



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

Steven Grossman
Treasurer and Receiver General

Kim S. Gainsboro, Esq.
Chairman

NOTICE OF SUSPENSION

September 12, 2011

ONE PEARL STREET DBA TULLY O'REILLY'S
1-5 PEARL STREET
NORTHAMPTON, MA 01060
LICENSE#: 090000033
HEARD: 6/21/2011

After a hearing on June 21, 2011, the Commission finds One Pearl Street dba Tully O'Reilly's in violation of Massachusetts General Laws c. 138, §69 (1 count).

The Commission **suspends the licensee's license for a total of five (5) days to be served.** The suspension shall commence on **Wednesday, October 19, 2011** and terminate on **Sunday, October, 23, 2011.** The license will be delivered to the Local Licensing Board or its designee on Wednesday, October 19, 2011 at 9:00 A.M. It will be returned to the licensee Monday, October 24, 2011.

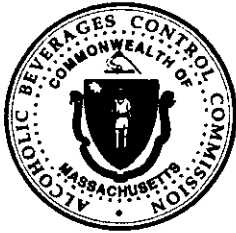
You are advised that pursuant to the provisions of M.G.L. c.138 §23, you may petition the Commission to accept an offer in compromise in lieu of suspension within twenty (20) calendar days following such notice of such suspension. If accepted, you may pay a fine using the enclosed form. All checks must be certified and accompanied by the enclosed form, which must be signed by 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

cc: Local Licensing Board
Frederick G. Mahony, Chief Investigator
Jamie Binienda, Investigator
Administration
File



The Commonwealth of Massachusetts
Department of the State Treasurer
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DECISION

ONE PEARL STREET DBA TULLY O'REILLY'S
1-5 PEARL STREET
NORTHAMPTON, MA 01060
LICENSE#: 090000033
HEARD: 6/21/2011

One Pearl Street dba Tully O'Reilly's (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 21, 2011, regarding an alleged violation of M.G.L. c.138, §69 (1 count) detailed in Investigator Jamie Binienda's report.

The following documents are in evidence:

1. Investigator Jamie Binienda's Report.
 - A. Northampton Police Report; and
 - B. Employee Handbook.

There is one (1) tape of this hearing.

FACTS

1. On November 13, 2010 at approximately 1:00a.m., Investigators Keefe and Binienda investigated the business operation of One Pearl Street dba Tully O'Reilly's.
2. Upon entering, the investigators observed a male individual drinking a draft beer with his eyes half closed and his head bobbing up and down.
3. He was awkwardly leaning up against the front bar and appeared to be having trouble maintaining his balance.
4. The male was also observed with slurred speech ordering three (3) shots of an alcoholic beverage.
5. The shots were delivered to him and two (2) female patrons.
6. At this point, the investigators formulated the opinion that the male patron was under the influence of alcohol and intoxicated as he staggered and walked to the back of the premises.
7. The investigators then observed the male another order a draft beer from the back bar.
8. At this point, the investigators notified an officer from the Northampton Police Department of the situation.
9. The Northampton police officer entered the premises to assist the investigators.
10. The male individual stated to both the police officer and the investigators that he had two (2) shots and six (6) draft beers in two (2) hours at the premises.

11. Investigator Binienda informed the manager of the violation and that a report would be filed.

DISCUSSION

The licensee did not stipulate. Counsel for the licensee stated to the Commission that the licensee did not believe the individual in question was intoxicated. The licensee testified that the male was a frequent customer and had a "certain look" to him that the Commission was to assume made him look intoxicated. However, there was never any medical evidence presented to buttress this and no witnesses presented to testify to this. This testimony was without merit.

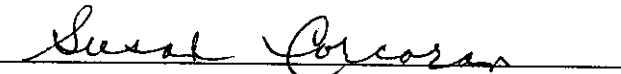
The licensee also presented the bartender who served the individual early on in the evening who testified that he seemed to be sober during the night but he did not serve him near the end of the night.

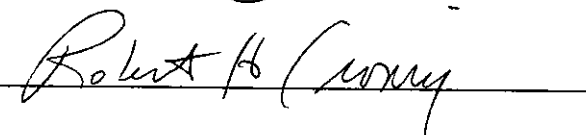
The Investigators testified that the male was cooperative when he was questioned outside of the establishment but was still under the influence. Counsel for the licensee introduced the police report which showed the individual was not taken into protective custody that night. However, several reports indicated he was given a ride safe transportation home by the police. Investigators for the Commission testified that their standard need not rise to the level of the police's protective custody standard for over service.

CONCLUSION

Based on the evidence, the Commission finds the licensee violated M. G. L. c. 138, §69 (1 count). Therefore, the Commission **suspends the licensee's license for a period of five (5) days.**

ALCOHOLIC BEVERAGES CONTROL COMMISSION

Susan Corcoran, Commissioner 

Robert H. Cronin, Commissioner 

Dated: September 12, 2011

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.

cc: Local Licensing Board
Frederick G. Mahony, Chief Investigator
Jamie Binienda, Investigator
Administration
File