

*The Commonwealth of Massachusetts*  
*Department of the State Treasurer*  
*Alcoholic Beverages Control Commission*  
*Boston, Massachusetts 02114*

*Deborah B. Goldberg*  
*Treasurer and Receiver General*

*Kim J. Gainsboro, Esq.*  
*Chairman*

NOTICE OF SUSPENSION

June 14, 2016

**MAJESTIC DRAGON RESTAURANT INC.**  
**81 NEWBURYPORT TPK**  
**IPSWICH, MA 01938**  
**LICENSE#: 056600020**  
**VIOLATION DATE: 12/11/15**  
**HEARD: 06/07/16**

After a hearing on June 7, 2016, the Commission finds Majestic Dragon Restaurant Inc. 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 seventeen (17) days of which ten (10) days will be served and seven (7) 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 April 29, 2015, 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 thirteen (13) days.

The suspension shall commence on Wednesday, August 3, 2016 and terminate on Monday, August 15, 2016. The license will be delivered to the Local Licensing Board or its designee on Wednesday, August 3, 2016 at 9:00 A.M. It will be returned to the licensee Tuesday, August 16, 2016.

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.

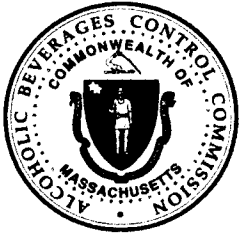
ALCOHOLIC BEVERAGES CONTROL COMMISSION



Kim S. Gainsboro  
Chairman

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这份文件是重要的，应立即进行翻译。

cc: Local Licensing Board  
Frederick G. Mahony, Chief Investigator  
Joseph Di Cicco, Investigator  
C. Temple, M. Teehan, M. Kenny, Investigators  
Thomas Horgan, Esq. via facsimile 617-770-9669  
Administration, File



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**DECISION**

**MAJESTIC DRAGON RESTAURANT INC.**  
**81 NEWBURYPORT TPK**  
**IPSWICH, MA 01938**  
**LICENSE#: 056600020**  
**VIOLATION DATE: 12/11/15**  
**HEARD: 06/07/16**

Majestic Dragon Restaurant Inc. (the "Licensee") holds an all alcohol license issued pursuant to M.G.L. c. 138, §12. The Alcoholic Beverages Control Commission (the "Commission") held a hearing on Tuesday, June 7, 2016, 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 December 11, 2015 according to Investigator Di Cicco's report.

The following documents are in evidence:

1. Investigator Di Cicco's Report dated December 11, 2015.
  - A. Sworn Affidavit of Alec Ross in Support of Majestic Dragon; and
  - B. Sworn Affidavit of Andrew Granlund in Support of Majestic Dragon.

There is one (1) audio recording of this hearing, and three (3) witnesses testified.

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

**FACTS**

1. Majestic Dragon Restaurant Inc. operates a restaurant at 81 Newburyport Turnpike, Ipswich, Massachusetts. (Commission Files)
2. On Friday, December 11, 2015, Investigators Temple, Teehan, Kenny and Di Cicco ("Investigators") investigated the business operation of Majestic Dragon Restaurant Inc. to determine the manner in which their business was being conducted.
3. Investigator Di Cicco, acting in an undercover capacity, investigated the Licensee's premises. Investigator Temple was in the parking lot of the licensed premises at the time

and communicated by mobile telephone with Investigator Di Cicco during the investigation.

4. Investigator Di Cicco observed two men, who were later identified as D. McCarron and B. Leahy. McCarron and Leahy spent several minutes in front of the bartenders before placing an order for alcoholic beverages.
5. Investigator Di Cicco observed the following physical and behavioral characteristics of Leahy that based on Di Cicco's knowledge, training, and experience indicated that Leahy was intoxicated: Leahy was unsteady on his feet, Leahy was bumping into bar stools, Leahy appeared to be buckling at the knees while standing, Leahy was swaying back and forth while standing at the bar, Leahy's eyes were rolling back, Leahy's eyes were blinking slowly, Leahy's eyes were glassy, Leahy was fumbling with his cell phone and almost dropped it, Leahy was fumbling through his wallet, and Leahy was slurring his words. Investigator DiCicco informed Investigator Temple of his observations by phone.
6. Leahy attempted to order alcoholic beverages from the bartender. Investigator Di Cicco could hear Leahy slurring his words while attempting to order. It appeared to Di Cicco that the bartender did not understand Leahy, and Leahy had to repeat what he was saying.
7. Leahy and McCarron were served three alcoholic beverages: a Bud Light bottle, a Corona bottle, and a large shot of an amber colored alcoholic beverage. Leahy had the Bud Light, McCarron had the Corona, and both men shared the large shot.
8. At approximately 12:39 a.m. on December 12, 2015, Investigator Temple entered the premises and identified himself to the manager of record, Adam Woo.
9. Investigators Temple and Di Cicco, along with an Ipswich Police Officer who Investigator Temple had summoned before entering the premises, attempted to interview Leahy, McCarron, and Woo. Leahy, McCarron, and Woo became very argumentative with the investigators.
10. Eventually, Leahy and McCarron indicated that they would be getting a ride home with another patron.
11. Investigators informed Mr. Woo of the violation and that a report would be filed with the Chief Investigator for review.
12. Investigator Di Cicco left fifteen dollars under the full bottle of Sam Adams that he had ordered, and the investigators left the premises.

#### 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).

In order to prove this violation, the following must be shown: (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. 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 investigators 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); see Vickowski, 422 Mass. at 610 ("The negligence lies in serving alcohol to a person who already is showing discernible signs of intoxication"). The investigators may prove that an individual is intoxicated by direct or circumstantial evidence or a combination of the two. See Vickowski, 422 Mass. at 611 (direct evidence of obvious intoxication not required). 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." *Id.*; see P.J. Liacos, Massachusetts Evidence § 4.2, at 118-119; § 5.8.6, at 242-244 (6th ed. 1994 & Supp. 1994).

Here, Investigator Di Cicco observed that Leahy was showing outward and visible signs of intoxication in front of the Licensee's bar staff. Leahy was unsteady on his feet, bumping into bar stools, buckling at the knees, and swaying back and forth. Additionally, Leahy's eyes were glassy, blinking slowly, and rolling back. Leahy fumbled his cell phone and almost dropped it and was fumbling through his wallet. Di Cicco also heard Leahy slur his words. Leahy then ordered three alcoholic beverages and was served them. The evidence shows that the Licensee's employees knew or should have known that Leahy was intoxicated at the time he ordered and was served the alcoholic beverages.

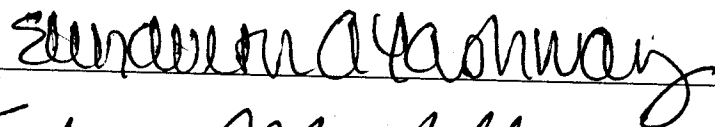
### CONCLUSION

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 seventeen (17) days of which ten (10) days will be served and seven (7) days will be held in abeyance for a period of two (2) years provided no further violations of Chapter 138 or Commission Regulations occur.**

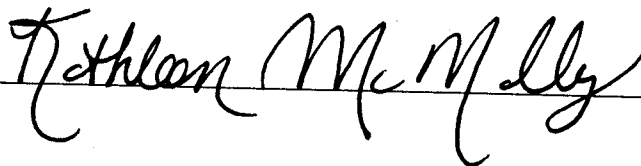
By decision dated April 29, 2015, the Commission had previously ordered a three (3) day license suspension to be held in abeyance for a period of two (2) years provided no further violations occurred. Based on the violation found above, the Licensee violated the conditions of that three (3) day suspension being held in abeyance. The Commission hereby orders that suspension to be served. The Licensee will serve a total of thirteen (13) days.

### ALCOHOLIC BEVERAGES CONTROL COMMISSION

Elizabeth A. Lashway, Commissioner



Kathleen McNally, Commissioner



Dated: June 14, 2016

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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