



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

*Steven Grossman*  
*Treasurer and Receiver General*

*Kim J. Gainsboro, Esq.*  
*Chairman*

DECISION

**Re:** Linda Cappuccio  
**DBA:** Strega Restaurant  
**Premise:** 94 Lafayette Street  
**City/Town:** Salem, MA 01970  
**License #:** 106400048  
**Heard:** July 21, 2010

This is an appeal of the action of the Salem Licensing Board ("the Board") in suspending the M.G.L. c. 138, §12 all alcoholic beverages license of Linda Cappuccio dba Strega Restaurant ("Strega" or the "Licensee"). On February 22, 2010, the Board held a hearing that resulted in a three (3) day suspension. The Licensee timely appealed the Board's decision to the Alcoholic Beverages Control Commission (the "Commission") and a hearing was held on July 21, 2010.

The following exhibits are in evidence by agreement of the parties:

1. Salem Licensing Board minutes for meeting held on January 11, 2010;
2. Salem Licensing Board minutes for meeting held on January 25, 2010;
3. Salem Licensing Board minutes for meeting held on February 8, 2010;
4. Letter from Salem Licensing Board to Strega restaurant dated February 9, 2010;
5. Salem Police Department Incident Report dated November 7, 2009;
6. Salem Police Department Incident Report dated November 9, 2009;
7. Affidavit of Brian O'Rourke;
8. Licensing Board Letter dated January 14, 2010 to Strega regarding February 8, 2010 hearing date;
9. Copies of certified mail envelopes unclaimed by Strega;
10. Licensing Board Letter dated October 7, 2009 to Strega alleging violation of after hours operation;
11. Police Report dated October 4, 2009, investigating incident of loud music and after-hours consumption of alcohol on the premises;
12. Police Report dated December 18, 2009, investigating report of individual assaulted at Strega;
13. E-mail message from Melissa Pagliaro to Robert St Pierre, Board Chairman, concerning hearing date of February 8, 2010;
14. Affidavit of Thomas Sutton;
15. Affidavit of Jack Brazil;
16. Photo of Strega;
17. November 16, 2009 written warning by Local Board;
18. Minutes of November 9, 2009 Local Board Hearing; and
19. Photos of Thomas Sutton.



There is one (1) tape of this hearing.

The Commission finds the following facts and makes the following rulings.

#### FACTS

1. On Saturday, November 7, 2009, Brian O'Rourke was working as a doorman at Strega located at 94 Lafayette Street, Salem, Massachusetts. He was scheduled to work that night from 9:00 P.M. to close. There was also another doorman named "Bob" working that evening. Brian O'Rourke's primary responsibility was checking the identification of the patrons entering the restaurant and enforcing the restaurant's dress code.
2. In front and outside of the restaurant is a fenced in area with patio seating. Patrons often stand in this area to smoke cigarettes.
3. At approximately 11:15 PM, Mr. O'Rourke was outside of Strega, standing in a fenced in area, located immediately in front of the restaurant, checking the identification of patrons entering the restaurant. The other doorman was doing his rounds inside the restaurant when suddenly and without warning a fight between two male patrons started. Brian O'Rourke immediately separated the two men. He did not hear any argument between the men before the fight started. While separating the two men, another fight began between three women and he immediately intervened and separated the women.
4. One of the men involved in the fight, Thomas Sutton, was initially calm and thankful but quickly became irate. He started pointing and yelling at Mr. O'Rourke, physically grabbing and pulling him and asking "Where is the other guy?" Mr. O'Rourke stated he did not see where the other male went. While Mr. O'Rourke was trying to calm the other patrons down that were still standing in the area, Mr. Sutton the asked him to call the police. Mr. O'Rourke explained he did not have a cell phone on him and advised Mr. Sutton to call the police. At that moment, a Salem police cruiser was driving on Lafayette Street. Mr. Thomas Sutton flagged them down as it passed Strega.
5. While Mr. Sutton was speaking with the police officers, Strega's owner Linda Cappuccio came outside.
6. After police arrived on the scene, Mr. O'Rourke went back to the door.
7. Thomas Sutton was accompanying his wife, Karen Sutton, to a birthday celebration for one of her employees.
8. Mr. Sutton went outside to smoke a cigar and sat on a bench closest to the door. There was a number of people at the outside table area from his party.
9. At that time there was a line to get into Strega, and there were two "bouncers" from Strega at the doors, no more than eight (8) feet away from where he was sitting and talking to Jessica Evans.
10. At that point, a man, who was unknown to Mr. Sutton came out of Strega and stood in front of Ms. Evans.
11. That unknown man immediately leaned over to Mr. Sutton and stated something to the effect of "you better stop staring at" either "my girlfriend" or "my wife."
12. Mr. Sutton responded "I don't know what you are talking about." He told the man he was here with his wife and pointed to her. He said he spoke to the unknown man in a normal tone and could see he was agitated and looking to start trouble.
13. The man repeated the same complaint while leaning on Mr. Sutton.
14. Mr. Sutton told the man "I don't know what you are talking about, I don't want any trouble. I am here at a birthday party with my friends."

15. Mr. Sutton then noticed there was a woman standing behind the unknown man who tried to pull him back, and said "Don't start any trouble."
16. The unknown man said "You better not look at her again, do you understand me."
17. Mr. Sutton told the woman to get him out of there or Mr. Sutton would get the bouncers and have them kicked out.
18. Mr. Sutton went over and told the bouncers, and said, "Can you do something about this guy, he is harassing me?"
19. The unknown man was behind him at this time. The bouncers looked at Mr. Sutton and then looked at the man and then turned away without saying anything, or taking any action.
20. Mr. Sutton went back to the bench to sit down and the unknown man started punching him about the head, throat, neck and ears, without giving him any time or space to react or defend himself.
21. Mr. Sutton was on his knees in the corner to the left of the bench, facing the concrete floor when the incident stopped.
22. During the incident, they were not more than eight feet away from the bouncers.
23. Mr. Sutton said he composed himself and looked to see where his attacker was as he was concerned he would continue the assault.
24. No one from the restaurant came over to help him.
25. He noticed the man who assaulted him was outside on the side walk walking down the street.
26. Mr. Sutton went to follow the unknown man to have him return and wait for the police.
27. The unknown man and the woman ran across the street.
28. Mr. Sutton went over to the bouncers and complained "Why didn't you do anything, why didn't you do anything when I came over the first time?"
29. There was no response and then he asked the bouncer to call the police.
30. One of the bouncers said "Why, we didn't see anything?"
31. Mr. Sutton asked a second time for them to call the police. One of them responded that there was a police officer across the street and told him to go and get him.
32. A police cruiser was coming out of Dodge Street when Mr. Sutton flagged him down.
33. There were two officers in the cruiser. Mr. Sutton told the police what had happened and what the unknown man looked like and where he had run to and what he was wearing. The police then left to look for the assailant.
34. Mr. Sutton went back to the restaurant and asked the bouncers if he could to speak to the owner.
35. He had blood on his face and he could barely talk. He claims the bouncers ignored him and he repeated that he wanted to speak with the owner.
36. The owner came outside to speak with Mr. Sutton after several minutes.
37. Mr. Sutton explained to the owner what had happened, how he was disappointed about how he told the bouncers about the patron and they had done nothing to stop it.
38. On Saturday, November 7, 2009, Jack Brazil was at Strega in Salem, Massachusetts, attending a friend's birthday dinner party being held there.
39. At some point during the night a few of them went outside for a cigarette.
40. Subsequently Jessica Evans and Tom Sutton and other persons attending the birthday party, were present outside near him.
41. Mr. Brazil saw Ms. Evans and Mr. Sutton were both physically attacked for no reason and Mr. Sutton was jumped and physically hit by an unidentified man.
42. Ms. Evans was jumped and physically hit by an unidentified woman. He recalls the bouncers there for security on staff at Strega were nowhere to be found during the attack.
43. The bouncers and staff appeared at the end of the incident.

### DISCUSSION

Neither the licensee nor its employees or agents committed any assault and battery on its patrons, Mr. Sutton and Ms. Evans. The question is whether the licensee permitted a disturbance or illegality on its premises, the assault and battery on patrons, Mr. Sutton and Ms. Evans, by other patrons who were unidentified.

The Commission is persuaded that the incidents involving the patrons Mr. Sutton and Ms. Evans were sudden and without warning. The Commission is persuaded by the evidence from Mr. Brazil that the attack on patrons Mr. Sutton and Ms. Evans had no reason and that the security and other staff were not in view of the incident when it occurred. Yet, the staff of the licensee and the owner responded timely upon obtaining the facts of what happened.

In determining the persuasiveness of the evidence, the Commission faced two underlying questions. Why did the police officers not get out of their vehicle and why did Jessica Evans choose not to speak with the officers at the scene? The testimony of Mr. O'Rourke conflicts with that of Mr. Sutton. The police report (Ex. 5) did not make any mention of a man with a bloody face. Jessica Evans, who seemed to be completely victimized, chose to avoid the police altogether. Several witnesses corroborated the facts that the licensee's staff were not in the area when the incident occurred.

Upon consideration of all the evidence the Commission was persuaded that the licensee did not permit the sudden attack on Mr. Sutton and Ms. Evans that happened without any warning. The best that could be said is that unkind words were spoken between 2 patrons, but these words did not reveal that any further illegality was imminent requiring action by the licensee or its agents and employees.

### CONCLUSION

The Commission needs to be persuaded the management of Strega permitted a violation by affirmatively doing something illegal or not doing something they could have done to prevent this incident from happening when they knew or should have known it was to occur. Based on the actions of the police, the participants, and the evidence at the Alcoholic Beverages Control Commission hearing, the Commission finds no violation by the licensee.

The Commission DISAPPROVES the action of the Local Board finding a violation and remands the matter with the recommendation that no further action be taken against the licensee as a result of this matter. The Commission did not consider the reasonableness of the penalty since any penalty would be aberrant to the Commission's decision finding no violation was proven to be committed by the licensee.

**ALCOHOLIC BEVERAGES CONTROL COMMISSION**

Robert H. Cronin, Commissioner \_\_\_\_\_

Kim S. Gainsboro, Chairman \_\_\_\_\_

Susan Corcoran, Commissioner \_\_\_\_\_

Dated: February 24th, 2011

You have the right to appeal this decision to the Superior Court under the provisions of Chapter 30A of the Massachusetts General Laws within thirty (30) days of receipt of this decision.

cc: Local Licensing Board  
Lt. Ouellette, Salem Police  
Stephen P. Lovely, Esq.  
File