

Re: 25 Essex Street, LLC
dba: Essex Street Grille
Premises: 25 Essex Street
City/Town: Haverhill, MA 01830
Heard: November 10, 2009

DECISION

The Commission scheduled a hearing to determine whether on July 17, 2009, 25 Essex Street, LLC dba Essex Street Grille was in violation of 204 CMR 2.05 (2) to wit: permitting an illegality on the licensed premises, 780 CMR 121.1 to wit: overcrowding; 204 CMR 2.05 (2)- Permitting an illegality on the licensed premises, to wit: 780 CMR 120.5.1 to wit: failure to post the certificate of inspection to certify that the premise, structure or portion thereof as herein specified for general fire and life safety features; and, 204 CMR 2.05 (2) permitting an illegality on the licensed premises, to wit: 26 USC §5301 (c)- refilling of liquor bottles (1) place in any liquor bottle any distilled spirits whatsoever other than those contained in such bottle at the time of tax determination under the provisions of this chapter.

On November 9, 2009, in lieu of a hearing, the licensee stipulated that the above-referenced violations as contained in the investigators report occurred.

Facts

1. On Friday July 17, 2009, Investigators Doyle, Capurso, Kujawski and Bailey conducted undercover operations in the City of Haverhill in conjunction with the Haverhill Police Department.
2. At approximately 12:45 a.m. Investigators Kujawski and Bailey, received a call from Investigator Capurso stating that a fight was occurring outside 25 Essex Street Grille.
3. Investigators Kujawski and Bailey arrived at the Essex Street Grille and went in to speak with the owner or manager on duty. They immediately observed that there were a large number of patrons in the licensed premises. It was extremely difficult to maneuver through the crowd to reach the bar in order to speak with the manager or owner. Investigator Bailey had to produce her neck badge in order for the crowd to part to allow her access to the bar.

4. Investigator Bailey spoke with one of the owners, Pascale C. Pervanas and asked for the capacity of the establishment. Mr. Pervanas admitted that they were over capacity. At Investigator Bailey's request, Investigators Kujawski and Doyle each took a head count and estimated that there were between 115 and 120 individuals in the licensed premises.
5. Investigator Bailey then asked Mr. Pervanas to provide her with the current alcoholic beverages license and the occupancy permit from the fire department, as well as his driver's license.
6. Mr. Pervanas provided Investigator Bailey with the liquor license, his driver's license and the 2009 fire inspection permit. The fire inspection permit was not posted in a conspicuous place on the wall.
7. Investigators Kujawski and Bailey went to the basement with Mr. Pervanas, and observed a stainless steel cart with two shelves. The bottom shelf held numerous 1-liter bottles of alcoholic beverages. The top shelf contained a funnel, 1.75 liter of Captain Morgan Rum and a 1-liter bottle of Captain Morgan Rum. As a result of their training and experience, the investigators understood that this was an indication that someone was refilling smaller bottles (1 ltr) of the same brand name alcoholic beverages from larger ones (1.75 ltr). The investigators took the funnel, 1.75 liter of Captain Morgan Rum, and 1 liter bottle of Captain Morgan Rum into evidence.
8. On Thursday, July 30, 2009, Investigator Bailey received a copy of the Certificate of Fire Inspection from the Haverhill Fire Department. The certificate specifies that the permitted occupancy for Essex Street Grille is 80 people.

The Commission finds the licensee in violation of all of the above-referenced charges. During the hearing, Michael Spencer, the licensee introduced evidence in mitigation of these violations, and contended that his goal is to make his establishment a more upscale, family friendly restaurant, as opposed to an overcrowded bar. The Commission is persuaded that the licensee truly intends to effectuate this type of change to the nature of his business. As a result, in accordance with the licensee's request, the Commission will modify the license by requiring sales of alcoholic beverages to cease at 10 p.m. every night for twenty-seven (27) days.

ALCOHOLIC BEVERAGES CONTROL COMMISSION

Kim S. Gainsboro, Chairman _____

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

Susan Corcoran, Commissioner _____

Dated in Boston, Massachusetts this 25th day of November 2009.

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: Local Licensing Board
Frederick G. Mahony, Chief Investigator
File