



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

Deborah B. Goldberg
Treasurer and Receiver General

Kim S. Gainsboro, Esq.
Chairman

NOTICE OF SUSPENSION

May 27, 2015

THE NEXT PLACE, LLC DBA THE GREATEST BAR
262-66 FRIEND ST
BOSTON, MA 02114
LICENSE#: 011601397
VIOLATION DATE: 12/14/2014
HEARD: 04/28/2015

After a hearing on April 28, 2015, the Commission finds The Next Place, LLC dba The Greatest Bar in violation of 204 CMR 2.05(2) Permitting an Illegality on the licensed premises, to wit: 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 nine (9) days to be served. The suspension shall commence on Wednesday, July 15, 2015, and terminate on Thursday, July 23, 2015.** The license will be delivered to the Local Licensing Board or its designee on Wednesday, July 15, 2015 at 9:00 A.M. It will be returned to the licensee Friday, July 24, 2015.

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
Caroline Guarino-Wilichoski, Investigator
Curt F. Bletzer, Esq. via facsimile 617-754-5522
Administration
File

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DECISION

THE NEXT PLACE, LLC DBA THE GREATEST BAR
262-66 FRIEND ST
BOSTON, MA 02114
LICENSE#: 011601397
VIOLATION DATE: 12/14/2014
HEARD: 04/28/2015

The Next Place, LLC dba The Greatest Bar (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, April 28, 2015, regarding an alleged violation of 204 CMR 2.05(2) Permitting an Illegality on the licensed premises, to wit: M.G.L. c. 138 §69-Sale or Delivery of an alcoholic beverage to an intoxicated person (1 count). The above captioned occurred on December 14, 2014, according to Investigator Guarino-Wilichoski's Report.

The following documents are in evidence:

1. Investigator Guarino-Wilichoski's Investigative Report dated December 15, 2014.

The Commission took Administrative notice of the Licensee's Commission files and records.

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

FACTS

1. On Sunday, December 14, 2014, at approximately 12:55 a. m., Chief Mahony along with Investigators Carey, Velez, and Guarino-Wilichoski (the "Investigators") conducted an investigation of the business operation of The Next Place, LLC dba The Greatest Bar, to determine the manner in which its business was being conducted.
2. Investigators entered the first floor bar area, and observed a male patron (the "Patron") with a glassy stare in his eyes as he leaned on the bar and drank from a can of Budweiser Light beer.
3. Chief Investigator Mahony testified that he observed this Patron to be unsteady on his feet and that he was weaving back and forth while standing at the bar.
4. Investigator Guarino-Wilichoski testified that she stood next to the Patron and heard him speak to another individual. At this time his speech was slurred.
5. Investigator Guarino-Wilichoski also observed that this Patron's eyes were red and glassy.
6. Investigator Guarino-Wilichoski testified that while she was making these observations, there were no other individuals standing in front of this patron to obstruct the view of the bartenders.
7. The Investigators made these observations while this Patron was standing at the bar in an open and obvious area, in clear view of the bartenders.

8. Chief Investigator Mahony testified that he made observations of this Patron, including that the Patron was weaving, and Chief Mahony formed the opinion that this Patron was exhibiting visible signs of intoxication.
9. Based on their training and experience, Investigators formed the opinion that this Patron was intoxicated.
10. At approximately 1:13 a. m., Investigators observed the Patron order an alcoholic beverage.
11. The Patron was served two alcoholic beverages, gin and tonic water and a Budweiser Light beer, from the bartender on duty, Christina Liberty.
12. The Patron was observed drinking the gin and tonic alcoholic beverage.
13. Chief Investigator Mahony testified that he spoke to the Patron to determine how the Patron was getting home, as he was intoxicated.
14. A friend of the Patron told Investigators that he would ensure that the Patron had safe passage home.
15. Investigators reviewed this patron's identification and determined that he was 21 years of age.
16. Investigators informed the manager on duty, Mario Menduni, of the violation and that a report would be filed with the Commission.

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).

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"). Direct or circumstantial evidence or a combination of the two may be used to prove that an individual is intoxicated. See Vickowski, 422 Mass. at 611 (direct evidence of obvious intoxication not required). "[S]ervice [to a patron] of a large number of strong alcoholic drinks [would be] sufficient to put [a licensee] on notice that it was serving a [patron] who could potentially endanger others." Cimino, 385 Mass. at 328. It is proper to infer from evidence of a patron's excessive consumption of alcohol, "on the basis of common sense and experience, that [a] patron would have displayed obvious outward signs of intoxication while continuing to receive service from the licensee." Vickowski, 422 Mass. at 611; see P.J. Liacos, Massachusetts Evidence §4.2, at 118-119; §5.8.6, at 242-244 (6th ed. 1994 & Supp. 1994).

The Commission must determine whether substantial evidence exists to find that the licensee, its staff or employees, sold or delivered alcoholic beverages to an intoxicated person in violation of M.G.L. c. 138, §69. Investigator Guarino-Wilichoski and Chief Investigator Mahony each testified before the Commission. The Commission heard evidence from each of the trained and experienced Investigators. Investigators testified that they were inside the licensed premises when they initially observed the Patron leaning on the bar drinking an alcoholic beverage, a Budweiser Light beer. The Investigators testified that they observed the Patron standing at the bar and that he had a glassy stare, red eyes, was weaving back and forth, was unsteady on his feet, and that his speech was slurred. Investigator Guarino-Wilichoski testified that during her observations, this patron was standing at the bar in an open and observable area, in clear unobstructed view of the bartenders.

The Investigators testified that they formed the opinion that the Patron was intoxicated. At approximately 1:13 a.m., while the Patron was exhibiting visible signs of intoxication, the Investigators observed the Patron being served alcoholic beverages, gin and tonic water, and a Budweiser Light beer, by a bartender. The Patron then started drinking the gin and tonic beverage.

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).

Based on the direct evidence in this matter, the Commission finds that the Patron was served an alcoholic beverage, after manifesting obvious and visible signs of intoxication, while inside the licensed premises, in clear view of the bartender/employee/staff, who knew or should have known that the Patron was intoxicated. 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 (1 count). Therefore, the Commission **suspends the license for a period of ten (10) days of which five (5) days will be served and five (5) 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 October 3, 2014, the Commission had previously ordered an eight (8) day suspension with four (4) days to be served and four (4) 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 four (4) day suspension being held in abeyance. The Commission hereby orders that suspension to be served on and after the five (5) day suspension. The Licensee will serve a total nine (9) days.

ALCOHOLIC BEVERAGES CONTROL COMMISSION

Elizabeth A. Lashway, Commissioner



Kathleen McNally, Commissioner



Dated: May 27, 2015

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
Caroline Guarino-Wilichoski, Investigator
Jack Carey, Investigator
Nicholas Velez, Investigator
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