



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

February 11, 2014

D & B CORP. DBA THE GOLDEN BANANA
151 REAR NEWBURY ST
PEABODY, MA 01960
LICENSE#: 095600113
VIO. DATE: 12/13/2013
HEARD: 01/28/2014

After a hearing on January 28, 2014, the Commission find D & B Corp. dba The Golden Banana in violation of M.G.L. c. 138 §69-Sale or Delivery of an Alcoholic Beverage to an Intoxicated Person (3 counts).

The Commission **suspends the licensee's license for a total of three (3) days to be served. The suspension shall commence on Wednesday, April 2, 2014, and terminate on Friday, April 4, 2014.** The license will be delivered to the Local Licensing Board or its designee on Wednesday, April 2, 2014 at 9:00 A.M. It will be returned to the licensee Saturday, April 5, 2014.

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
Michael Teehan, Investigator
Dennis Keefe, Investigator
Mark Kenny, Investigator
Administration
File

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

Raven Grassman
Treasurer and Revenue General

DECISION

Kim S. Guinstone, Esq.
Chairman

D & B CORP. DBA THE GOLDEN BANANA
151 REAR NEWBURY ST
PEABODY, MA 01960
LICENSE#: 095600113
VIO. DATE: 12/13/2013
HEARD: 01/28/2014

D & B Corp. dba The Golden Banana (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, January 28, 2014, regarding an alleged violation of M.G.L. c. 138 §69-Sale or Delivery of an Alcoholic Beverage to an Intoxicated Person (3 counts). Prior to the commencement of the hearing, the licensee stipulated to the violation alleged in Investigator Teehan's Report.

The following documents are in evidence:

1. Investigator Teehan's Investigative Report dated December 13, 2013; 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 file.

FACTS

1. On Friday, December 13, 2013, at approximately 8:35 p.m., Investigators Kenny, Keefe and Teehan conducted an investigation of the business operation of D & B Corp. dba The Golden Banana to determine the manner in which its business was being conducted.
2. While on the licensed premises, investigators observed three individuals, in possession of alcoholic beverages, who appeared to be intoxicated.
3. The individuals were identified as Zach Leonard, actual date of birth [REDACTED] (age 29), John Lanzi, actual date of birth [REDACTED] (age 28), and Edward Gallagher, actual date of birth [REDACTED] (age 52).
4. Investigators observed Mr. Leonard and Mr. Lanzi sitting at a table approximately five feet from them.
5. Investigators observed that each man was in possession of a bottle of beer, and a Captain [Morgan's Spiced Rum] and Coca-Cola.
6. At approximately 9:13 p.m., investigators observed that a female waitress served Mr. Leonard and Mr. Lanzi an alcoholic beverage "shot". The waitress then poured the shots into each man's mouth.

7. At approximately 9:30 p.m., investigators observed that the bartender on duty served Mr. Lanzi a bottle of Budweiser Light beer and a shot. Mr. Lanzi returned to the table with the alcoholic beverages.
8. Investigators observed that a female waitress, Nicole Carrillo, was within direct line of sight and she observed Mr. Lanzi with the alcoholic beverages.
9. Investigators observed that Mr. Leonard staggered and was unsteady on his feet, and his movements appeared to be slow. His speech was slurred, and at times his head nodded up and down while he was slouched over on his chair. Based on their training and experience, investigators formulated the opinion that Mr. Leonard was intoxicated.
10. At approximately 10:13 p.m., investigators observed that a female waitress on duty, Patricia Welch, served Mr. Leonard a Captain [Morgan's Spiced rum] and ginger ale and he was observed drinking the alcoholic beverage.
11. A short time later Ms. Welch observed that Mr. Leonard nodded his head up and down while he sat slouched over in his chair, and she took his drink away from him.
12. Investigators observed Mr. Leonard then exited the premises with Mr. Lanzi.
13. Investigators observed that Mr. Lanzi staggered and was unsteady on his feet. His movements appeared to be slow, his speech was slurred, and he was loud and boisterous. While seated at the table, Mr. Lanzi continuously pushed his chair from the floor in a gliding motion. Based on their training and experience, investigators formulated the opinion that Mr. Lanzi was intoxicated.
14. At approximately 9:31 p.m., investigators observed that a female waitress served Mr. Gallagher an alcoholic beverage "shot", and that she poured the shot in his mouth.
15. At approximately 9:34 p.m., investigators observed that the bartender on duty served Mr. Gallagher a shot of vodka, and a cola.
16. Investigators observed that Mr. Gallagher staggered and was unsteady on his feet. His movements appeared to be slow and uncoordinated. While seated at the table, Mr. Gallagher appeared to be unable to sit up straight and he was continuously bending over. Based on their training and experience, investigators formulated the opinion that Mr. Gallagher was intoxicated.
17. At approximately 9:42 p.m., investigators observed that a female waitress served Mr. Gallagher a shot of vodka and a cola, and he was observed drinking the alcoholic beverage.
18. Investigators identified themselves to Chris Morris, the doorman on duty, and Kenny Botelho, the manager.
19. Investigator Teehan with his badge visibly displayed requested to see identification from Mr. Leonard and Mr. Lanzi.
20. Mr. Leonard responded, "Fuck you. I don't have to show you anything" and he proceeded to exit the licensed premises.
21. Investigators approached Mr. Leonard outside the licensed premises. Detectives with the Peabody Police Department were patrolling the parking lot and they assisted investigators in obtaining identification information, and ensuring that the intoxicated individuals did not move their vehicle from the premises.
22. Mr. Lanzi provided investigators with his identification. Investigators asked Mr. Lanzi when he had arrived on the licensed premises. Mr. Lanzi replied 10:30 p.m.
23. Investigators re-entered the licensed premises, and with their badges visibly displayed, requested identification from Mr. Gallagher. Mr. Gallagher provided his identification and stated that he would walk to his parents' house in Salem. Management personnel assured investigators that they would provide safe transport home to Mr. Gallagher.
24. Investigators informed Mr. Morris and Mr. Botelho of the violations and that a report would be submitted to the Chief Investigator for further action.

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 (3 counts). Therefore, the Commission **suspends the license for nine (9) days of which three (3) days will be served and six (6) days will be held in abeyance for a period of two (2) years provided no further violations of Chapter 138 or Commission Regulations occur.**

ALCOHOLIC BEVERAGES CONTROL COMMISSION

Kim S. Gainsboro, Chairman

I, the undersigned, hereby certify that I have reviewed the hearing record and concur with the above decision.

Kathleen McNally, Commissioner

Dated: February 11, 2014

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
Michael Teehan, Investigator
Dennis Keefe, Investigator
Mark Kenny, Investigator
Administration
File