



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

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

**DECISION**

**SHREESBARR LLC D/B/A PHOENIX BAR & GRILL  
4 AYER ROAD  
SHIRLEY, MA 01464  
LICENSE#: 03029-RS-1114  
VIOLATION DATE: 12/08/2023  
HEARD: 6/11/2024**

Shreesbarr LLC d/b/a Phoenix Bar & Grill (“Licensee” or “Phoenix Bar”) holds an alcohol license issued pursuant to M.G.L. c. 138, § 12. The Alcoholic Beverages Control Commission (“ABCC” or “Commission”) held a remote hearing via Microsoft Teams on Tuesday, June 11, 2024, regarding an alleged violation of M.G.L. Ch.138 § 69 – Sale or delivery of an alcoholic beverage to an intoxicated person (1 Count).

The following documents are in evidence:

1. Special Investigator Keefe’s Report;
2. ABCC Local Licensing Authority Review Record, Transfer of License Approved 12/12/2016.

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

**FINDINGS OF FACT**

1. On Friday, December 8, 2023, at approximately 11:00 p.m., Investigators Quinn and Keefe (“Investigators”) acting in an undercover capacity entered Shreesbarr LLC d/b/a Phoenix Bar & Grill (“Licensee” or “Phoenix Bar”) to observe the Licensee’s business operation. (Testimony, Exhibit 1)
2. At approximately 11:20 p.m., Investigator Keefe observed an unknown male individual (“UM”) whose eyes appeared to be red and glassy. UM was throwing money causing people to laugh. Id.
3. Investigator Keefe observed UM was positioned directly at the bar and had multiple interactions with the bartenders. At approximately 11:30 p.m., Investigator Keefe observed UM to have slurred speech, moving in an uncoordinated manner and appeared to have difficulty taking sips of a Miller lite beer. Id.

4. At approximately 11:41 p.m., Investigator Keefe observed Frank order, in slurred speech, another drink. A female bartender on duty stated, "I will not serve him unless he sings" which appeared to be a reference to karaoke. Id.
5. At approximately 11:59 p.m., Frank returned to the bar and was served a Miller Lite beer by the female bartender on duty. Id.
6. Investigators identified themselves to the bartender, informed her of the violation and that a report would be filed with the Chief Investigator for further review. Id.
7. Karen Shree Barrett, Licensee, appeared at the Commission hearing. (Commission Records)
8. The Licensee has held a license under M.G.L. c. 138, § 12 since 2017 with no prior violations. (Commission Records)

### DISCUSSION

The Licensee is 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). "[S]ervice [to a patron] of a large number of strong alcoholic drinks [would be] sufficient to put [a licensee] on notice that it was serving a [patron] who could potentially endanger others." Cimino, 385 Mass. at 328. It is proper to infer from evidence of a patron's excessive consumption of alcohol, "on the basis of common sense and experience, that [a] patron would have displayed obvious outward signs of intoxication while continuing to receive service from the licensee." Vickowski, 422 Mass. at 611; see P.J. Liacos, *Massachusetts Evidence* § 4.2, at 118-119; §5.8.6, at 242-244 (6th ed. 1994 & Supp. 1994).

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). Burlington Package Liquors, Inc. v. Alcoholic Beverages Control Comm'n, 7 Mass. App. Ct. 186, 190 (1979).

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. Investigator Keefe testified he was inside the licensed premises when he made observations of the patron and then observed the Licensee's employee serve him an alcoholic beverage. However, the Investigator did not establish that he had made a determination that said patron was intoxicated prior to the service.

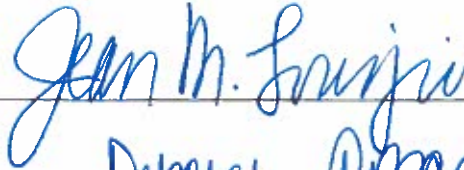
Given the evidence presented, the Commission finds it cannot draw an inference of obvious intoxication at the time of service with the requisite degree of certainty. Based on the direct evidence in this matter, the Commission finds no violation of M.G.L. c. 138 § 69.

### CONCLUSION

Based on the evidence, the Commission finds **NO VIOLATION** OF M.G.L. Ch.138 § 69 – Sale or delivery of an alcoholic beverage to an intoxicated person (1 Count) occurred.

**ALCOHOLIC BEVERAGES CONTROL COMMISSION**

Jean M. Lorizio, Chairman



Deborah A. Baglio, Commissioner



Dated: June 4, 2025

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  
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