

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

Jean M. Lorizio, Esq.
Chairman

NOTICE OF SUSPENSION

December 11, 2019

**QING MING LLC D/B/A THE PILOT HOUSE
1-3 PORTER & 83 MAIN STREET
GLOUCESTER, MA 01930
LICENSE#: 00032-RS-0450
VIOLATION DATE: 7/19/2019
HEARD: 11/12/2019**

After a hearing on November 12, 2019, the Commission finds Qing Ming LLC d/b/a The Pilot House violated M.G.L. 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 four (4) days to be served.

The suspension shall commence on Monday, January 27, 2020 and terminate on Thursday, January 30, 2020. The license will be delivered to the Local Licensing Board or its designee on Monday, January 27, 2020 at 9:00 a.m. It will be returned to the licensee on January 31, 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
Katelyn Quinn, Investigator
Dennis Keefe, Investigator
Lisa Watson, Investigator
Administration, File



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DECISION

**QING MING LLC D/B/A THE PILOT HOUSE
1-3 PORTER & 83 MAIN STREET
GLOUCESTER, MA 01930
LICENSE#: 00032-RS-0450
VIOLATION DATE: 7/19/2019
HEARD: 11/12/2019**

Qing Ming LLC d/b/a The Pilot House (the "Licensee" or "Pilot House") holds an all alcoholic beverages license issued pursuant to M.G.L. c. 138, § 12. The Alcoholic Beverages Control Commission (the "Commission") held a hearing on Tuesday, November 12, 2019, regarding an alleged violation of M.G.L. c. 138, § 69 – Sale or delivery of an alcoholic beverage to an intoxicated person (1 Count) which occurred July 19, 2019, according to Investigator Quinn's report.

The following documents are in evidence as exhibits:

1. Investigator Quinn's Investigative Report;
2. Copy of Transfer Application Approval, 9/7/2011.

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

FINDINGS OF FACT

1. On Friday, July 19, 2019, at approximately 11:15 p.m., Investigators Keefe, Watson, and Quinn ("Investigators") conducted an investigation of the business operation of Qing Ming LLC d/b/a The Pilot House to determine the manner in which its business was being conducted. The bar was very well lit during the time these observations were made. (Testimony, Exhibit 1)
2. At approximately 11:20 p.m., Investigators' attention was drawn to an unidentified male ("UM") wearing a black scally cap and seated at the bar. Investigators observed the UM fumbling with his money and hiccupping. (Testimony, Exhibit 1)
3. Investigators observed the bartender on duty, Tony Chen, pouring an alcoholic beverage, comprised of three-fourths rum and one-fourth Coke® into a pint glass. At approximately 11:22 p.m., Investigators observed the bartender serve the rum and Coke® to the UM. (Testimony, Exhibit 1)

4. Tony Chen is an owner of the licensed business. (Testimony, Exhibit 1)
5. At approximately 11:23 p.m., Investigators observed the UM trying to put back dollar bills and change into his wallet. At approximately 11:29 p.m., the UM fumbled with his money before standing and walking over to the juke box. (Testimony, Exhibit 1)
6. At approximately 11:30 p.m., Investigators observed that the UM had almost finished his rum and Coke®. This was approximately just seven minutes after he had been served the alcoholic beverage. (Testimony, Exhibit 1)
7. Investigators then observed the UM speak to the bartender/licensee. Investigators observed the UM's speech was slurred. At approximately 11:31 p.m., the UM asked the bartender/licensee to turn up the music. (Testimony, Exhibit 1)
8. Investigators observed the UM had difficulty pressing the buttons on the juke box and his movements were slow and delayed when attempting to press the song buttons. Although the UM was standing next to the juke box, he appeared to have difficulty seeing the screen. (Testimony, Exhibit 1)
9. Investigators observed the UM blinking his eyes very slowly and then he closed his eyes, leaned backwards, and appeared to lose his balance. (Testimony, Exhibit 1)
10. Investigators observed that the UM missed the straw when he attempted to take a sip of his alcoholic beverage. Based on their training and experience, Investigators formulated the opinion that the UM was intoxicated. (Testimony, Exhibit 1)
11. At approximately 11:35 p.m., Investigators observed a food order of crab Rangoon and chicken wings was delivered to the UM. The UM ate a small amount of the food, and the rest was wrapped up to-go shortly after it had been delivered. The UM then asked the bartender/licensee and staff walking by, for a drink and he became agitated when no one acknowledged him. (Testimony, Exhibit 1)
12. At approximately 11:43 p.m., Investigators observed the bartender/licensee tell the UM he needed to pay for his food order. The UM refused, stating that he had already paid for the food. Investigators observed the UM argue with the bartender/licensee for several minutes before the bartender/licensee walked away to serve other customers. (Testimony, Exhibit 1)
13. Investigators observed the UM ask again for a drink with his money fanned out. The UM appeared agitated, he had trouble standing up from the bar stool, and he had trouble taking out his money. The UM then paid for his food order. The UM then mocked the bartender/licensee's accent by loudly saying, "you get me a drink," "I your best customer," and "you call me a cab." (Testimony, Exhibit 1)
14. At approximately 11:54 p.m., Investigators observed the bartender/licensee serve the UM another rum and Coke®. Again, the alcoholic beverage was comprised of three-fourths rum and one-fourth Coke® into a pint glass. The UM repeatedly called the bartender/licensee's name and the bartender/licensee waved his hand at the UM to imply he was ignoring him. The bartender/licensee continued to serve other patrons. The Investigators observed the UM finish his drink. (Testimony, Exhibit 1)
15. Investigators approached the UM in an effort to identify him to the bar staff. The UM stated, "why the f**k are you here? Who do you think you are?" The UM proceeded to

get in the Investigator's personal space to which the Investigator said, "Sir, we are just making sure everyone gets home safe" and the UM replied, "yeah, I am going outside and getting a cab. I never drunk and drive." The UM continued to yell and swear in an agitated fashion at the Investigator. Investigator had to ask the UM five times to back up. The UM then spoke to the Investigator in a threatening manner, telling him to meet him [UM] outside in the parking lot. (Testimony, Exhibit 1)

16. Investigators contacted the Gloucester Police for back up since the UM's behavior was escalating. The UM then exited the building and eventually got into his taxi and left the premises. The Gloucester Police arrived on scene shortly thereafter. (Testimony, Exhibit 1)
17. Investigators notified bartender/licensee Tony Chen of the violation. Mr. Chen stated that the UM did not have a tab, he was a regular customer, and that "he is a little cuckoo." (Testimony, Exhibit 1)
18. Investigators advised Mr. Chen of the violation and that a report would be submitted to the Chief Investigator for further review. (Testimony, Exhibit 1)
19. The Licensee has held a license under M.G.L. c. 138, § 12 since 2011 with no prior violations. (Exhibit 2)

DISCUSSION

The Licensee is charged with committing the violation of service to an intoxicated person in violation of M.G.L. c. 138, § 69. The statute states "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. To find a violation of this statute, the Commission must be presented with substantial evidence that a violation has occurred. 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, 710 (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 this statute, substantial evidence must be presented that (1) while in or on a licensed premises;(2) a visibly intoxicated patron;(3) was sold or delivered an alcoholic beverage;(4) by an employee of the licensee, who knew or reasonably should have known, that this patron was intoxicated prior to the sale/service/delivery of the alcoholic beverage. That an individual is intoxicated may be shown "by direct evidence, circumstantial evidence, or a combination of the two." Douillard v. LMR, Inc., 433 Mass. 162, 165 (2001). There must be 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). "[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).

The evidence presented to the Commission was that three (3) experienced Investigators, who were inside the licensed premises, made observations of the patron ("UM") exhibiting signs of intoxication on the evening of the incident. Specifically, the UM was showing outward manifestations of intoxication (glassy red eyes, lack of balance, slurred speech, hiccupping, lack of physical coordination/dexterity), so that the Investigators' attentions were drawn to him.

Investigators Quinn and Watson both testified that they observed UM fumbling with his wallet, exhibiting slurred speech, glassy red eyes and physically swaying around the juke box. (Testimony). At that time based on their observations, training, and experience, Investigators Quinn and Watson formed the opinion that patron UM was exhibiting outward and obvious signs of intoxication, while being served an alcoholic beverage, three-fourths rum and one-fourth Coke® in a pint glass, by the bartender/licensee Mr. Chen. (Testimony). See Westerback v. Harold F. LeClair Co., Inc., 50 Mass. App. Ct. 144, 144-145 (2000) (patron served despite having difficulty walking, falling down, appearing depressed and sleepy, and having slurred speech).

Based on the totality of direct evidence in the form of testimony and facts presented, the Commission finds by substantial evidence that an employee of the licensee served an alcoholic beverage to a visibly intoxicated patron inside The Pilot House resulting in a violation of M.G.L. c. 138 § 69.

CONCLUSION

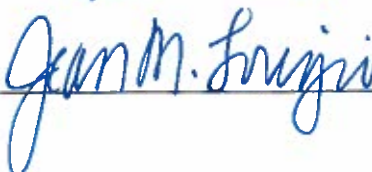
Based on the evidence, the Commission finds the Licensee violated M.G.L. c. 138, § 69- Sale or delivery of an alcoholic beverage to an intoxicated person (1 Count). Therefore, the Commission **suspends the license for a period of four (4) days to be served.**

ALCOHOLIC BEVERAGES CONTROL COMMISSION

Crystal Matthews, Commissioner



Jean M. Lorizio, Chairman



Dated: December 11, 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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