

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

Deborah B. Goldberg
Treasurer and Receiver General

Kim J. Gainsboro, Esq.
Chairman

NOTICE OF SUSPENSION

March 31, 2016

SERN-WAH, INC. D/B/A SINGAPORE RESTAURANT
170 WHALON STREET
FITCHBURG, MA 01420
LICENSE#: 039400058
VIOLATION DATE: 12/19/2015
HEARD: 03/15/2016

After a hearing on March 15, 2016, the Commission finds Sern-Wah, Inc. d/b/a Singapore Restaurant violated 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 seven (7) days of which four (4) days will be served, and three (3) days will be held in abeyance for a period of two (2) years provided no further violations of Chapter 138 or Commission Regulations occur.**

By decision dated May 7, 2014, the Commission had previously ordered a six (6) day license suspension, with two (2) days to be served and four (4) days to be held in abeyance for a period of two (2) years provided no further violations occurred. Based on the violation found above, the Licensee violated the conditions of that four (4) day suspension being held in abeyance. The Commission hereby orders that suspension to be served on and after the four (4) day suspension. The Licensee will serve a total eight (8) days.

The suspension shall commence on Wednesday, May 25, 2016 and terminate on Thursday, June 1, 2016. The license will be delivered to the Local Licensing Board or its designee on Wednesday, May 25, 2016 at 9:00 A.M. It will be returned to the licensee Thursday, June 2, 2016.

You are advised that pursuant to the provisions of M.G.L. c.138 §23, you may petition the Commission to accept an offer in compromise in lieu of suspension within twenty (20) calendar days following such notice of such suspension. If accepted, you may pay a fine using the enclosed form which must be signed by the Licensee and a Massachusetts Licensed Accountant.

You are advised that you have the right to appeal this decision under M.G.L. c. 30A to Superior Court within thirty (30) days upon receipt of this notice.

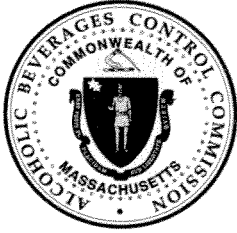
ALCOHOLIC BEVERAGES CONTROL COMMISSION



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Το έγγραφο αυτό είναι σημαντικό και θα πρέπει να μεταφραστούν αμέσως.
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cc: Local Licensing Board
Frederick G. Mahony, Chief Investigator
Nicholas Velez, Investigator
Caroline Guarino-Wilichoski, Investigator
Christopher Temple, Investigator
Thomas Barron, Esq. via facsimile 617-773-7924
Administration, File



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DECISION

SERN-WAH, INC. D/B/A SINGAPORE RESTAURANT
170 WHALON STREET
FITCHBURG, MA 01420
LICENSE#: 039400058
VIOLATION DATE: 12/19/2015
HEARD: 03/15/2016

Sern-Wah, Inc. d/b/a Singapore Restaurant (the "Licensee") holds an alcohol license issued pursuant to M.G.L. c. 138, §12. The Alcoholic Beverages Control Commission (the "Commission") held a hearing on Tuesday, March 15, 2016, 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 alleged in Investigator Velez's report.

The following documents are in evidence:

1. Investigator Velez's Investigative Report dated December 19, 2015; and
2. Licensee's Stipulation of Facts (but not as to a violation);

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

The Commission took Administrative Notice of the Licensee's record.

FINDINGS OF FACT

1. On Saturday, December 19, 2015, at approximately 12:10 a.m., Investigators Guarino-Wilichoski, Temple, and Velez ("Investigators") investigated the business operation of Sern-Wah, Inc. d/b/a Singapore Restaurant to determine the manner in which their business was being conducted. (Exhibit 1; Testimony)
2. At approximately 12:20 a.m., Investigators observed an individual, Mark, who appeared to be intoxicated. (Exhibit 1; Testimony)
3. Mark is a long-time, regular patron of the Licensee's. (Testimony)
4. Investigators observed that Mark staggered as he walked in an unsteady manner in front of them. (Exhibit 1; Testimony)

5. Investigators observed Mark swaying as he stood near the bar. Mark had bloodshot, red, glassy, watery eyes, and stared blankly. Investigators observed Mark stumble, step aside and fall down three steps. (Exhibit 1; Testimony)
6. When an Investigator spoke with Mark, Mark stated that he had had too much to drink. The Investigator observed that Mark's speech was thick and slurred. (Exhibit 1)
7. Based on their training and experience, Investigators formed the opinion that Mark was intoxicated. (Exhibit 1; Testimony)
8. At approximately 12:46 a.m., Investigators observed a male bartender, Sam Dong, deliver to Mark a bottle of Bud Light beer. (Exhibit 1; Testimony)
9. Before serving Mark the Bud Light beer, Mr. Dong had already served Mark two Mai Tai beverages as well as a bottle of Bud Light beer. (Testimony)
10. Investigators identified themselves to Mr. Dong, and then they identified Mark to him. (Exhibit 1; Testimony)
11. Mr. Dong stated he would call a taxi for Mark to make sure he would have safe transport home. (Exhibit 1; Testimony)
12. Investigators informed Mr. Dong of the violation and that a report would be filed with the Chief Investigator for further review. (Exhibit 1; Testimony)

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). “[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 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; accord P.J. Liacos, Massachusetts Evidence § 4.2, at 118-119; § 5.8.6, at 242-244 (6th ed. 1994 & Supp. 1994).

Here, the Licensee stipulated to the facts alleged in Investigator Velez’s Report. Investigators Velez and Temple testified that before the patron Mark was served the Bud Light beer, he had bloodshot, red, glassy, and watery eyes. Investigator Temple observed that patron Mark was staring blankly and that he stumbled and fell down three steps. Furthermore, patron Mark admitted to one of the investigators that he had consumed too much alcohol. (Exhibits 1, 2; Testimony). See Baywatch Inc. of Stoughton, Stoughton (ABCC Decision Jan. 31, 2008 (licensee knew or reasonably should have known patron was intoxicated where patron had bloodshot, glassy eyes and stumbled when getting up from chair prior to being served a beer); Westerback v. Harold F. LeClair Co., Inc., 50 Mass. App. Ct. 144, 144-145 (patron served despite having difficulty walking, falling down, appearing depressed and sleepy, and having slurred speech). Mr. Dong testified that he served patron Mark, who is a regular customer, four (4) drinks that evening, and offered to call patron Mark a cab ride home. The Commission relies on the facts, as testified by the Investigators. The Commission therefore finds that (1) that Mark was intoxicated on the licensed premises; (2) that an employee of the licensed premises, in

particular Mr. Dong, reasonably should have known that Mark was intoxicated; and (3) that after Mr. Dong reasonably should have known the individual was intoxicated, Mr. Dong delivered a beer to Mark. See Vickowski, 422 Mass. at 609; Exhibits 1, 2; Testimony.

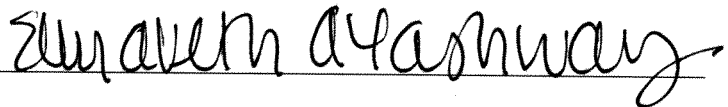
CONCLUSION

Based on the evidence, the Commission finds the Licensee violated 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 seven (7) days of which four (4) days will be served, and three (3) days will be held in abeyance for a period of two (2) years provided no further violations of Chapter 138 or Commission Regulations occur.**

By decision dated May 7, 2014, the Commission had previously ordered a six (6) day license suspension, with two (2) days to be served and four (4) days to be held in abeyance for a period of two (2) years provided no further violations occurred. Based on the violation found above, the Licensee violated the conditions of that four (4) day suspension being held in abeyance. The Commission hereby orders that suspension to be served on and after the four (4) day suspension. The Licensee will serve a total eight (8) days.

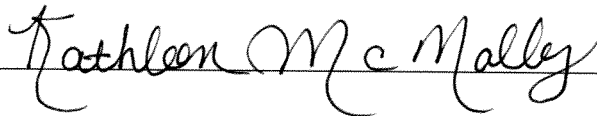
ALCOHOLIC BEVERAGES CONTROL COMMISSION

Elizabeth A. Lashway, Commissioner



I, the undersigned, hereby certify that I have reviewed the hearing record and concur with the above decision.

Kathleen McNally, Commissioner



Dated: March 31, 2016

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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