



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

Jean M. Lorizio, Esq.
Chair

NOTICE OF SUSPENSION

May 20, 2019

**NOTCH 8 INC. D/B/A UNION STATION
125-A PLEASANT STREET
NORTHAMPTON, MA 01060
LICENSE#: 0900-00040
VIOLATION DATE: 12/06/2018
HEARD: 3/12/2019**

After a hearing on March 12, 2019, the Commission finds Notch 8 Inc. d/b/a Union Station violated M.G.L. Ch. 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 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.

By decision dated November 8, 2017, the Commission had previously ordered a four (4) day license suspension with two (2) days to be served and two (2) days to be held in abeyance for a period of two (2) years provided no further violations of Chapter 138 or Commission Regulations occur. Based on the violation found above, the Licensee violated the conditions of the 2-day suspension being held in abeyance. The Commission hereby orders that suspension to be served on and after the two (2) day suspension. The Licensee will serve a total four (4) days.

The suspension shall commence on Monday, June 24, 2019, and terminate on Thursday, June 27, 2019. The license will be delivered to the Local Licensing Board or its designee on Wednesday, June 24, 2019 at 9:00 A.M. It will be returned to the Licensee on June 28, 2019.

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.

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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
Nicholas Velez, Investigator
Christopher Temple, Investigator
Lisa Watson, Investigator
Jesse M. Adams, Esq.
Administration, File



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DECISION

**NOTCH 8 INC. D/B/A UNION STATION
125-A PLEASANT STREET
NORTHAMPTON, MA 01060
LICENSE#: 0900-00040
VIOLATION DATE: 04/21/2017
HEARD: 03/12/2019**

Notch 8 Inc. d/b/a Union Station (the "Licensee") holds an alcohol license issued pursuant to M.G.L. c. 138, § 12. The Alcoholic Beverages Control Commission (the "Commission") held a hearing on Tuesday, March 12, 2019, regarding an alleged violation of M.G.L. Ch. 138 § 69-Sale or delivery of an alcoholic beverage to an intoxicated person (1 count). The above-captioned occurred December 6, 2018, according to Investigator Velez's report.

The following documents are in evidence:

1. Investigator Velez's Investigative Report; and
2. Decision of the Commission addressed to the Licensee, dated November 8, 2017.

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

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

FINDINGS OF FACT

1. On Thursday, December 6, 2018, at approximately 11:00 p.m., Investigators Temple, Watson, and Velez ("Investigators") conducted an investigation of the business operation of Notch 8 Inc. d/b/a Union Station to determine the manner in which its business was being conducted. (Exhibit 1; Testimony)
2. Investigators entered the licensed premises where their attention was drawn to an intoxicated male individual, Neil (the "Patron"), standing near the bar. See id.
3. Investigators observed that the Patron's eyes were bloodshot and watery, and the Patron had a blank stare. See id.
4. Investigators heard the Patron when he spoke to a male individual and noted that the Patron's speech was thickly slurred. See id.
5. Investigators observed that the Patron appeared unbalanced during his conversation, and he stumbled to regain his balance. The Patron swayed back and forth and held onto the railing for support. See id.

8. Based on their training and experience, Investigators formed the opinion that the Patron was intoxicated. See id.
9. Investigators observed the Patron proceed to the bar and sway side to side. Investigators then observed Brittnei Lennon, a female bartender on duty, deliver a drink to the Patron, which was thereafter identified as a Dark & Stormy mixed alcoholic beverage. See id.
10. Investigators identified themselves to the manager on duty, Zack Mandaean, and the head of security, Eric Dowd, and identified the Patron to them. See id.
11. A female patron stated to Investigators that she would make sure that the Patron was provided with safe transport home. See id.
12. Investigators advised Mandaean of the violation and that a report would be submitted to the Chief Investigator for further review. See id.

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.; 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 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

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 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).

The Commission must determine whether substantial evidence exists to find that the Licensee, its staff or employees, sold or delivered alcoholic beverages to an intoxicated person in violation of M.G.L. c. 138, § 69. Investigator Velez testified before the Commission that he was inside the licensed premises when he observed the Patron with bloodshot and watery eyes and thickly slurred speech. He observed that the Patron appeared unbalanced, as the Patron swayed, leaned against a wall, stumbled, held onto a railing for support, and had trouble walking down stairs. (Testimony) The Investigator testified that after he formed the opinion that the Patron was intoxicated and while the Patron was exhibiting visible signs of intoxication, the Investigator observed the Patron being served an alcoholic beverage, a Dark and Stormy mixed drink, by a bartender. (Testimony)

The law is well-settled that it is the responsibility of the licensee to exercise sufficiently close supervision so that there is compliance with the law on the premises. A vendor who sells alcohol is "bound at his own peril to keep within the condition of his license." Commonwealth v. Gould, 158 Mass. 499, 507 (1893). See Burlington Package Liquors, Inc. v. Alcoholic Beverages Control Comm'n, 7 Mass. App. Ct. 186, 190 (1979).

Based on the direct evidence in this matter, the Commission finds that the Patron was served an alcoholic beverage after he manifested obvious and visible signs of intoxication while inside the licensed premises, in clear view of the bartender/employee/staff, who knew or should have known that the Patron was intoxicated. The Commission finds that there was a violation of M.G.L. c. 138, § 69.

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 a period of 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.**

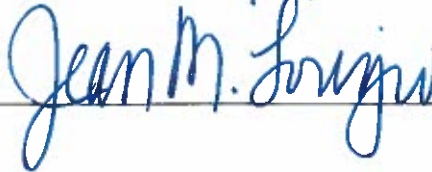
By decision dated November 8, 2017, the Commission had previously ordered a four (4) day license suspension with two (2) days to be served and two (2) days to be held in abeyance for a period of two (2) years provided no further violations of Chapter 138 or Commission Regulations occur. Based on the violation found above, the Licensee violated the conditions of the 2-day suspension being held in abeyance. The Commission hereby orders that suspension to be served on and after the two (2) day suspension. The Licensee will serve a total four (4) days.

ALCOHOLIC BEVERAGES CONTROL COMMISSION

Elizabeth A. Lashway, Commissioner



Jean M. Lorizio, Chairman



Dated: May 20, 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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