2 Counts).

Prior to the commencement of the hearing, the Licensee stipulated to the facts alleged in Investigator Cutter’s report related to 204 CMR 2.05(2) to wit: Ch. 138, § 34C (2 Counts).

The following documents are in evidence:

1. Investigative Report of A. Cutter;
 2. ABCC Transfer of License Approval, 4/2/2008;
 3. ABCC Decision, 6/8/2023;
 4. Photograph of Fraudulent Identifications;
 5. Licensee’s Stipulation of Facts as to 204 CMR 2.05 (2), to wit: Ch. 138 § 34C.
- A. Licensee’s Video Surveillance;
B. TIPS Certificate of Completion of K. Falcucci.

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

FINDINGS OF FACT

1. On Saturday, March 16, 2024, Investigators Fleming and Cutter (“Investigators”), working in an undercover capacity, inspected the business operation of Game On Fenway

LLC d/b/a Game On Sports Café (the “Licensee” or “Game On Sports”) during a St. Patrick’s Day bar crawl event. (Testimony, Exhibit 1)

2. At approximately 5:35 p.m., Investigators entered the licensed premises and made observations of an unidentified male individual (“UM1”), standing near the main floor’s bar. Id.
3. Investigators continued to make observations of UM1. Id.
4. Investigators determined that UM1 was exhibiting signs of intoxication. Investigators then observed UM1 leaning over the bar and conversing with the bartender on duty, K. Falcucci. At approximately 5:47 p.m., Investigators observed the bartender serve UM1 an alcoholic beverage. Id.
5. K. Falcucci spoke directly with UM1 and did not observe any signs of intoxication. (Testimony)
6. Investigators Temple, Teehan, and Bolcome entered the licensed premises and observed a youthful appearing female individual in possession of a Michelob Ultra beer. Investigators identified themselves and asked to see proof of legal age to possess an alcoholic beverage. (Exhibit 1)
7. Underage #1’s actual date of birth was 7/27/2005 (age 18). Id.
8. Investigators Temple, Teehan, and Bolcome also observed a youthful appearing male individual in possession of a Corona beer. Investigators identified themselves and asked to see proof of legal age to possess an alcoholic beverage. Id.
9. Underage #2’s actual date of birth was 11/28/2004 (age 19). Id.
10. Investigators Temple, Teehan, and Bolcome spoke to the manager on duty about the alleged violations and informed him that a report would be filed with the Chief Investigator for further review. Id.
11. The Licensee has surveillance cameras within the licensed premises which continuously record the activity inside the establishment. (Testimony, Exhibit A)
12. The Licensee has held a license under M.G.L. c. 138, § 12 since 2008 with one prior violation. (Exhibits 2, 3)

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 Massachusetts General Laws, Chapter 138.

Chapter 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). The Commission is given “comprehensive powers of supervision over licensees.” Connolly, 334 Mass. at 617.

The law is well-settled that 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 Comm’n, 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. Alcoholic Beverages Control Comm’n, 19 Mass. App. Ct. 1026, 1027 (1985).

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; see McGuiggan v. New England Tel. & Tel. Co., 398 Mass. 152, 161 (1986).

To substantiate a violation of M.G.L. c. 138, § 69, there must be proof of the following elements: (1) that an individual was in or 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. See Vickowski, 422 Mass. at 609. “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.” Id.

The Commission’s decision must be based on substantial evidence. 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 (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).

To find a violation of M.G.L. c. 138, § 69, evidence must exist 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); see Vickowski, 422 Mass. at 610 (“The negligence lies in serving alcohol to a person who already is showing discernible signs of intoxication”).

Here direct evidence was presented through the testimony of Investigator Cutter who was inside the licensed premises and made observations of an unidentified male patron whom she alleges was exhibiting signs of intoxication and then served an alcoholic beverage. (Testimony)

Direct evidence was presented through the testimony of the bartender who interacted directly with the allegedly intoxicated patron and refuted the Investigator's allegations. (Testimony, Exhibit A) Additionally, the Licensee presented video evidence depicting the inside of the licensed premises on the night of March 16, 2024, which corroborates the bartender's testimony. Id.

The Commission is not persuaded that substantial evidence exists to support a finding that the Licensee violated M.G.L. c. 138 § 69. As a result, the Commission finds no violation of M.G.L. c. 138 § 69.

The Licensee is also charged with a violation of 204 CMR 2.05 (2) Permitting an Illegality on the Licensed Premises, to wit: Ch. 138 § 34C – Possession of an alcoholic beverage by a person under twenty-one (21) years of age (2 Counts) to which it stipulated. (Exhibit 5)

CONCLUSION

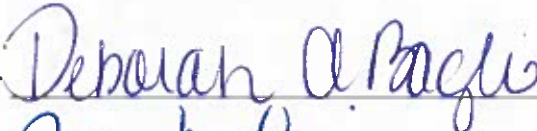
Based on the evidence, the Commission finds that Game On Fenway LLC violated 204 CMR 2.05(2) Permitting an Illegality on the Licensed Premises, to wit: Ch. 138 § 34C – Possession of an alcoholic beverage by a person under twenty-one (21) years of age (2 Counts).

The Commission finds NO VIOLATION of M.G.L. Ch. 138, § 69 – Sale or delivery of an alcoholic beverage to an intoxicated person (1 Count) occurred.

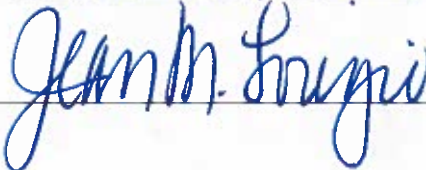
As a result, the Commission **SUSPENDS the license for a period of two (2) days of which one (1) day will be served and one (1) day will be held in abeyance for a period of two (2) years provided no further violations of Chapter 138 or Commission Regulations are found by this Commission.**

ALCOHOLIC BEVERAGES CONTROL COMMISSION

Deborah Baglio, Commissioner



Jean M. Lorizio, Chairman



Dated: September 23, 2025

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.

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