

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

Jean M. Lorizio, Esq.
Chairman

DECISION

**WEST END DINING LLC D/B/A CAUSEWAY
65-71 CAUSEWAY STREET
BOSTON, MA 02114
LICENSE#: 00172-RS-0116
VIOLATION DATE: 3/16/2024
HEARD: 7/30/2024**

West End Dining LLC d/b/a Causeway (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 30, 2024, regarding an alleged violation of M.G.L. Ch. 138, § 69 – Sale or delivery of an alcoholic beverage to an intoxicated person (1 Count).

The following documents are in evidence:

1. Investigative Report of D. McDonough;
2. ABCC Form 43, Transfer of License Approval, 6/11/2014;
3. ABCC Decision, 3/5/2018;
4. ABCC Decision, 3/7/2018;
5. ABCC Decision, 6/8/2018;
6. ABCC Decision, 11/5/2019.

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

FINDINGS OF FACT

1. On Saturday, March 16, 2024, at approximately 2:30 p.m., Special Investigators David and McDonough inspected the licensed premises of West End Dining LLC d/b/a Causeway ("Licensee") to determine the way its business was being conducted. (Testimony, Exhibit 1)
2. At approximately 2:40 p.m., Investigators observed a male individual ("UM") from a distance of approximately 2 feet. They believed the UM was unsteady on his feet and spoke with slurred speech. Investigators formulated the opinion that the UM was intoxicated. (Testimony)
3. Investigators interacted with the UM and were approximately 6 to 8 feet away from the bartender. Id.

4. At approximately 2:45 p.m., Investigators observed the bartender on duty deliver two glasses of Guinness beer to the UM. Id.
5. Investigators did not observe any licensee employee interact with the UM prior to the bartender delivering the beer to him. Id.
6. Investigators Velez and Gould entered the licensed premises, spoke to Tim McCasland, Manager of Record, and identified the UM. (Exhibit 1)
7. Investigators Velez and Gould advised Tim McCasland, Manager of Record, of the violation and that a report would be filed with the Chief Investigator for further review. Id.
8. Mr. McCasland appeared at the Commission hearing and testified the Licensee has added additional staff and has re-trained bartenders. In addition, the Licensee operates below capacity when hosting events to ensure employees are better able to monitor the crowd. (Testimony)
9. The Licensee has held a license under M.G.L. c. 138, § 12 since 2014. (Exhibit 2)

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.

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’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).

Investigators testified they were inside the licensed premises when they observed a male patron exhibiting obvious signs of intoxication. The Investigators then formed the opinion the patron was intoxicated. (Testimony) There is no evidence the Licensee or its employees observed the male patron exhibiting signs on intoxication. After making said determination, Investigator David observed an employee of the Licensee serve the patron an alcoholic beverage. (Testimony) The Investigators did not observe any employee interact with the patron prior to the employee delivering the alcoholic beverage. (Testimony)

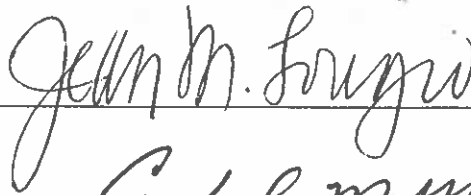
Given the evidence presented, the Commission cannot conclude with the requisite degree of certainty that the Licensee’s employee knew or should have known the patron was exhibiting obvious signs of intoxication prior to delivering the alcoholic beverage. Based on the direct evidence in this matter, the 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. Ch. 138, § 69 occurred.

ALCOHOLIC BEVERAGES CONTROL COMMISSION

Jean M. Lorizio, Chairman



Crystal Matthews, Commissioner



Deborah Baglio, Commissioner



Dated: May 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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2024-000072-ad-enf

cc: Local Licensing Board
Frederick G. Mahony, Chief Investigator
Katherine McCormick, Associate General Counsel
David McDonough, Investigator
John David, Investigator
Brian Gould, Investigator
Nicholas Velez, Investigator
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Administration, File