

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

**Jean M. Lorizio, Esq.**  
*Chairman*

**DECISION**

**JET EIGHT GROUP INC. D/B/A THE CHINA RESTAURANT & SPORTS BAR**  
**681 HANCOCK ST.**  
**QUINCY, MA 02170**  
**LICENSE#: 00051-RS-1006**  
**VIOLATION DATE: 11/28/2019**  
**HEARD: 9/28/2021**

Jet Eight Group Inc. d/b/a The China Restaurant & Sports Bar (the "Licensee") holds an alcohol license issued pursuant to M.G.L. c. 138, § 12. The Alcoholic Beverages Control Commission (the "ABCC" or Commission") held a remote hearing via Microsoft Teams on Tuesday, September 28, 2021, regarding alleged violations of:

- 1) 204 CMR 2.05 (2) Permitting an Illegality on the licensed premises, to wit: M.G.L. c. 138, § 34C Possession of an alcoholic beverage by a person under 21 years of age (2 Counts);
- 2) M.G.L. c. 138, § 69- Sale or delivery of an alcoholic beverage to an intoxicated person (1 Count).

The above-mentioned occurred November 28, 2019, according to Investigator Teehan's Report.

The following documents are in evidence:

1. Investigator Teehan's Report;
2. ABCC Form 43 Transfer of License Approval, 9/29/2011;
3. Licensee's Accela Summary Page.

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

**FINDINGS OF FACT**

1. On Thursday, November 28, 2019, at approximately Midnight, Investigators Kenny and Teehan along with Chief Investigator Mahony ("Investigators") and members of the Quincy Police Department ("Officers") inspected the operation of Jet Eight Group Inc. d/b/a The China Restaurant & Sports Bar to determine the manner in which the business was being conducted. (Testimony, Exhibit 1)
2. While on the licensed premises, Investigators observed two youthful appearing individuals in possession of alcoholic beverages. Investigators identified themselves and asked to see proof of legal age. Id.

3. Underage #1, actual date of birth 9/03/2001 (age 18) was in possession of a vodka and cranberry mixed drink. Id.
4. Underage #2, actual date of birth 10/02/2000 (age 19) was in possession of a bottle of Bud Light beer. Id.
5. Investigators observed an unidentified male patron (UM), moving in an uncoordinated manner and swaying back and forth. He was loud and boisterous, and his speech was slurred. Investigators noted that the UM was standing at the bar within direct sight of the bartenders. Id.
6. Based on their observations, training and experience, Investigators determined the UM was intoxicated. Id.
7. At approximately 12:25 a.m., Chief Mahony observed a female bartender delivering what appeared to be multiple bottles of beer to the UM. Chief Mahony observed the UM was in possession of two bottles of Michelob Ultra beer and he alternated drinking from each bottle. Id.
8. The UM stated to Investigators he had arrived on the premises around 10:00 p.m. and had consumed approximately two drinks and three beers. He confirmed he was drinking from both bottles of beer in his possession. The UM was informed the Licensee was being charged with serving alcohol to him while intoxicated and he stated he was intoxicated because of the alcohol he had consumed. Id.
9. Investigators also observed five youthful individuals in possession of alcoholic beverages. Id.
10. Investigators identified themselves and asked to see proof of legal age. These individuals provided to Investigators fraudulent Massachusetts driver's licenses. Investigators determined that the Licensee reasonably relied upon these identifications and, therefore, did not charge the Licensee for these five minors in possession of alcoholic beverages. Id.
11. Investigators informed the owner, Julie Chen, of the violations and that a report would be submitted to the Chief Investigator for further action. Id.
12. Ms. Chen appeared at the Commission hearing and testified she is both an LLC Manager of the Licensee entity and the Manager of Record. She explained the Licensee's practice and policy regarding requesting identification from patrons. Ms. Chen testified employees were stationed at both the front and rear doors to request identification from people seeking to enter the licensed premises. She stated she personally trains all employees as to what identifications are acceptable to ensure all employees are on the same page. Ms. Chen testified that all staff members are required to be TIPS certified, and she has been TIPS certified since 1992. (Testimony)
13. Ms. Chen testified she was at the door when the UM entered at approximately 10:00 p.m. She stated she requested his identification and noted he was loud and obnoxious. Ms. Chen testified she spoke with the UM at approximately 11:30 p.m. and asked him to calm down and quiet down. She stated he did not have slurred speech at that time. Id.
14. The Commission was informed that after this incident the Licensee purchased an ID Science identification checking system. Ms. Chen testified that in the past she had turned-over confiscated identifications to the Quincy Police Department. Since utilizing the ID

Science scanner, Ms. Chen stated she has confiscated approximately 40 identifications and now turns them over to ID Science to assist with their research. Id.

15. The Licensee has held a license under M.G.L. c. 138, § 12 since 2011 with no previous violations. (Exhibit 3, Commission Records)

### DISCUSSION

Licenses to sell alcoholic beverages are a special privilege subject to public regulation and control, Connolly v. Alcoholic Beverages Control Comm'n, 334 Mass. 613, 619 (1956), for which States have especially wide latitude pursuant to the Twenty-First Amendment to the United States Constitution. Opinion of the Justices, 368 Mass. 857, 861 (1975). The procedure for the issuance of licenses and required conduct of licensees who sell alcoholic beverages is set out in Massachusetts General Laws, Chapter 138.

Chapter 138 gives the Commission the authority to grant, revoke and suspend licenses. Chapter 138 was "enacted ... to serve the public need and ... to protect the common good." M.G.L. c. 138, § 23. "[T]he purpose of discipline is not retribution, but the protection of the public." Arthurs v. Bd. of Registration in Medicine, 383 Mass. 299, 317 (1981). The Commission is given "comprehensive powers of supervision over licensees." Connolly, 334 Mass. at 617.

The Licensee is charged with a violation of 204 CMR 2.05 (2) - Permitting an illegality on the licensed premises, to wit: Chapter 138, § 34C- Possession of an alcoholic beverage by a person under twenty-one (21) years of age. A Commission regulation promulgated at 204 CMR 2.05(2) provides in pertinent part, that "[n]o licensee for the sale of alcoholic beverages shall permit any disorder, disturbance or illegality of any kind to take place in or on the licensed premises. The licensee shall be responsible therefore, whether present or not." The law is well-settled that,

under the regulation [204 C.M.R. 2.05(2)], the responsibility of the licensee is 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); Burlington Package Liquors, Inc. v. Alcoholic Beverages Control Comm'n, 11 Mass. App. Ct. 785, 788 (1981). It is, thus, quite possible for a licensee to offend the regulatory scheme without scienter.

Rico's of the Berkshires, Inc. v. Alcoholic Beverages Control Comm'n, 19 Mass. App. Ct. 1026, 1027 (1985). A licensee is responsible for illegalities that occur on the licensed premises. See id.

Massachusetts General Laws, Chapter 138, § 34C states, in pertinent part, that: "Whoever, being under twenty-one years of age and not accompanied by a parent or legal guardian, knowingly possesses any alcohol or alcoholic beverages, shall be punished." M.G.L. c. 138, § 34C. Direct evidence was presented through the testimony of Investigator Teehan as to two individuals under the age of 21 found to be in possession of alcoholic beverages on the licensed premises.

The Commission is persuaded by the evidence that the two patrons were younger than 21 years of age and were in possession of alcoholic beverages in the licensed premises. The Commission finds that the Licensee committed a violation of 204 CMR 2.05 (2) – Permitting an illegality on the

licensed premise, to wit: M.G.L. c. 138, § 34C- Possession of an alcoholic beverage by a person under 21 years of age (2 counts).

The Licensee is also 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 "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).

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. Investigators testified before the Commission that he was inside the licensed premises when he observed the patron moving in an uncoordinated manner, swaying back and forth. Investigators further testified the patron was loud and boisterous, with slurred speech. (Testimony) Investigators testified that after they formed the opinion that the Patron was intoxicated and while the Patron was exhibiting visible signs of intoxication, the Investigators observed the Patron being served multiple alcoholic beverages, two bottles of beer, 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

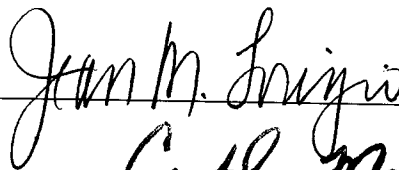
Based on the evidence, the Commission finds the Licensee violated:

- 1) 204 CMR 2.05 (2) Permitting an Illegality on the licensed premises, to wit: M.G.L. c. 138, § 34C Possession of an alcoholic beverage by a person under 21 years of age (2 Counts);
- 2) M.G.L. c. 138, § 69- Sale or delivery of an alcoholic beverage to an intoxicated person (1 Count).

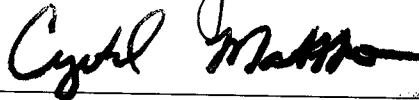
Therefore, the Commission **suspends the license for a period of 5 (five) days, which are hereby deemed served.**

#### **ALCOHOLIC BEVERAGES CONTROL COMMISSION**

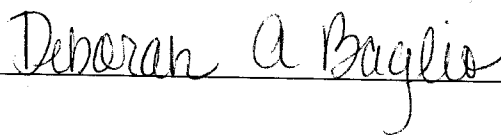
Jean M. Lorizio, Chairman



Crystal Matthews, Commissioner



Deborah Baglio, Commissioner



Dated: May 18, 2022

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  
Kyle E. Gill, Esq., Associate General Counsel  
Michael Teehan, Investigator  
Mark Kenny, Investigator  
Lt. Peter Teroskas, Quincy PD  
Jack P. Milgram, Esq.  
Administration, File