

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

Steven Grossman
Treasurer and Receiver General

Kim J. Gainsboro, Esq.
Chairman

DECISION

ANTHONY'S DANCE CLUB, INC. D/B/A ANTHONY'S I
500 NEW LUDLOW ROAD
SOUTH HADLEY, MA 01075
LICENSE#: 117600017
VIOLATION DATE: 12/19/2013
HEARD: 05/06/2014

Anthony's Dance Club, Inc. d/b/a Anthony's I (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, May 6, 2014, regarding an alleged violation of 204 CMR 2.05(2) - Permitting an Illegality on the licensed premises, to wit: c. 138, §69-Sale or Delivery of an alcoholic beverage to an intoxicated person (1 Count). The above captioned occurred on December 19, 2013, according to Investigator Teehan's Report.

The following documents are in evidence as exhibits:

1. Investigator Teehan's Investigative Field Report dated December 19, 2013.

There is one (1) audio recording of this hearing, and two (2) witnesses testified.

FACTS

1. On Thursday, December 19, 2013, at approximately 7:40 p. m., Investigators Kenny and Teehan conducted an investigation of the business operation of Anthony's Dance Club, Inc. d/b/a Anthony's I, to determine the manner in which its business was being conducted.
2. Investigator Teehan testified that he observed an individual, in possession of a bottle of Budweiser Light beer, who appeared to be intoxicated. This patron was later identified as Mike.
3. Investigator Teehan testified that he observed Mike to be unsteady on his feet, his movements were slow, he swayed back and forth, and his head nodded up and down. Based on his training and experience, Investigator Teehan formulated the opinion that Mike was intoxicated.
4. Investigator Teehan observed Mike sit at the stage in front of the bar area with two male individuals, and each patron was in possession of a bottle of Budweiser Light beer.
5. At approximately 10:30 p. m., investigators observed a female waitress on duty, Rachel, serve Mike a shot of an alcoholic beverage.
6. At approximately 10:38 p. m., investigators observed another female waitress, Michele, serve Mike another shot of an alcoholic beverage.

7. Investigator Teehan testified that at approximately 11:05 p. m., he observed a patron deliver a bottle of Budweiser Light beer to patron Mike.
8. Investigator Teehan testified that this occurred while patron Mike was in the line of sight of a female bartender who was on duty.
9. Investigator Teehan testified that this was when he determined that a violation occurred.
10. Investigators identified themselves to the manager on duty, Joanne Askins.
11. Investigators asked Mike for identification and he became argumentative.
12. Mike stated that he didn't have any identification with him, became very upset, and repeatedly told investigators that he was not driving. He stated that he wanted his money back.
13. Investigators informed Ms. Askins of the violation, and that a report would be filed with the Chief Investigator for review.
14. Ms. Askins testified before the Commission that she is one of the managers of the premises, and that another patron, not an employee or staff member, delivered a beer to Mike.
15. Ms. Askins testified that she spoke to Mike when the violation was issued. She determined during this conversation that Mike was coherent, and did not appear to be intoxicated.
16. Ms. Askins testified that she then asked Mike if she could videotape him to demonstrate that Mike was coherent and not intoxicated.
17. Ms. Askins told the Commission that Mike refused to be videotaped.
18. Mike explained to Ms. Askins that he did not want to be videotaped because he was inside a strip joint and did not want to get into any trouble with his wife.

DISCUSSION

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." Massachusetts' Courts have held that negligence cases provide "some guidance" as to what must be proven "to show a violation of the statute [G.L. c. 138, §69]." Ralph D. Kelly, Inc. v. ABCC, Middlesex Superior Court C.A. No. 99-2759 (McEvoy, J.) (May 23, 2000) cited in Royal Dynasty, Inc. v. ABCC, Suffolk Superior Court C.A. No. 03-1411 (Billings, J.) (December 9, 2003). To prove this violation there must be evidence that the licensee served alcohol to an individual when it knew, or should have known, that he was intoxicated. See Bennett v. Eagle Brook Country Store, Inc., 408 Mass. 355, 358 (1990); Cimino v. The Milford Keg, Inc., 385 Mass. 323, 327 (1982).

The Massachusetts Appeals Court held that "The statutory language applicable to licensees focuses only on sales and deliveries." A.C. Cruise Line, Inc. v. Alcoholic Beverages Control Commission, 560 N.E.2d 145, 29 Mass. App. Ct. 319, 324, (1990) citing Tiki Hut Lounge, Inc. v. Alcoholic Beverages Control Commission, 398 Mass. 1001, 1002 (1986). "We do not imply language in a statute if the Legislature has not provided it." A.C. Cruise Line, Inc. v. Alcoholic Beverages Control Commission, 560 N.E.2d 145, 29 Mass. App. Ct. 319, 324, (1990) citing New England Power Co. v. Selectman of Amesbury, 389 Mass 69, 74 -75 (1983).

To prove a violation of M.G.L. chapter 138, §69 there must be proof of four elements:

- 1) In or on a licensed premises;
- 2) a visibly intoxicated person;
- 3) was sold or delivered;
- 4) an alcoholic beverage.

In this case we have proof that Mike, a patron, was inside the licensed premises. Investigator Teehan testified that he observed another patron deliver a beer to Mike. Investigator Teehan testified that it was in the line of sight of a female bartender who was on duty. Ms. Askins, the manager, testified that she

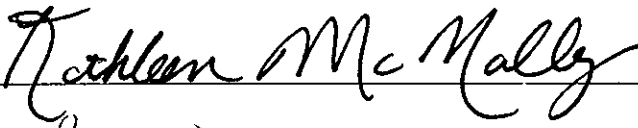
spoke to patron Mike after the violation was issued, and in her opinion, he did not appear to be intoxicated, and that she even attempted to videotape him to demonstrate this.

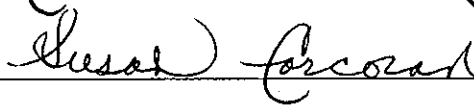
Although Investigator Teehan testified that the delivery of the beer was in the line of sight of the bartender, the Commission did not hear evidence that the bartender knew or observed the delivery of the beer by another patron to patron Mike. Based on the evidence presented at the hearing, the Commission finds that there was not sufficient evidence to prove a violation of 204 CMR 2.05(2) to wit: chapter 138, §69.

CONCLUSION

Based on the evidence, the Commission finds no violation of 204 CMR 2.05(2) - Permitting an Illegality on the licensed premises, to wit: c. 138, §69 - Sale or Delivery of an alcoholic beverage to an intoxicated person (1 Count).

ALCOHOLIC BEVERAGES CONTROL COMMISSION

Kathleen McNally, Commissioner 

Susan Corcoran, Commissioner 

Dated: September 10, 2014

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.

- cc: Local Licensing Board
- Frederick G. Mahony, Chief Investigator
- Michael Teehan, Investigator
- Mark Kenny, Investigator
- Daniel D. Kelly, Esq. via facsimile 413-733-1245
- Administration
- File