



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

Jean M. Lorizio, Esq.
Chair

NOTICE OF SUSPENSION

December 30, 2019

**FEDEROE LLC D/B/A KELLY'S 134
50 ROUTE 134
DENNIS, MA 02660
LICENSE#: 03535-RS-0278
VIOLATION DATE: 3/15/2019
HEARD: 12/17/2019**

After a hearing on December 17, 2019, the Commission finds Federoe LLC d/b/a Kelly's 134 violated M.G.L. C. 138 § 69-Sale or Delivery of an Alcoholic Beverage to an Intoxicated Person (2 counts).

The Commission suspends the license for four (4) days of which two (2) days will be served and two (2) days will be held in abeyance for a period of two (2) years provided no further violations of Chapter 138 or Commission Regulations occur

The suspension shall commence on Monday, February 3, 2020 and terminate on Tuesday, February 4, 2020. The license will be delivered to the Local Licensing Board or its designee on Monday, February 3, 2020 at 9:00 a.m. It will be returned to the licensee on February 5, 2020.

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 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

Jean M. Lorizio
Chairman

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cc: Local Licensing Board
Frederick G. Mahony, Chief Investigator
Kyle E. Gill, Esq., Associate General Counsel
Lisa Watson, Investigator
Jamie Binienda, Investigator
Administration, File



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DECISION

**FEDEROE LLC D/B/A KELLY'S 134
50 ROUTE 134
DENNIS, MA 02660
LICENSE#: 03535-RS-0278
VIOLATION DATE: 3/15/2019
HEARD: 12/17/2019**

Federroe LLC d/b/a Kelly's 134 (the "Licensee") holds an alcohol license issued pursuant to M.G.L. c. 138, § 12. The Alcoholic Beverages Control Commission ("Commission" or "ABCC") held a hearing on Tuesday, December 17, 2019, regarding an alleged violation of M.G.L. C. 138 § 69-Sale or Delivery of an Alcoholic Beverage to an Intoxicated Person (2 counts). Prior to the commencement of the hearing, the Licensee stipulated to the facts alleged in Investigator Watson's Report.

The following documents are in evidence:

1. Investigator Watson's Investigative Report;
2. Licensee Stipulation of Fact;
3. Copy of New License Approval, 7/28/2017.

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

FINDINGS OF FACT

1. On Friday, March 15, 2019, at approximately 10:41 p.m., Investigators Binienda and Watson ("Investigators") conducted an investigation of the business operation of Federroe LLC d/b/a Kelly's 134 to determine the manner in which its business was being conducted.
2. Investigators' attention was drawn to an individual wearing a "Dorchester" tee-shirt, Jim, who appeared to be intoxicated. Jim was swaying from side to side while he stood at the bar and he appeared to be holding on to the bar for balance. Investigators observed that Jim was holding a Stella Artois beer and a whiskey drink.
3. At approximately 10:57 p.m., Investigators observed that Jim was served another Stella Artois beer and another whiskey drink. Jim continued to show signs of intoxication over

the course of 20 minutes as Investigators witnessed Jim walk around the bar in full view of several staff members.

4. Investigators observed Jim taking uneven steps as he walked to the bathroom. From time to time Jim sat down and then stood up in an awkward uncoordinated manner. Investigators observed Jim standing with his back to the bar. He appeared to lose his balance and fall backwards into the edge of the bar.
5. Based on their training and experience, Investigators formed the opinion that Jim was intoxicated.
6. Investigators observed that Jim continued to move slowly and appear drowsy. Jim appeared to be closing his eyes for long periods of time. His head bobbed up and down as he sat at the bar. When he stood up, he swayed. The bar stool was not directly behind him when he attempted to sit down, so he missed the stool. His movements appeared uncoordinated and unsteady as he sat on the stool.
7. Jim stood facing the bartender. When she came over to him, she asked if he wanted another round. Jim waved his hand and shook his head no. Jim later pulled out his money and began to look at it.
8. Approximately three minutes later as Jim faced the bar with his money out, the bartender walked by and Jim handed her \$40.00. The bartender then asked Jim, "Do you want another round?" Jim said "no" but continued to give her the \$40.00. He then hesitated and pointed to the right, waved his hands around and said, "get me a fireball." Investigators observed that Jim's speech was slurred as he was speaking to the bartender.
9. At 11:49 p.m., Investigators observed the bartender deliver a shot of fireball whiskey and a beer to Jim.
10. Jim sang a karaoke song and appeared to have difficulty following the words. His speech was slurred, his eyes were closed, and he was unsteady as he walked to and from the stage area.
11. Investigators' attention was then drawn to a second individual, Carlyann, wearing a Bruins sweatshirt. Investigators observed Carlyann walking around the bar and hugging people for an extended period, with her eyes closed.
12. Investigators observed Carlyann had trouble walking. She shuffled her feet instead of picking them up and she took very wide steps. Carlyann's eyes were closed, her movements were slow and delayed as she sipped her drink. When adjusting her hat and glasses, Carlyann moved in jerking motions.
13. Investigators observed Carlyann stumble several times as she walked through the bar. They observed Carlyann stumbling between several groups of people, stopping for several minutes to talk to them.
14. Based on their training and experience, Investigators formed the opinion that Carlyann was intoxicated.

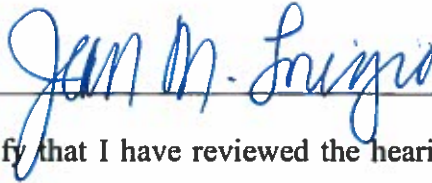
15. Investigators observed Carlyann head back towards the bar and engage in conversation with another male patron with a Cape sweatshirt while standing at the bar. Carlyann, with her eyes almost closed, stood directly in front of the bartender and ordered a drink.
16. Investigators observed the male patron in the Cape sweatshirt as he held up two fingers and ordered from the bartender with Carlyann standing next to him. Investigators heard Carlyann sang karaoke with slurred speech.
17. At approximately 11:25 p.m., Investigators observed the bartender deliver two alcoholic beverages [to Carlyann and the male patron] and said, "it's here, when she is done singing." Investigators believed the one alcoholic beverage was a shot, a combination of peach alcohol and Jägermeister, since the glass in which it was served was only three-quarters full.
18. Investigators observed Carlyann retrieve her drink and walk over to another table in the back of the bar. Investigators observed Carlyann fall and when she stood up off the ground, she punched the table next to her.
19. The male patron in the cape sweatshirt walked over to Carlyann after she fell. Carlyann pushed him aggressively and attempted to punched him in an uncoordinated manner but she missed. Carlyann clenched her face and fists and made loud aggressive noises.
20. At approximately 11:48 p.m., Investigators observed Carlyann back at the bar where she was served a beer by the bartender.
21. Investigators spoke to the bartender, Sarah Hall. Sarah admitted that Jim was intoxicated but that she was calling a cab for him. She apologized and said, "I've been a bartender for 15 years, I know better."
22. Investigators then spoke to the manager on duty, Wendy Eldredge, and informed her of the violations and that a report would be filed with the Chief Investigator for review.
23. The Licensee has held a license under M.G.L. c. 138, § 12 since 2017 with no previous violations.
24. The Licensee acknowledged at the Commission hearing that he was not present on the date of the incident and did not become aware of the violations until six (6) weeks later, when he received the Investigator's Report.

CONCLUSION

Based on the evidence, the Commission finds the Licensee violated M.G.L. Ch. 138 § 69 Sale or Delivery of an Alcoholic Beverage to an Intoxicated Person (1 count). Therefore, the Commission **suspends the license for four (4) days of which two (2) days will be served and two (2) days will be held in abeyance for a period of two (2) years provided no further violations of Chapter 138 or Commission Regulations occur.**

ALCOHOLIC BEVERAGES CONTROL COMMISSION

Jean M. Lorizio, Chairman



I, the undersigned, hereby certify that I have reviewed the hearing record and concur with the above decision.

Crystal Matthews, Commissioner



Dated: December 30, 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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