



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

Jean M. Lorizio, Esq.
Chairman

DECISION

**SPEAKEASY GROUP INC. as GENERAL PARTNER OF SPEAKEASY LIMITED
PARTNERSHIP D/B/A STORYVILLE
90 EXETER STREET
BOSTON, MA 02116
LICENSE#: 00354-RS-0116
VIOLATION DATE: 12/19/2019
HEARD: 9/28/2021**

Speakeasy Group Inc. as General Partner of Speakeasy Limited Partnership d/b/a Storyville (the "Licensee") holds an alcohol license issued pursuant to M.G.L. c. 138, §12. The Alcoholic Beverages Control Commission (the "Commission" or "ABCC") held a remote hearing via Microsoft Teams on Tuesday, September 28, 2021, 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-mentioned occurred December 19, 2019, according to Investigator Di Cicco's Report.

The following documents are in evidence:

1. Investigator Di Cicco's Report;
2. ABCC Form 43, License Transfer approval 7/16/2002;
3. ABCC Form 43, Transfer of Stock, New Officer/Director, Corporate Name Change Application approval 3/4/2004;
4. Photograph of A. Sanginario's Passport;
5. Photograph of Couch Inside Licensed Premises;
6. Photograph of Bar Check No. 6913, 12/19/2019.

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

FINDINGS OF FACT

1. On Thursday, December 19, 2019, Investigators Keefe and Di Cicco ("Investigators") inspected the business operation of Speakeasy Group Inc. as General Partner of Speakeasy Limited Partnership d/b/a Storyville to determine the manner in which their business was being conducted.
2. Investigators entered the licensed premises and observed an Unidentified Male (UM) with an Unidentified Female (UF), in front of the main bar behind some couches, who appeared to be intoxicated.

3. Investigators observed the UM and UF attempting to kiss in an uncoordinated fashion. Investigators observed that the couple seemed unsteady on their feet, leaning heavily against the back of the couch for support.
4. On two occasions the UM and the UF nearly fell over onto the floor. Investigators observed the couple attempting to dance in an uncoordinated manner, with their knees buckling as they danced.
5. Investigators observed the UM speak to the bartender on duty. After UM placed his order, ~~but before being served, he attempted to lick the UF's arm which took place directly in~~ sight of the bartender.
6. Investigators observed the bartender serve the UM a mixed drink, Red Bull energy drink and vodka.
7. Investigator Di Cicco then informed the bouncer and the bartender of the incident.
8. Investigators identified themselves to the manager on duty, Mike Montesano, and informed him of the alleged violation. Investigators advised Montesano that a report would be filed with the Chief Investigator for further review.
9. Brian Lesser, the Licensee, appeared at the Commission hearing along with Mr. Montesano. Mr. Montesano has worked in a management role in the alcoholic beverage industry for approximately 16 years.
10. Mr. Montesano testified he was working on the night of the Investigators' visit. He stated between 6 and 10 security personnel were working that night. The Licensee had 3 employees posted at the front door of the premises. The employees were at the front door to check identification and to assess the condition of people seeking entry into the licensed premises. There were approximately 5 security employees working inside the establishment.
11. Mr. Montesano testified he remembered the UM and UF and stated the best way to describe their behavior was to say, they were "aggressively showing displays of affection to each other." He testified the patrons did not appear intoxicated. Mr. Montesano testified the UM and UF were focused on each other and were not observed to be stumbling or unsteady on their feet. He explained the Licensee's policy in the event of an intoxicated patron but stated he did not observe these patrons bothering other patrons and did not observe them to be unsteady on their feet. Mr. Montesano was informed by the bartender that the male patron attempted to lick the female's arm. The bartender did not report the patrons were intoxicated.
12. Mr. Montesano testified he confirmed with the bartender that only one drink was served to the patron.
13. Mr. Montesano estimated the Investigators were inside the establishment for 8 to 10 minutes.
14. Mr. Montesano testified the UM and UF once reprimanded regarding their behavior completely changed and they stopped touching each other. He stated they walked out of the licensed premises seemingly fine.

15. The Licensee has held a license under M.G.L. c. 138, § 12 since 2002 with no previous violations.

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 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). See Burlington Package Liquors, Inc. v. Alcoholic Beverages Control Comm’n, 7 Mass. App. Ct. 186, 190 (1979).

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 Di Cicco testified he was inside the licensed premises when he observed the male patron and a female patron attempting to kiss in an uncoordinated fashion as well as attempting to dance in an uncoordinated manner. Investigator Di Cicco further testified he observed the male patron speak to the bartender on duty and then attempt to lick the female patron's arm while still directly in view of the bartender. The Investigator testified that after he formed the opinion the patron was intoxicated and while the patron was exhibiting visible signs of intoxication, the Investigator observed the patron being served an alcoholic beverage by the bartender. (Testimony)

Mr. Montesano testified the male and female patrons did not appear to be intoxicated, rather were aggressive in their displays of affection towards one another. Mr. Montesano testified the male patron did not appear to be unsteady on his feet. Mr. Montesano acknowledged the inappropriateness of the male patron's behavior and testified that once reprimanded, the male patron's demeanor completely changed and he and the female patron walked out of the licensed premises.

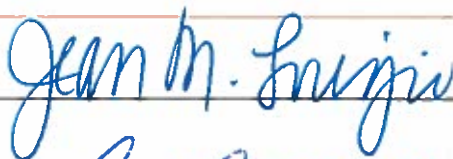
Given these circumstances and the evidence presented, the Commission finds we cannot draw an inference of obvious intoxication at the time of sale with the requisite degree of certainty. Based on the direct evidence in this matter, the Commission finds no violation of M.G.L. c. 138, § 69.

CONCLUSION

Based on the evidence, the Commission finds NO VIOLATION of 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.

ALCOHOLIC BEVERAGES CONTROL COMMISSION

Jean M. Lorizio, Chairman



Crystal Matthews, Commissioner



Deborah Baglio, Commissioner



Dated: May 31, 2022

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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cc: Local Licensing Board
Frederick G. Mahony, Chief Investigator
Kyle E. Gill, Esq., Associate General Counsel
Dennis Keefe, Investigator
Kristen L. Scanlon, Esq.
Administration, File