



Jean M. Lorizio, Esq.
Chairman

*Commonwealth of Massachusetts
Department of the State Treasurer
Alcoholic Beverages Control Commission
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NOTICE OF SUSPENSION

March 27, 2018

**THE NEXT PLACE, LLC D/B/A THE GREATEST BAR
262-66 FRIEND ST
BOSTON, MA 02114
LICENSE#: 0116-01397
VIOLATION DATE: 12/17/2017
HEARD: 03/20/2018**

After a hearing on March 20, 2018, the Commission finds The Next Place, LLC d/b/a The Greatest Bar violated 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 license for a period of twelve (12) days of which four (4) days will be held served and eight (8) days will be in abeyance for a period of two (2) years provided no further violations of Chapter 138 or Commission Regulations occur.

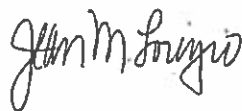
By decision dated June 15, 2016, the Commission had previously ordered a three (3) day license suspension to be held in abeyance for a period of two (2) years provided no further violations occurred. Based on the violation found above, the Licensee violated the conditions of that three (3) day suspension being held in abeyance. The Commission hereby orders that suspension to be served. The Licensee will serve a total of seven (7) days.

The suspension shall commence on Wednesday, May 16, 2018, and terminate on Tuesday, May 22, 2018. The license will be delivered to the Local Licensing Board or its designee on Wednesday, May 16, 2018 at 9:00 A.M. It will be returned to the Licensee May 23, 2018.

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 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.

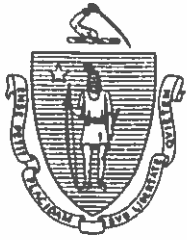
ALCOHOLIC BEVERAGES CONTROL COMMISSION



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cc: Local Licensing Board
Frederick G. Mahony, Chief Investigator
Dennis Keefe, Investigator
Curt F. Bletzer, Esq. via facsimile 617-754-5522
Administration, File



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DECISION

**THE NEXT PLACE, LLC D/B/A THE GREATEST BAR
262-66 FRIEND ST
BOSTON, MA 02114
LICENSE#: 0116-01397
VIOLATION DATE: 12/17/2017
HEARD: 03/20/2018**

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 (the "Commission") held a hearing on Tuesday, March 20, 2018, regarding an alleged 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), which occurred on December 17, 2017, according to Investigator Keefe's report.

The following documents are in evidence:

1. Investigator Keefe's Investigative Report.

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

The Commission took Administrative Notice of the Licensee's record.

FINDINGS OF FACT

1. On Saturday, December 16, 2017, Chief Investigator Mahony and Investigator Keefe ("Investigators") investigated the business operation of The Next Place, LLC d/b/a The Greatest Bar to determine the manner in which their business was being conducted.
2. At approximately 11:00 p.m., Investigator Keefe entered the licensed premises and observed a male individual, Christopher Cote, who appeared to be intoxicated.
3. Cote approached the bar holding a glass, which was $\frac{3}{4}$ filled, in his hand and ordered a Jameson Irish Whiskey and Coke® from the female bartender, Danyele Carpentiere.
4. Investigator Keefe observed that Cote made numerous attempts to place bills back into his wallet and continued his observation.

5. Investigator Keefe observed that Cote swayed from side to side as he walked, and his movements were slow and methodical. At one point, Investigators observed Cote make his way over to a corner booth and attempt to sit in the lap of another patron.
6. At approximately 1:44 a.m., Cote approached the bar again and attempted to consume the drink in his possession. As he did so, Investigator observed that some of the liquid poured out of the side of Cote's mouth. Investigator observed that Cote's eyes were glassy. When Cote attempted to place his chin in his hand, his elbow slipped and dropped off the bar.
7. Investigator Keefe observed the bartender, Ms. Carpentiere, approach Cote who ordered and was served another Jameson Irish Whiskey and Coke®. When Cote paid for his drink, Investigator Keefe observed that it took Cote three attempts before he was able to place his wallet back into his pocket.
8. Investigator Keefe notified Chief Mahony of the over service to Cote and went to meet him in the stairway of the establishment.
9. Investigators observed Cote and at least three other unidentified individuals moving to exit the premises.
10. Investigators approached Cote, identified themselves, and asked for identification. Investigators asked Cote by what means he would return home. With slurred speech, Cote stated that he was not driving but would take a car service home.
11. Investigators identified Cote to the doorman on duty, Habib, and advised him of the service to Cote.
12. Investigators then observed Cote and his associates enter a car service vehicle.
13. Investigators then spoke to the security manager, Jovon, as well as the manager on duty, Jimmy, and notified both men of the violation and that a report would be submitted for further review.

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 Keefe testified before the Commission. Investigator Keefe testified that he and Chief Investigator Mahony were inside the licensed premises when they initially observed the Patron leaning on the bar drinking an alcoholic beverage, Jameson Irish Whiskey and Coke®. The Investigator testified that they observed the Patron having difficulty putting his wallet in his pocket, swaying from side to side as he walked, pouring part of his drink out the side of his mouth as he attempted to consume his beverage, attempting to sit on another patron’s lap, and having glassy eyes.

The Investigator testified that they formed the opinion that the Patron was intoxicated. At approximately 1:44 a.m., while the Patron was exhibiting visible signs of intoxication, the

Investigators observed the Patron being served an alcoholic beverage, Jameson Irish Whiskey and Coke®, by a bartender.

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

The Commission suspends the license for a period of twelve (12) days of which four (4) days will be served and eight (8) 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 June 15, 2016, the Commission had previously ordered a three (3) day license suspension 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 three (3) day suspension being held in abeyance. The Commission hereby orders that suspension to be served. The Licensee will serve a total of seven (7) days.

ALCOHOLIC BEVERAGES CONTROL COMMISSION

Elizabeth Lashway, Commissioner



Kathleen McNally, Commissioner



Dated: March 27, 2018

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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