



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

Jean M. Lorizio, Esq.
Chairman

DECISION

**H AND O INC. D/B/A KEY WEST SALOON
159 STATE STREET
NORTH ADAMS, MA 01247
LICENSE#: 00030-GP-0820
VIOLATION DATE: 12/14/2023
HEARD: 4/2/2024**

H and O INC. d/b/a Key West Saloon ("Licensee") holds an alcohol license issued pursuant to M.G.L. c. 138, § 12. The Alcoholic Beverages Control Commission ("ABCC" or "Commission") held a remote hearing via Microsoft Teams on Tuesday, April 2, 2024, regarding an alleged violation of M.G.L. c. 138, § 69 – Sale or delivery of an alcoholic beverage to an intoxicated person (1 Count).

The following documents are in evidence:

1. Investigative Report of J. DiCicco;
2. ABCC Form 43, New License Approval, 3/25/1986.

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

FINDINGS OF FACT

1. On Thursday, December 14, 2023, at approximately 9:45 p.m., Investigators Guarino, Keefe, and Di Cicco ("Investigators") inspected the business operation of H and O INC. d/b/a Key West Saloon ("Licensee"). (Testimony, Exhibit 1)
2. Investigator DiCicco observed an unknown male individual ("UM") who appeared to display several signs of intoxication. Id.
3. Investigator DiCicco later observed a bartender serve the UM an alcoholic beverage. Id.
4. Michael Bloom, Licensee, appeared at the Commission. Mr. Bloom was not working on the night of the inspection. (Testimony)
5. The Licensee has held a license under M.G.L. c. 138, § 12 since 1986, nearly forty (40) years, with no prior violations. (Testimony, Exhibit 2)

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.

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).

Investigator DiCicco observed an unknown male patron on the licensed premises and showing possible signs of intoxication who was then served an alcoholic beverage. (Testimony) Investigator DiCicco had not made a determination that the male patron was intoxicated. Furthermore, while Investigator DiCicco’s report alleges the male patron interacted with the bartender prior to service (Exhibit 1), the Investigative and Enforcement Division did not offer

corroborating evidence to support a finding that the bartender knew or should have known the male patron was intoxicated.

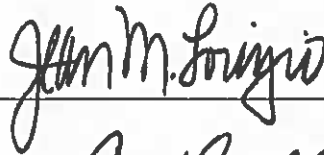
Based on the direct evidence presented, the Commission finds it cannot draw an inference of obvious intoxication at the time of sale or delivery with the requisite degree of certainty. As a result, the Commission finds no violation of M.G.L. c. 138 § 69.

CONCLUSION

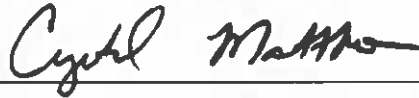
Based on the evidence, the Commission finds No Violation of M.G.L. c. 138 § 69 occurred.

ALCOHOLIC BEVERAGES CONTROL COMMISSION


Jean M. Lorizio, Chairman



Crystal Matthews, Commissioner



Deborah Baglio, Commissioner



Dated: March 20, 2025

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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2024-000021-ad-enf

cc: Local Licensing Board
Frederick G. Mahony, Chief Investigator
Joseph Di Cicco, Investigator
Caroline Guarino, Investigator
Dennis Keefe, Investigator
Administration, File