

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

Steven Grossman
Treasurer and Receiver General

Kim S. Gainsboro, Esq.
Chairman

NOTICE OF SUSPENSION

November 8, 2012

HEALY'S RESTAURANT INC. DBA MOYNIHAN'S RESTAURANT
895-97 MAIN ST.
WORCESTER, MA 01610
LICENSE#: 150800102
HEARD 11/06/2012

After a hearing on November 6, 2012, the Commission finds Healy's Restaurant Inc. dba Moynihan's Restaurant in violation of c. 138 §69-Sale or Delivery of an Alcoholic Beverage to an Intoxicated Person (2 counts).

The Commission suspends the licensee's license for a total of seven (7) days to be served. The suspension shall commence on Wednesday, December 26, 2012 and terminate on Tuesday, January 1, 2013. The license will be delivered to the Local Licensing Board or its designee on Wednesday, December 26, 2012 at 9:00 A.M. It will be returned to the licensee Wednesday, January 2, 2013.

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. All checks must be certified and accompanied by the enclosed form, which must be signed by a Massachusetts Licensed Accountant.

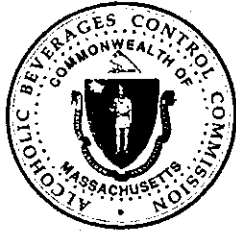
You are advised that you have the right to appeal this decision under M.G.L. c. 30A to Superior Court within thirty (30) days upon receipt of this notice.

ALCOHOLIC BEVERAGES CONTROL COMMISSION

Kim S. Gainsboro
Chairman

cc: Local Licensing Board
Frederick G. Mahony, Chief Investigator
Christopher Temple, Investigator
Stephen V. Miller, Esq. via facsimile 617-946-4624
Administration
File

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The Commonwealth of Massachusetts
Department of the State Treasurer
Alcoholic Beverages Control Commission
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Steven Grossman
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DECISION

HEALY'S RESTAURANT INC. DBA MOYNIHAN'S RESTAURANT
895-97 MAIN ST.
WORCESTER, MA 01610
LICENSE#: 150800102
HEARD: 11/06/2012

Healy's Restaurant Inc. dba Moynihan's Restaurant (the "Licensee") holds an all alcoholic beverages license issued pursuant to M.G.L. c. 138, §12. The Alcoholic Beverages Control Commission (the "Commission") held a hearing on Tuesday, November 6, 2012, regarding an alleged violation of c. 138 §69-Sale or Delivery of an Alcoholic Beverage to an Intoxicated Person (2 counts). Prior to the commencement of the hearing, the licensee stipulated to the violations alleged in Investigator Temple's Investigative Report.

The following documents are in evidence:

1. Licensee's Stipulation of Facts; and
 2. Investigator Temple's Investigative Report dated July 24, 2012.
- A. Statement dated November 2, 2011[sic] from Ms. Sommer Cartier;
 - B. Statement dated November 1, 2012 from Mr. John Powers; and
 - C. Copy of ServSafe Certificate for Mr. John Powers and TIPS Certificate for Ms. Sommer Cartier.

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

FACTS

1. On Friday, July 20, 2012, at approximately 12:00 a. m., Investigators Keefe and Temple, acting in an undercover capacity with Officer Bill Stout of the Worcester Police Department, investigated the business operation of Healy's Restaurant Inc. dba Moynihan's Restaurant to determine the manner in which their business was conducted.
2. Investigators entered the licensed premises and observed approximately twenty-five (25) patrons in the well-lit interior.
3. Investigators' attention was drawn to a male patron, later identified as Jose (last name unknown), whose movements on the dance floor were uncoordinated. Investigators observed Jose stumbling into other individuals.
4. Investigators observed Jose to be unsteady on his feet as he made his way to the bar.
5. At approximately 11:45 p. m., investigators observed Jose in possession of a glass which was three-quarters full of an unknown beverage. They observed Jose consume a majority of this unknown beverage in one gulp.

6. Investigators then observed Jose order a Rolling Rock beer from the female bartender, later identified as Ms. Sommer Cartier.
7. Jose was accompanied by a female individual, later identified as Ms. Jennifer Bailey.
8. Investigators observed Ms. Bailey had uncoordinated movements, and that she stumbled into other individuals on the dance floor.
9. At approximately 11:45 p. m., investigators observed that a draft beer was delivered to Ms. Bailey by the female bartender, Ms. Cartier.
10. Investigators observed Ms. Bailey drink from the beer, then get up and exit the licensed premises.
11. Investigators identified themselves to Ms. Bailey, and asked her for identification.
12. While outside the licensed premises a male bartender, later identified as Mr. John Powers, approached investigators and asked if everything was all right.
13. Investigators stated to Mr. Powers that they had observed two (2) individuals who displayed signs of intoxication in plain view of the bartender who later served them alcoholic beverages.
14. Investigators identified both intoxicated individuals to Mr. Powers.
15. Mr. Powers stated that he knew these two (2) individuals were intoxicated but that he did not know that Ms. Sommer had served them.
16. Mr. Powers stated that this was only Ms. Sommer's third night working at the bar.
17. Investigators then spoke to Ms. Sommer about the violation.
18. Ms. Sommer responded, "Did you see me pour out the rest of his [Jose's] other beer before that?"
19. Investigators determined that safe transport was provided for both intoxicated individuals.
20. Investigators informed Mr. Powers of the violation, and that a report would be submitted to the Chief Investigator for review.

CONCLUSION

Based on the evidence, the Commission finds the licensee violated c. 138 §69-Sale or Delivery of an Alcoholic Beverage to an Intoxicated Person (2 counts). Therefore, the Commission **suspends the license for six (6) days of which two (2) days will be served and four (4) 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 March 7, 2012, the Commission had previously ordered a five (5) day license suspension to be held in abeyance for a period of two (2) years provided no further violations occurred. Based on the violations found above, the licensee violated the conditions of that five (5) day suspension being held in abeyance. The Commission hereby orders that suspension to be served on and after the two (2) day suspension. The licensee will serve a total seven (7) days.

ALCOHOLIC BEVERAGES CONTROL COMMISSION

Susan Corcoran, Commissioner *Susan Corcoran*

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

Kathleen McNally, Commissioner *Kathleen McNally*

Dated: November 8, 2012

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
Christopher Temple, Investigator
Stephen V. Miller, Esq. via facsimile 617-946-4624
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