



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

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

**DECISION**

**SHENANIGANS BAR & GRILL, INC. D/B/A SHENANIGANS  
2691 CRANBERRY HIGHWAY  
WAREHAM, MA 02571  
LICENSE#: 00112-RS-1328  
VIOLATION DATE: 12/03/2022  
HEARD: 1/24/2023**

Shenanigans Bar & Grill, Inc. d/b/a Shenanigans (the "Licensee") 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, January 24, 2023, regarding an alleged violation of M.G.L. c. 138, § 69 – Sale or delivery of an alcoholic beverage to an intoxicated person (1 Count).

The following documents are in evidence:

1. Investigator Cutter's Report;
2. ABCC Form 43, New License Approval, 4/22/2015;
- A. Employee S.T.O.P. Alcohol Awareness Server Program and TIPS Certifications.

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

**FINDINGS OF FACT**

1. On Saturday, December 3, 2022, at approximately 12:10 a.m., Investigators Temple and Cutter ("Investigators") inspected Shenanigans Bar & Grill, Inc. d/b/a Shenanigans to determine the way its business was being conducted. (Testimony, Exhibit 1)
2. Investigators observed an unknown male individual ("UM") standing in front of the bar in clear view of several bartenders, who appeared to be intoxicated. Id.
3. Investigators observed UM's eyes were glassy and watery, his eyes had a dazed look, and he seemed to have difficulty keeping his eyes open. Investigators believed UM was leaning on a friend to remain balanced.
4. Investigators walked by UM, heard him speaking and determined that his speech was slurred. Id.
5. Investigators determined UM was intoxicated. Id.

6. Investigators observed the manager on duty, A. Ferreira, walk from the kitchen and hand UM some food. UM stood at the bar eating the food. Id.
7. At approximately 12:40 a.m., Investigators observed another bartender deliver a shot of Hennessy cognac to UM as he stood at the bar. Investigators were too far away to hear whether UM placed an order with the bartender. Id.
8. Investigators identified themselves to Ms. Ferreira and informed her that after she had given food to UM, another bartender served UM an alcoholic beverage. Id.
9. Investigators informed Ms. Ferreira of the violation and that a report would be filed with the Chief Investigator for further review. Id.
10. Ms. Ferreira appeared at the Commission hearing. (Testimony)
11. Ms. Ferreira knows the male patron as he has been coming into the licensed establishment for years, as well as from “around town.” Id.
12. December 3, 2022, was a busy night at Shenanigan’s. There was a band playing and the establishment was dimly lit. Id.
13. Ms. Ferreira regularly provides complimentary appetizers towards the end of the night to regular customers, and new customers alike. Id.
14. The Licensee has held a license under M.G.L. c. 138, § 12 since 2015 with no previous violations. (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 M.G.L. c. 138.

M.G.L. c. 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) (emphasis supplied). The Commission is given “comprehensive powers of supervision over licensees.” Connolly, 334 Mass. at 617.

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; accord McGuiggan v. New England Tel. & Tel. Co., 398 Mass. 152, 161 (1986).

To prove this violation, the following must be shown: (1) that an individual was intoxicated 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. Vickowski, 422 Mass. at 609. There must be some evidence 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). As explained in Vickowski,

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. 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).

Vickowski, 422 Mass. at 610. That an individual is intoxicated may be shown “by direct evidence, circumstantial evidence, or a combination of the two.” Douillard v. LMR, Inc., 433 Mass. 162, 165 (2001).

For the Commission to make a finding, there must be substantial evidence that a violation has occurred. “Substantial evidence of a violation is more than a mere scintilla. It means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.” Consol. Edison Co. of New York v. N.L.R.B., 305 U.S. 197, 229 (1938); accord Charlesbank Rest. Inc. v. Alcoholic Beverages Control Comm’n, 12 Mass. App. Ct. 879 (1981).

Evidence was presented through the testimony of investigators who were inside the licensed premises on December 3, 2022, and observed a male patron whom they later determined to be intoxicated. Their opinion was based on observations made when walking by the male patron and then from surveillance of the male patron from as far as approximately ten (10) feet away. Following the Investigators’ determination that the male patron was intoxicated, they observed an employee place an alcoholic beverage on the bar in front of the patron.

The Licensee presented direct evidence through the testimony of Ms. Ferreira, the manager on duty on the night of December 3, 2022, who knows the male patron as a regular at the

establishment, as well as knowing the male generally within the community. Ms. Ferreira did not find the male patron's behavior to be out of the ordinary. (Testimony)

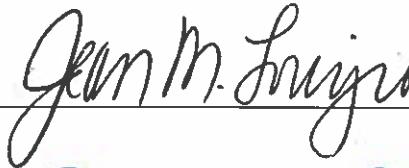
The Commission is not persuaded there was substantial evidence presented as to obvious intoxication. As a result, the Commission finds no violation of M.G.L. c. 138, § 69 Sale or delivery of an alcoholic beverage to an intoxicated person.

### CONCLUSION

Based on the evidence, the Commission finds NO VIOLATION of M.G.L. c. 138, § 69 Sale or delivery of an alcoholic beverage to an intoxicated person occurred.

### **ALCOHOLIC BEVERAGES CONTROL COMMISSION**

Jean M. Lorizio, Chairman



Deborah Baglio, Commissioner



Dated: June 25, 2024

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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