

Re: Hawaii Garden, Inc.  
Premise: 300 E. Plymouth Street  
City/Town: Halifax, MA 02338  
Heard: March 2, 2010

## DECISION

Hawaii Garden, Inc., holds an all alcohol license pursuant to Massachusetts General Laws chapter 138, §12. The Alcoholic Beverages Control Commission (“the Commission”) scheduled a hearing on March 2, 2010 regarding an alleged violation of Massachusetts General Laws chapter 138, §69.

The following documents are in evidence:

1. Investigator Dennis Keefe’s Report;
  - A. Blueprint of Bar;
  - B. Photo of Table (front view);
  - C. Photo of Table (side view);
  - D. Newspaper Article – Saugus; and
  - E. Receipt of Tab.

### Facts

1. On Thursday, December 3, 2009, at approximately 11:40 p.m., Investigators Keefe, Kenny, Binienda and Chief Mahony investigated the business operation of Hawaii Garden, Inc.
2. Investigators Keefe and Binienda entered the premise and noticed a female patron, later identified as Darlene Walker, sitting at a table slumped over and appeared to be asleep.
3. Ms. Walker struggled to get to her feet by holding onto a chair for balance and staggered over to the bar. With badly slurred speech she ordered a Bud Light beer from a male bartender, later identified as Hon Wah Tang. At this point the investigators formulated the opinion that Ms. Walker was intoxicated.
4. At approximately 11:45 p.m., the investigators observed Mr. Tang deliver a bottle of Bud Light beer to Ms. Walker.

5. The investigators also observed a male patron, later identified as Richard Wilson, staggered as he attempted to walk back from the bathroom to his table, where Ms. Walker was seated.
6. Mr. Wilson sat at the table and drank from a large ceramic bowl using a using straw. The drink in the bowl was later identified as a Scorpion Bowl.
7. Mr. Wilson then struggled to get his balance to get up and staggered over to the Juke Box. Mr. Wilson swayed from side to side as he made his way back to his table. Mr. Wilson spoke to Ms. Walker with badly slurred and unintelligible speech. At this point the investigators formulated the opinion that Mr. Wilson was intoxicated.
8. Mr. Wilson then motioned to the bartender for another drink. At approximately 11:59 p.m., Mr. Tang brought Mr. Wilson another Scorpion Bowl. As Mr. Tang placed the drink on the table, Mr. Wilson almost knocked the table over by grabbing onto the table for balance while seated.
9. At this point Investigator Binienda telephoned Investigator Kenny and Chief Mahony who were outside the establishment and informed them of the violation and requested assistance.
10. Investigator Kenny notified the Halifax Police Department and requested assistance.
11. Shortly after Investigator Kenny, Chief Mahony and Officers Bemmer and Barbour of the Halifax Police entered the establishment.
12. Investigator Binienda informed the Mr. Tang of the violations.
13. Mr. Tang stated in a rude and sarcastic tone that Mr. Wilson was not drunk because he was not yelling or screaming and he only had a couple drinks so, “do the math.”
14. Investigator Binienda informed Mr. Tang that a report would be filed and there would be a hearing in front of the Commission.
15. Mr. Tang responded again in a rude and sarcastic tone, “good, good, good.” Mr. Tang stated that he would give Mr. Wilson and Ms. Walker a ride home.
16. The Attorney for the licensee provided the Commission with several items of evidence. A receipt of the tab clearly indicated the food ordered, one beer ordered and the alcoholic beverages ordered by Ms. Walker on the date in question.
17. Testimony was also elicited from the bartender and the witness that she had ordered but had not fully consumed a third (3<sup>rd</sup>) beer, which was not on the receipt produced.

18. The witness produced by Counsel, testified that she was not intoxicated that night and did not consume three (3) beers. In fact, she stated that during the course of the night, she ate and drank two (2) beers and begun to drink the third (3<sup>rd</sup>) but did not finish it.

19. The Attorney for the licensee stated that Ms. Walker did not have a problem placing any orders that evening. He further disputed the fact that she had difficulty walking or was “staggering” as, alleged in the investigator’s report.

20. There was not any testimony from Mr. Wilson nor was there testimony rebutting his state of intoxication on the date in question.

Conclusion

An administrative review of the licensee’s file was conducted and it was revealed that this was the third violation for the licensee. Since there was credible evidence presented that the female patron, Ms. Walker, was not intoxicated, the Commission finds the licensee in violation of only one (1) count of Massachusetts General Laws chapter 138, §69. Therefore, the Commission **suspends the license for eight (8) days.**

ALCOHOLIC BEVERAGES CONTROL COMMISSION

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

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

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

Dated in Boston, Massachusetts this 6<sup>th</sup> day of April 2010.

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 days of receipt of this decision.

cc: Halifax Licensing Board  
Frederick G. Mahony, Chief Investigator  
John B. Glynn, Esq.  
File