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Chairman

*Commonwealth of Massachusetts
Department of the State Treasurer
Alcoholic Beverages Control Commission
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DECISION

**LIMEYS NORWOOD INC. D/B/A LIMEY'S PUB
659 WASHINGTON ST.
NORWOOD, MA 02062
LICENSE#: 0914-00024
VIOLATION DATE: 04/29/2017
HEARD: 09/19/2017**

Limeys Norwood Inc. d/b/a Limey's Pub (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, September 19, 2017, regarding an alleged violation of 204 CMR 2.05(2) Permitting an illegality on the licensed premises, to wit: 204 CMR 4.03 No licensee or employee, or agent of a licensee shall deliver two or more drinks to one (1) person at a time. Prior to the start of the hearing, the Licensee stipulated to the violation in Investigator Carey's report.

The following documents are in evidence:

1. Investigator Carey's Investigative Report; and
2. Licensee's Stipulation of Facts.

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

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

FINDINGS OF FACT

1. On Saturday, April 29, 2017, at approximately 11:30 p.m., Investigators Doyle and Carey ("Investigators") conducted an investigation of the business operation of Limeys Norwood Inc. d/b/a Limey's Pub to determine the manner in which its business was being conducted. (Testimony, Exhibit 1)
2. Investigators observed about 30 patrons in the establishment and two bartenders, one male and one female. (Testimony, Exhibit 1)
3. At approximately 12:30 a.m., when the last call was announced, Investigators observed an unidentified male patron go to the bar and order four shots of an alcoholic beverage. (Testimony, Exhibit 1)

4. Anthony Jeannetti, the male bartender, served the male patron, who was seated at a high-top table with three other men. The high-top table was located approximately five feet from the bar, within the line of vision of the bartender. The bartender knew these four patrons. (Testimony, Exhibit 1)
5. The Investigators and the bartender observed the male patron carry the shots over to a high-top table and deliver the alcoholic beverages to the three other men who were situated at the table. The four patrons were each observed consuming one alcoholic beverage. (Testimony, Exhibit 1)
6. Investigators went outside and called Norwood Police Department for backup assistance. Shortly afterwards, two Norwood Police Officers arrived. (Testimony, Exhibit 1)
7. Investigators re-entered the premises, identified themselves to Mr. Jeannetti, and informed Mr. Jeannetti of the violation and that a report would be filed with the Chief Investigator for further action. (Testimony, Exhibit 1)

DISCUSSION

The Commission must determine whether the Licensee committed an alleged violation of 204 CMR 2.05(2), Permitting an illegality on the licensed premises, to wit: 204 CMR 4.03.

Regulation 204 CMR 4.03 provides that “Certain Practices Prohibited

(1) No licensee or employee, or agent of a licensee shall: . . .

(b) Deliver two or more drinks to one (1) person at a time.”¹

The Licensee in this matter stipulated to the facts as presented and testified that there was no dispute that the bartender served four alcoholic beverages to one patron at the same time. However, the bartender had direct view of the table and knew that there were three other (four in total) patrons at the table. The bartender knew the patron who purchased the drinks and knew he was with the three other patrons at the table, and the table was only a few feet away from the bar and within his line of vision. The bartender could see where the alcoholic beverages were being delivered and could ascertain that there was only one drink being served to each patron. This occurred during last call when there were approximately 30 (thirty) patrons inside the premise. (Testimony; Exhibit 1)

The Massachusetts Superior Court has held in a similar fact pattern that where the bartender knows for whom the drinks are intended, and the delivery is in direct view of the bartender, and no patron is being served more than two drinks at one time, then it is not considered a violation of 204 CMR 4.03. See Larry's Inc. v. Alcoholic Beverages Control Comm'n, (Middlesex Superior Court, C.A. No. 90-2943, November 1, 1990) (Chernoff, J.) (sale and delivery by bartender of several bottles of beer to one patron where “there were relatively few people in the bar” and “the [patron's] table was in direct view of the bar.”).

Likewise, the Commission has not found a violation of 204 CMR 4.03 in a prior decision with a similar fact pattern to this matter. See Carlin's Restaurant Inc., (ABCC Decision February 27, 1991) (Commission found no violation where bartender knew where the multiple drinks were

¹ This regulation can be found on the Commission's website at www.mass.gov/abcc. 204 CMR 4.03 is commonly referred to as the “Happy Hour” regulation.

being delivered, and no patron received more than two alcoholic drinks after beverages were distributed).

When more than two drinks are purchased by one patron at the same time and the licensee bartender/server cannot ascertain or identify that the alcoholic beverages are actually being delivered/served to patrons who are not receiving more than two drinks at the same time, the Commission has found a violation. See Bedford Dining Inc. d/b/a White Horse Tavern, (ABCC Decision May 24, 2004) (Commission found a violation of 204 CMR 4.03 when a server delivered a tray containing seven alcoholic beverages to a patron, who then carried the drinks out of view of the server/bartender, so that the server could not monitor where the seven alcoholic beverages were delivered/destined, the licensee was found to have committed a violation); Martha's Vineyard Hotels, Inc. d/b/a Shiretown Inn, (ABCC Decision January 23, 2003) (Commission found a violation where the patron purchased three mixed alcoholic drinks and then patron left the bar area, which was crowded, and walked out of sight of the bartender, so bartender could not ascertain to whom drinks were delivered); Northam, Inc. d/b/a The Rose and Crown (ABCC Decision April 23, 1996) (Violation found where ABCC Investigator purchased three beers at one time and bartender did not inquire, nor know for whom the beers were intended to be delivered/consumed); Jake's New Tyme Saloon, Inc. d/b/a Jake's (ABCC Decision October 26, 1995) (Violation found when licensee bartender served ABCC Investigator three (3) bottles of beer when Investigator was alone) G-C Development Corp. d/b/a Rascal's (ABCC Decision December 20, 1994) (Commission found a violation when ABCC Investigators observed licensee bartender deliver four alcoholic beverages to one patron at the same time, and patron walked with four drinks out of sight of bartender to other side of a partition wall, and bartender did not determine that no more than two alcoholic beverages were intended for one person).

Based on the evidence presented at the hearing, considered in conjunction with the aforementioned Superior Court Decision and prior Commission decisions, the Commission finds that although the Licensee served more than two alcoholic beverages to one patron at the same time, the bartender knew to whom the drinks were being delivered (four drinks delivered to four patrons, one drink apiece) and saw them being delivered. The Commission finds that the Licensee did NOT commit a violation of 204 CMR 2.05(2) Permitting an illegality on the licensed premises, to wit: No licensee or employee, or agent of a licensee shall deliver two or more drinks to one (1) person at a time.

CONCLUSION

The Commission, after a hearing, finds **NO VIOLATION** of 204 CMR 2.05(2) Permitting an illegality on the licensed premises, to wit: 204 CMR 4.03 No licensee or employee, or agent of a licensee shall deliver two or more drinks to one (1) person at a time occurred.

ALCOHOLIC BEVERAGES CONTROL COMMISSION

Kathleen McNally, Commissioner

Jean M. Lorizio, Chairman

Elizabeth Lashway, Commissioner

Dated: November 16, 2017

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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cc: Local Licensing Board
Frederick G. Mahony, Chief Investigator
Jack Carey, Investigator
Brad Doyle, Investigator
Administration, File