



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

Jean M. Lorizio, Esq.
Chairman

DECISION

**THE NEXT PLACE LLC D/B/A THE GREATEST BAR
262-266 FRIEND STREET
BOSTON, MA 02114
LICENSE#: 01397-RS-0116
VIOLATION DATE: 12/10/2022
HEARD: 7/11/2023**

The Next Place LLC d/b/a The Greatest Bar (the "Licensee") 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 11, 2023, 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 10, 2022, according to Investigator Quinn's report.

The following documents are in evidence:

1. Investigator Quinn's Report;
2. ABCC Form 43, Transfer of License Approval, 1/29/2008;
3. ABCC Decision, 11/17/2020;
4. ABCC Decision, 3/27/2018;
5. ABCC Decision, 6/15/2016;
6. ABCC Decision, 5/27/2015;
7. ABCC Decision, 10/3/2014;
8. ABCC Decision, 5/23/2012;
9. ABCC Decision, 3/6/2012.

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

FINDINGS OF FACT

1. On Saturday, December 10, 2022, Investigators Cutter, David, Keefe, and Quinn ("Investigators") inspected the licensed premises and business operations of The Next Place LLC d/b/a The Greatest Bar ("Licensee"). (Testimony, Exhibit 1)
2. At approximately 6:04 pm., Investigator Cutter observed an unidentified male individual ("UM") dressed in a blue shirt and with his face painted blue. She observed him to have bloodshot and glassy eyes, and to be swaying and standing by himself. Investigator

Cutter observed the UM stumble and trip as he walked over to a table of patrons. Investigator Cutter observed his speech was slurred. At this time, Investigator Cutter formed the opinion that the UM was intoxicated. Id.

3. Investigator Cutter stood next to the UM at the bar and observed he was within the bartender's line of sight. Id.
4. Investigators observed another patron approach the UM and ask him what he would like to drink. The patron then ordered alcoholic beverages. A male bartender delivered the alcoholic beverages, placing a drink in front of the patron and the UM. Id.
5. Investigator Cutter observed the UM pick up the shot, said "cheers" to Investigator Cutter and stated something the Investigator did not understand. Id.
6. Investigator Cutter then relayed her observations to Investigators Keefe and Quinn. Id.
7. Investigators Keefe and Quinn identified themselves to a staff member and to the Licensee, Bill Fairweather. Mr. Fairweather identified the male bartender on duty as Ben Fisher. Id.
8. Mr. Fisher remembered the UM. Mr. Fisher had not exchanged words with him or had any interaction with him. Mr. Fisher admittedly served the UM's friend but stated he had not made observations of the UM while he was standing at the bar. Id.
9. Mr. Fairweather stated to Investigators that a group of world cup soccer fans was on the premises watching the game and that the UM was part of that group. Id.
10. Mr. Fairweather then ensured the UM left the premises. Id.
11. Investigators informed Mr. Fairweather of the violation and that a report would be filed with the Chief Investigator for further review. Id.
12. Mr. Henry, a manager and bartender at the licensed premises, appeared at the Commission hearing. Mr. Henry was working on the night of December 10, 2022, and had seen the UM throughout the day, beginning at approximately 3:45. Mr. Henry did not observe anything out of the ordinary about the UM. He had not seen any signs of intoxication. Mr. Henry interacted with the UM after the Investigators identified the UM to employees. The UM had a heavy British accent. Mr. Henry did not notice any "stuttering or slowness." (Testimony)
13. Mr. Fisher appeared at the Commission hearing and testified he has been a bartender for approximately 16 years and has received training as to service of alcohol to intoxicated patrons. He was working on December 10, 2022, at the licensed premises. Mr. Fisher had seen the UM at the bar but had no interaction or words with him. He served a person he believed to be UM's friend. Id.
14. The Licensee has held a license under M.G.L. c. 138, § 12 since 2008. (Commission Records)

DISCUSSION

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.; 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).

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).

The law is well-settled that it is the responsibility of the licensee 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).

The Commission must determine whether substantial evidence was presented to support a finding that the Licensee, its staff or employees, knew or should have known a patron on the premises was intoxicated and then sold or delivered an alcoholic beverage to said intoxicated person in violation of M.G.L. c. 138, § 69.

Here, evidence was presented through the testimony of Investigator Cutter as to her observations at the licensed premises on the night of December 10, 2022, specifically her observations of the

unknown male whom she determined was intoxicated on the licensed premises and then served an alcoholic beverage.

However, the Licensee presented direct evidence through the testimony of two employees who were present at the licensed premises on the night of December 10, 2022:

- 1) The bartender who served an individual standing next to the UM and assumed to be his friend. The bartender remembered seeing the UM but did not interact with him and did not serve him.
- 2) A manager who observed the UM over the course of the afternoon and into the evening and did not observe signs of intoxication. He interacted with the UM after Investigators identified him to the Licensee. This employee observed the UM to have a heavy British accent and did not observe him to have impaired speech. (Testimony)

The Commission is not persuaded that substantial evidence exists to support a finding that the Licensee violated M.G.L. c. 138 § 69.

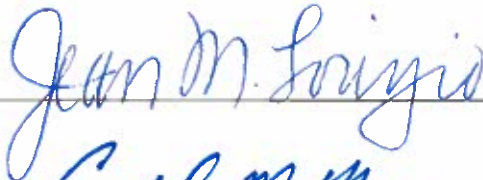
Based on the direct evidence in this matter, the Commission finds no violation of M.G.L. c. 138 § 69.

CONCLUSION

Based on the evidence, the Commission finds **NO VIOLATION** of M.G.L. c. 138, § 69 occurred.

ALCOHOLIC BEVERAGES CONTROL COMMISSION

Jean M. Lorizio, Chairman



Crystal Matthews, Commissioner



Deborah Baglio, Commissioner



Dated: January 14, 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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2023-000017-ad-enf

cc: Local Licensing Board
Frederick G. Mahony, Chief Investigator
Katherine McCormick, Esq., Associate General Counsel
Katelyn Quinn, Investigator
Alicia Cutter, Investigator
John David, Investigator
Dennis Keefe, Investigator
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Administration, File