



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

Jean M. Lorizio, Esq.
Chairman

DECISION

**EARL'S RESTAURANT (SOMERVILLE, MA) INC.
D/B/A EARL'S KITCHEN & BAR
698 ASSEMBLY ROW #102
SOMERVILLE, MA 02145
LICENSE#: 00164-RS-1130
VIOLATION DATE: 12/28/2019
HEARD: 9/22/2021**

Earl's Restaurant (Somerville, MA) Inc. d/b/a Earl's Kitchen & 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 Wednesday, September 22, 2021, regarding an alleged violation of M.G.L. c. 138, § 69 – Sale or delivery of an alcoholic beverage to an intoxicated person (1 count). Prior to the commencement of the hearing, the Licensee stipulated to the facts in Investigator Bolcome's report.

The following documents are in evidence:

1. Investigator Bolcome's Report;
 2. ABCC Form 43 New License approval, 8/15/2014;
 3. Receipt, 12/27/2019;
 4. Licensee's Stipulation of Facts
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- A. Licensee's Alcohol Service Training;
 - B. Detailed Receipt, 12/27/2019;
 - C. List of Licensee's TIPS certified employees.

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

FINDINGS OF FACT

1. On Friday, December 27, 2019, Investigators Di Cicco and Bolcome ("Investigators") inspected the business operation of Earl's Restaurant (Somerville, MA) Inc. d/b/a Earl's Kitchen & Bar to determine the manner in which its business was being conducted.

2. At approximately 8:55 p.m., Investigator Bolcome entered the licensed premises and observed a male individual who showed signs of intoxication. Bolcome notified Investigator Di Cicco who joined him shortly thereafter.
3. Investigators observed the male seated at the bar where he quickly finished a beer and was then served a mixed alcoholic beverage.
4. Investigators observed the male patron's eyes were glassy and heard him yelling at the individuals immediately next to him. He was speaking significantly louder than the other patrons at the bar.
5. Investigators observed the male patron's behavior was erratic in that his movements were slow and exaggerated, followed by abrupt actions. He was leaning heavily on the bar and on individuals and then he would flail his arms. He slapped the bar creating a loud noise which attracted the attention of other patrons.
6. Investigators made observations of the male patron for approximately one hour. Due to other enforcement responsibilities, it was necessary for Investigators to leave the premises at approximately 10:15 p.m. They decided they would return later in the evening if time allowed.
7. At approximately 1:00 a.m., Investigators returned to the licensed premises and observed the male patron whom they had observed earlier was still on the premises, seated where he had been four hours prior. Investigators observed the male patron finishing a mixed alcoholic beverage, later identified as a Ford's Gin cocktail.
8. Investigators immediately concluded, based on their observations, training and experience, the male patron was intoxicated. His eyes were glassy, bloodshot, and he squinted at times. Seated at the bar, the male patron attempted multiple times to drink out of an empty glass. In several instances, Investigators observed him fumble and attempt to grab his beverage, but the glass eluded his grasp.
9. Investigators observed the male patron leaning against the bar and upon nearby individuals. His behavior appeared labored and sluggish. At one point, the male patron, unsteady on his feet, almost fell when attempting to place his coat on a chair. Investigators observed him staring ahead blankly for extended periods of time.
10. At approximately 1:35 a.m., Investigators observed the male patron bargaining with a bartender for another alcoholic beverage. The bartender sounded reluctant to serve the male patron but ultimately served him a Ford's Gin cocktail at approximately 1:40 a.m. Investigators noted both bartenders on duty were also working when Investigators were on the premises earlier in the evening.
11. Investigators then spoke to the bartender who last served the male patron, and they were joined immediately by the bar manager. Investigators informed the manager of the violation and that a report would be submitted to the Chief Investigator for further review.
12. The manager advised Investigators she would ensure the male patron and his party would have safe transportation home. The bartender also provided Investigators with a copy of the male patron's bar tab for the evening.

13. Dylan Todd, general manager for premises, appeared at the Commission hearing. Mr. Todd stated the bartender on the evening of the incident was not TIPS certified. Mr. Todd testified that while a majority of employees were TIPS certified on the night of the Investigators' visit, the Licensee has made sure all employees are now TIPS certified. Mr. Todd added that new employees must be certified before beginning employment. In addition, the Licensee has their own in-house responsible alcohol service training, and their responsible alcohol service policy is discussed with employees before the start of each shift.
14. The Licensee has held a license under M.G.L. c. 138, § 12 since 2014 with no previous violations.

CONCLUSION

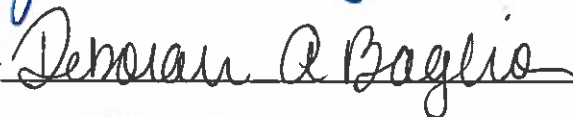
Based on the evidence, the Commission finds the Licensee violated 204 CMR 2.05 (2) Permitting an Illegality on the licensed premises, to wit: M.G.L. c. 138, § 69 – Sale or delivery of an alcoholic beverage to an intoxicated person (1 count). Therefore, the Commission **suspends the license for a period of 3 days, which are hereby deemed served.**

ALCOHOLIC BEVERAGES CONTROL COMMISSION

Jean M. Lorizio, Chairman



Deborah Baglio, Commissioner



Crystal Matthews, Commissioner



Dated: November 16, 2021

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
David Bolcome, Investigator
Joseph Di Cicco, Investigator
Patricia Farnsworth, Esq.
Administration, File