

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

Jean M. Lorizio, Esq.
Chair

DECISION

**FANNIE'S PLACE INC. D/B/A CHELSEA WALK
416 BROADWAY
CHELSEA, MA 02150
LICENSE#: 0202-00013
HEARD: 7/11/2019**

This is an appeal of the action of the Licensing Board of the City of Chelsea (the "Local Board" or "Chelsea") for suspending the M.G.L. c. 138, § 12 all alcoholic beverages license of Fannie's Place Inc. d/b/a Chelsea Walk ("Chelsea Walk" or the "Licensee") located at 416 Broadway, Chelsea, Massachusetts, for a total of 10 weeks to be served, and for a rollback of hours on Monday to Sunday, 12:00 p.m. to 10:00 p.m.¹ The Licensee timely appealed the Local Board's decision to the Alcoholic Beverages Control Commission (the "Commission" or "ABCC"), and a hearing was held on Thursday, July 11, 2019.

The following documents are in evidence as exhibits:

1. Decision of the Local Board, 4/9/2019;
2. Copy of Licensee's 2019 Liquor License;
3. Chelsea Police Department Incident Report #18-3411-OF dated 11/12/2018;
4. Chelsea Police Department Protective Custody Report #18-1145-AR dated 11/17/2018;
5. Chelsea Police Department Incident Report #18-3450-OF dated 11/17/2018;
6. Chelsea Police Department Incident Report #18-3476-OF dated 11/20/2018;
7. Chelsea Police Department Protective Custody Report #18-1165-AR dated 11/25/2018;
8. Rules and Regulations of the Licensing Board for the City of Chelsea;
9. LLA Decisions for Other Licensees; and
10. Thumb drive of surveillance videos.

At the close of the hearing, the Commission left the record open until August 23, 2019, for the parties to submit post-hearing memoranda and video footage. The Licensee and the Local Board

¹ The Licensee's counsel stated at the hearing before the Commission that the Licensee obtained a stay of the suspension after having served three of the ten weeks.

submitted the documents in a timely manner. The thumb drive containing the video footage has been marked as Exhibit 10. The record is now closed.

There is one (1) audio recording of this hearing and six (6) witnesses testified.

FINDINGS OF FACT

The Commission makes the following findings based on the evidence presented at the hearing:

1. Fannie's Place Inc. d/b/a Chelsea Walk ("Licensee" or "Chelsea Walk") holds a § 12 all alcoholic beverages license and operates a restaurant at 416 Broadway, Chelsea, Massachusetts. Chelsea Walk is open seven days a week with a 1:00 a.m. closing hour. Monday through Saturday it opens at 8:00 a.m. Sunday it opens at 11:00 a.m. (Exhibit 2)

November 12, 2018 Incident

2. On Monday, November 12, 2018, at approximately 5:00 p.m. Chelsea Police Officer Joseph Santiago along with Officer James Farden were on patrol in the vicinity of the licensed premises. While walking near Chelsea Walk, Officers observed a female smoking a cigarette, who was unsteady on her feet and had bloodshot eyes. After approximately 10 minutes, officers observed the female stumble inside the licensed premises. (Testimony; Exhibit 3)
3. Officers entered the licensed premises and approached the female, who was seated at a table. Officers asked the female patron if she was okay. Officers observed that the female had trouble speaking, her eyes were red and bloodshot, and she smelled strongly of alcohol. See id.
4. There was a full pitcher of beer and a pint of beer on the table where the woman and her male friend were sitting. The female stated she had been there three to four hours.² See id.
5. Based on their training and experience, Officers determined the female patron was intoxicated. Officers told the female that she had had too much to drink and should go home. Her male companion escorted the female out of the premises. Officers observed the female had trouble standing upright and walking out of the pub. See id.

November 17, 2018 Incident #1

6. On Saturday, November 17, 2018, at approximately 8:00 p.m., Chelsea Police Officer Joseph Santiago was on uniformed patrol. While Officer Santiago was walking near Chelsea Walk, he observed a bartender escorting a male patron out of the premises. The bartender stated to the officer that the male patron was no longer allowed to be in the pub because he had had too much to drink. (Testimony; Exhibit 4)
7. At this point Police Officers Michael Villanueva and Maria Barbosa arrived on scene to assist Officer Santiago. See id.
8. During questioning, Officer Santiago observed that the male patron was stumbling and having trouble standing upright. His face was flushed, his eyes were red and bloodshot, and he emitted

² The video surveillance recordings submitted to the Commission do not include surveillance from November 12, 2018. (Exhibit 10)

a strong odor of alcohol. Based on his training and experience, Officer Santiago determined the male patron was intoxicated. Eventually, the male had to be taken into protective custody. See id.

November 17, 2018 Incident #2

9. On November 17, 2018, Chelsea Police Officer Nicole McLaughlin observed a male individual stumble out of Chelsea Walk. (Testimony; Exhibit 5)
10. Officer McLaughlin observed the male individual had difficulty opening the front door as he attempted to leave the premises. He appeared very unsteady on his feet and after taking approximately ten steps on the sidewalk, he fell to the ground at the Broadway entrance to the premises. See id. The officer contacted Chelsea Control and requested EMS to respond for an evaluation. See id.
11. Video surveillance from inside the licensed premises on November 17, 2018, shows the man drinking two beers, which were served one after the other, and a cup of chili. After service of the second beer, the patron appeared to have uncoordinated movements and slow blinks, and when he got up to leave, he had to steady himself by holding onto barstools. (Exhibit 10)

November 20, 2018 Incident

12. On Tuesday, November 20, 2018, at approximately 1:15 a.m. Officers Hysa and LaMarra were on routine patrol in the Bellingham Square area. Officers observed one male on the ground in front of Chelsea Walk and another male who was barely standing on his feet. (Testimony; Exhibit 6)
13. Both men were taken to the hospital by ambulance. See id.
14. Video surveillance from inside the premises on November 20, 2018 show people drinking alcoholic beverages. While one of the patrons appeared intoxicated inside the premises, there is no evidence that he was served an alcoholic beverage after he began showing signs of intoxication. (Exhibit 10)
15. Video surveillance also shows that the bartender saw other patrons help the heavily intoxicated patron walk to the exit of the premises and outside the front door. See id. The legs and feet of a person are also seen on the ground outside the front door of the premises, as if a person was laying down outside. See id.

November 25, 2018 Incident

16. On Sunday, November 25, 2018, at approximately 1:00 a.m., Officer Christopher Troisi conducted a bar closing in front of Chelsea Walk. Officer Troisi observed a male person ("Male A") swaying back and forth while he urinated on the wall which leads down to Luther Place from Broadway. Male A noticed the police cruiser and attempted to walk away. (Testimony; Exhibit 7)
17. Officer Triosi approached Male A and observed that he had red glassy eyes and slurred speech, was unsteady on his feet, emitted a strong odor of alcohol, and was unable to answer the officer's questions. Based on his training and experience, Officer Triosi determined that Male

A was intoxicated. Officer Triosi placed Male A in protective custody. See id.

18. Video surveillance from November 25, 2018 does not show any patrons evidencing signs of intoxication before service of any alcoholic beverages. (Exhibit 10)

November 25, 2018 Incident

19. In review of the video surveillance from November 25, 2018, a second male person ("Male B"), who had been seated next to Male A in the licensed premises, was served a can of beer. The bartender is then seen pouring a clear liquid from a glass bottle into a glass and serving the glass of the beverage to Male B. After some time, Male B moved the glass away from him on the bar, towards the bartender service area. The bartender then served Male B another can of beer. Male B is then seen reaching for and retrieving the glass that he had recently pushed away. Male B is then seen furtively putting the new, unopened can of beer under his coat. (Exhibit 10)

Local Board's Decision

20. The Local Board held a hearing on April 3, 2019, for alleged violations of: M.G.L. Ch. 138, § 69 Sale or Delivery of an Alcoholic Beverage to an Intoxicated Person and violations of Chelsea Licensing Commission Rules and Regulations ("Local Rule"): 2.08(p) sale of alcohol to an intoxicated person; 2.09(e) noise, disturbance, misconduct, disorder or act outside/adjacent to the licensed premises; and 2.09(h) failure to provide video surveillance footage. (Exhibit 1)
21. By decision dated April 9, 2019, the Local Board unanimously voted and determined that the Licensee violated:
- a. M.G.L. c. 138, § 69 and Local Rule 2.08(p) for service to intoxicated on November 12, 2018, November 17, 2018, November 20, 2018, and November 25, 2018;
 - b. 204 CMR 4.03(1(b) and Local Rule 2.08(c)(2) for serving more than two drinks on November 25, 2018;³ and
 - c. Local Rule 2.09(e) by leaving a patron on the sidewalk on November 20, 2018 and permitting a patron to urinate in public immediately outside the licensed premises on November 25, 2019.⁴

(Exhibit 1)

22. In finding these violations, the Local Board,
- a. reduced the Licensee's hours of operation to Monday to Sunday, 12:00 p.m. to 10:00 p.m. effective immediately;
 - b. suspended the license for one week to be served for serving an intoxicated person relative to the November 12, 2018 incident;
 - c. suspended the license for two weeks to be served for serving an intoxicated person on November 20, 2018;
 - d. suspended the license for three weeks to be served for serving in excess of two drinks to one person on November 25, 2018; and

³ According to the Decision, the Local Board never gave notice to the Licensee for this alleged violation-- 204 CMR 4.03(1(b) and Local Rule 2.08(c)(2). (Exhibit 1)

⁴ The Decision has these two dates flip-flopped for these two events. (Exhibit 1)

e. suspended the license for four weeks to be served for permitting a disorder in the environs of the premises on November 20, 2018 and November 25, 2018.
The weeks suspended were to run consecutively, and the Licensee was to serve a total of 10 weeks, effective upon receipt of the decision. (Exhibit 1)

23. The Licensee timely appealed the Local Board's decision to the ABCC.

24. Chelsea Walk had received no prior discipline from the Local Board or the ABCC.
(Testimony)

DISCUSSION

Licenses to sell alcoholic beverages are a special privilege subject to public regulation and control, Connolly v. Alcoholic Beverages Control Comm'n., 334 Mass. 613, 619 (1956), for which States have especially wide latitude pursuant to the Twenty-First Amendment to the United States Constitution. Opinion of the Justices, 368 Mass. 857, 861 (1975).

Chapter 138 was "enacted . . . to serve the public need and . . . to protect the common good." M.G.L. c. 138, § 23. In order to effectuate the purpose of Chapter 138, the Commission has "general supervision of the conduct of the business of manufacturing, importing, exporting, storing, transporting and selling alcoholic beverages. . . ." M.G.L. c. 10, § 71. As part of these "comprehensive powers of supervision over licensees," Connolly, 334 Mass. at 617, the Commission has the authority to grant, revoke and suspend licenses. "[T]he purpose of discipline is not retribution, but the protection of the public." Arthurs v. Bd. of Registration in Medicine, 383 Mass. 299, 317 (1981) (emphasis supplied).

Pursuant to M.G.L. Ch. 138, § 67, "[t]he ABCC is required to offer a de novo hearing, that is to hear evidence and find the facts afresh. As a general rule the concept of a hearing de novo precludes giving evidentiary weight to the findings of the tribunal from whose decision an appeal was claimed." Dolphino Corp. v. Alcoholic Beverages Control Comm'n., 29 Mass. App. Ct. 954, 955 (1990) citing United Food Corp v. Alcoholic Beverages Control Comm'n., 375 Mass. 240 (1978). The findings of a local licensing board are "viewed as hearsay evidence, [and] they are second-level, or totem pole hearsay, analogous to the non-eyewitness police reports in Merisme v. Board of Appeals on Motor Vehicle Liab. Policies and Bonds, 27 Mass. App. Ct. 470, 473 – 476 (1989)." Dolphino, 29 Mass. App. Ct. at 955.

The Licensee has an obligation under 204 C.M.R. 2.05(2) to maintain control over the premises and to comply with Chapter 138 and local regulations. The responsibility of the Licensee is to "exercise sufficiently close supervision so that there is compliance with the law on the premises." Rico's of the Berkshires, Inc. v. Alcoholic Beverages Control Comm'n., 19 Mass. App. Ct. 1026, 1027 (1985) (table). A licensee who sells alcohol is "bound at his own peril to keep within the condition of his license." Burlington Package Store, Inc. v. Alcoholic Beverages Control Comm'n., 7 Mass. App. Ct. 186, 190 (1979); accord Commonwealth v. Gould, 158 Mass. 499, 507 (1893). "It is, thus, quite possible for a Licensee to offend the regulatory scheme without scienter." Rico's of the Berkshires, 19 Mass. App. Ct. at 1027.

In order for the Commission to make a finding, there must be substantial evidence that a violation has occurred. "Substantial evidence of a violation is more than a mere scintilla. It means such

relevant evidence as a reasonable mind might accept as adequate to support a conclusion.” Consol. Edison Co. of New York v. N.L.R.B., 305 U.S. 197, 229 (1938); accord Charlesbank Rest. Inc. v. Alcoholic Beverages Control Comm’n, 12 Mass. App. Ct. 879 (1981).

The Local Board has the burden of producing satisfactory proof that the Licensee committed the violations that occurred.

I. Service to an Intoxicated

The Licensee is charged with service to intoxicated persons in violation of M.G.L. c. 138, § 69 and Local Rule 2.08(p)⁵. “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; accord McGuiggan v. New England Tel. & Tel. Co., 398 Mass. 152, 161 (1986).

In order to prove this violation, the Local Board must show: (1) that an individual was intoxicated 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. Vickowski, 422 Mass. at 609. A Local Board must produce some evidence 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). As explained in Vickowski,

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. 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

⁵ Local Rule 2.08(p) provides that, “[a]lcoholic beverage licensees are forbidden to make a sale or delivery of alcoholic beverages or alcohol to a person who is intoxicated.” (Exhibit 8)

in favor of commercial establishment affirmed when there was no evidence that patron was served alcohol after he began exhibiting obvious signs of intoxication).

422 Mass. at 610.

“The [Local Board] may prove that an individual is intoxicated by direct or circumstantial evidence or a combination of the two.” 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 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; accord P.J. Liacos, Massachusetts Evidence § 4.2, at 118-119; § 5.8.6, at 242-244 (6th ed. 1994 & Supp. 1994).

However, “[e]vidence of apparent intoxication, or of elevated blood alcohol levels, at some later point in time does not, by itself, suffice to show that the patron’s intoxication was evident at the time the last drink was served.” Douillard v. LMR, Inc., 433 Mass. 162, 165 (2001). Yet, such evidence may be used to bolster other evidence concerning a patron’s condition at the time alcohol was served. Id. at 166. Courts are “reluctant to accept evidence of subsequent, obvious intoxication as a surrogate for evidence of a patron's demeanor at the relevant time.” Vickowski, 422 Mass. at 612. The reluctance to accept this type of evidence “stems from the uncertainties of the situation, including the possible delayed impact of the consumption of alcohol, and the unknown effect on a patron of the last drink served to him by a licensee.” Id.

In this matter, there were five alleged instances of service to an intoxicated person under M.G.L. c. 138, § 69 and Local Rule 2.08(p). In all five instances, the police officers who observed the intoxicated persons, observed the patrons after they had been served their last alcoholic beverages. (Testimony; Exhibits 3-7) The case law summarized above is clear that a violation of § 69 does not occur unless the patron is showing signs of intoxication before he or she is served an alcoholic beverage. Vickowski, 422 Mass. at 609. In other words, there must be visible intoxication and then service, as opposed to service and then visible intoxication in order for a finding of a § 69 violation. See id. Here, there was no evidence that any of the subject patrons were showing signs of intoxication at the time they were sold or delivered alcoholic beverages.⁶ (Testimony; Exhibits 3-7) The Commission viewed the video surveillance (Exhibit 10), and while one patron on November 20, 2018 appeared heavily intoxicated—to the extent that he eventually needed assistance walking out of the premises—the video does not evidence him showing signs of intoxication at the time the bartender last served him an alcoholic beverage. (Exhibit 10) For these reasons, the Commission finds no violation of M.G.L. c. 138, § 69 or Local Rule 2.08(p).

II. Service of More Than Two Drinks to One Patron at One Time

⁶ In the Joint Prehearing Memorandum, in the agreed facts section, it states that, “[t]he November 12 and 20, 2018 instances were admitted by Chelsea Walk Manager Angela Palmieri.” (Joint Prehearing Memo, at 2) However, it is unclear as to what is meant by “instances,” and therefore, it is unclear as to what the Licensee actually stipulated.

The Local Board found a violation of 204 CMR 4.03, which provides that “(1) No licensee or employee, or agent of a licensee shall: . . . (b) Deliver two or more drinks to one (1) person at a time.”⁷ Likewise, the Local Board found that the Licensee violated its own regulation on the matter, Local Rule 2.08(c)(2), which is substantially the same as the CMR. (Exhibit 8)

The fatal issue with the Local Board’s finding that the Licensee served a patron more than two alcoholic beverages at one time is that the Local Board never gave the Licensee notice that it was considering such a violation. (Exhibit 1) The Decision lists the charges of which the Local Board gave notice to the Licensee on March 18, 2019, and neither 204 CMR 4.03 nor Local Rule 2.08(c)(2) is listed.

A licensee is entitled to “sufficient notice of the issues involved to afford them reasonable opportunity to prepare and present evidence and argument” at an administrative hearing. M.G.L. c. 30A, § 11(1). See 801 CMR 1.02(6)(a)(1)(d) (requiring, under the Informal (Fair Hearing) Rules, that notice of action by an agency to suspend include the regulation or other legal authority on which the action is based). The requirement under M.G.L. c. 138, § 64, that there be satisfactory proof of a violation of the law or a condition of the license is not an empty formality. The Commission cannot ignore this fundamental due process right that the Licensee is entitled to sufficient notice, which it did not receive here, likely substantially prejudicing it. See Deann, Inc. d/b/a The Lion’s Den, Revere (ABCC Decision May 4, 2005) (rights of licensee substantially prejudiced where local board’s notice to licensee did not cite the law that licensee allegedly violated or any specifics as to the incident that allegedly caused a violation); Higgins v. Bd. of License Com’rs of City of Quincy, 308 Mass. 142, 148 (1941) (determining that where “license was revoked upon a ground other than that contained in the notice [and t]he decision was based upon matters concerning which the petitioner had never been given an opportunity to answer . . . [the] administrative proceeding [was] lacking in the ‘rudiments of fair play long known to our law.’”). Contrast Aristocratic Restaurant of Massachusetts, Inc. v. Alcoholic Beverages Control Comm’n, 374 Mass. 547, 550-551 (1978) (while licensee did not have adequate notice of the facts behind the charges before the Local Board, it was not prejudiced before the Commission because it learned of the facts at the Local Board hearing); New Palm Gardens, Inc. v. Alcoholic Beverages Control Comm’n, 11 Mass. App. Ct. 785, 788 (1981) (Commission’s errors in referring to the wrong statute in the hearing notice and part of the decision were insignificant where “licensee was well aware of the charges made against it”).⁸

The Commission finds that the Licensee cannot be held accountable for violations of 204 CMR 4.03 or Local Rule 2.08(c)(2), where the Licensee did not receive notice before the Local Board hearing that those charges were being made against it.

⁷ 204 CMR 4.03 is commonly referred to as the “Happy Hour” regulation.

⁸ Even if the Licensee had received notice of this alleged violation, the Commission would not find that the Licensee violated 204 CMR 4.03 or Local Rule 2.08(c)(2) because each time the patron in question was served an alcoholic beverage, he only had one other alcoholic beverage in front of him. (Exhibit 10) On the surveillance video, the patron is seen with a can of beer and a glass of a clear liquid. He moved the glass away from him, suggesting that he was finished with it. However, once he was served a second can of beer, he retrieved the glass from where he had placed it. See id.

III. Permitting a Disturbance/Disorder in Front of/ Adjacent to the Licensed Premises

The Local Board found that the Licensee violated Local Rule 2.09(e), which provides that,

[w]hen any noise, disturbance, misconduct, disorder, act, or activity occurs in the licensed premises, or in the area in front of or adjacent to the licensed premises, . . . which in the judgment of the Commission adversely affects the protection, health, welfare, safety or repose of the residents of the area in which the licensed premises are located, or results in the licensed premises becoming the focal point for police attention, or is offensive to public decency, the licensee may be held in violation of the license and subject to proceedings for suspension, revocation or modification of the license.

(Exhibit 8) There are two incidents that the Local Board points to as evidence of the Licensee violating Local Rule 2.09(e). The first occurred on November 20, 2019 when two intoxicated men were discovered by Chelsea police officers outside the licensed premises. (Testimony; Exhibit 6) One of the two men was on the ground, and the other was barely standing. See id. Surveillance video shows that one man was helped out of the licensed premises, as he was barely able to stand. (Exhibit 10) Another video shows the outside entrance to the premises with people holding one man up, and a later shot of the front entrance shows the legs and feet of a person on the ground outside the front door of the premises, as if a person was laying down on the ground. See id. Video surveillance also shows that the bartender saw other patrons help the heavily intoxicated patron walk to the exit of the premises and outside the front door. See id. Based on these facts, the Commission is persuaded that the Licensee violated Local Rule 2.09(e) because a “disorder” or “act” occurred “in the area [directly] in front of . . . the licensed premises” which “affect[ed] the . . . repose of the residents of the area in which the licensed premises are located, [and] result[ed] in the licensed premises becoming the focal point for police attention.” (Exhibit 8)

The second incident occurred on November 25, 2018 and involved a man urinating on the wall leading to Luther Place from Broadway. (Testimony; Exhibit 7) The man was a former patron of the Licensee’s and appeared intoxicated. See id. While the incident was “misconduct” and a “disorder” which occurred “adjacent to the licensed premises” which “affect[ed] the . . . repose of the residents of the area in which the licensed premises are located, [and] result[ed] in the licensed premises becoming the focal point for police attention,” the Commission finds that the Licensee should not be held accountable under this Local Rule for actions of their patrons that occur outside the premises and which they cannot see and for which they have no control. (Exhibit 8) Unlike the incident above, which occurred in the front entrance of the premises and which the bartender saw, there is no evidence that the incident that occurred on November 25, 2018 happened in sight of any of Licensee’s employees. The incident appears to have occurred off the licensed premises and around the corner from the Licensee’s front entrance.

The Commission concludes that the Licensee violated one count of Local Rule 2.09(e).

IV. Reasonableness of Penalty Issued by Local Board:

With the Commission’s finding that the Licensee permitted the violation of Local Rule 2.09(e), as

determined by the Local Board, the Commission must determine if the penalty issued by the Local Board is appropriate. "The burden is on the licensee to prove the penalty imposed should not be approved." Metrowest Tropical Foods, Inc. (ABCC Decision Sept. 20, 2006).

The Local Board Rules are silent regarding the length of time/period for a suspension for the violations committed. The Licensee argues that it had no record of prior violations until the Local Board found that it committed these aforementioned violations.

The Local Board initially suspended the Licensee's license for a total of ten weeks. The Licensee has already served three of the ten weeks. The Commission finds that a three week suspension for the violation of Local Rule 2.09(e) is appropriate.

The Local Board also rolled back the Licensee's hours. The Licensee is open seven days a week, and was licensed to be open until 1:00 a.m. every day with an opening hour Monday through Saturday of 8:00 a.m. and Sunday of 11:00 a.m. (Exhibit 2) The Decision rolled back the hours to Monday to Sunday, 12:00 p.m. to 10:00 p.m. Given the Commission's findings herein, the Commission recommends that the Local Board not roll back the Licensee's hours.

CONCLUSION

The Alcoholic Beverages Control Commission ("Commission") DISAPPROVES the action of the Licensing Board of the City of Chelsea in finding that Fannie's Place Inc. d/b/a Chelsea Walk committed violations of:

- 1) M.G.L. Ch. 138, § 69 and Local Rule 2.08(p), Sale or Delivery of an Alcoholic Beverage to an Intoxicated Person, or
- 2) 204 CMR 4.03 nor Section 2.08(c)(2).


The Commission APPROVES the action of the Licensing Board of the City of Chelsea in finding that Fannie's Place Inc. d/b/a Chelsea Walk committed violations of:

- 1) Local Rule 2.09(e) noise, disturbance, misconduct, disorder or act outside/adjacent to the licensed premises.

The Local Board initially suspended the Licensee's license for a total of ten weeks. The Licensee has already served three of the ten weeks. The Commission finds that a three week suspension for the violation of Local Rule 2.09(e) is appropriate. However, consistent with this decision, the Commission recommends that the Local Board not roll back the Licensee's hours.

The Commission remands the matter to the Local Board with the recommendation that the Licensee's suspension equate to time-served and that there be no roll back of hours.

ALCOHOLIC BEVERAGES CONTROL COMMISSION

Elizabeth Lashway, Commissioner 

Kathleen McNally, Commissioner 

Dated: October 4, 2019

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: James J. Cipoletta, Esq.
Strephon Treadway, Esq.
Local Licensing Board
Frederick G. Mahony, Chief Investigator
Administration, File