



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

October 3, 2014

THE NEXT PLACE, LLC DBA THE GREATEST BAR
262-66 FRIEND ST
BOSTON, MA 02126
LICENSE#: 011601397
VIOLATION DATE: 12/31/2013
HEARD: 04/15/2014

After a hearing on April 15, 2014, the Commission finds The Next Place, LLC dba The Greatest Bar in 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 (2 Counts).

The Commission **suspends the licensee's license for a total of eight (8) days to be served. The suspension shall commence on Wednesday, November 26, 2014, and terminate on Wednesday, December 3, 2014.** The license will be delivered to the Local Licensing Board or its designee on Wednesday, November 26, 2014 at 9:00 A.M. It will be returned to the licensee Thursday, December 4, 2014.

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
Chris Temple, Investigator
Caroline Guarino-Wilichoski, Investigator
James A. Murphy, Esq. via facsimile 617-254-5522
Administration
File



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DECISION

THE NEXT PLACE, LLC DBA THE GREATEST BAR
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BOSTON, MA 02126
LICENSE#: 011601397
VIOLATION DATE: 12/31/2013
HEARD: 04/15/2014

The Next Place, LLC dba The Greatest Bar (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, April 15, 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 (2 Counts). The above captioned occurred on December 31, 2013, according to Investigator Kelleher's Report.

The following documents are in evidence:

1. Investigator Kelleher's Investigative Report dated December 31, 2013.
2. Licensee's City of Boston Licensing Board Docket Sheet covering from 1994 to 2014.

There is one (1) audio recording of this hearing and four (4) witnesses testified.

FACTS

1. On Tuesday, December 31, 2013, at approximately 11:30 p. m., Chief Mahony along with Investigators Guarino, Temple, and Kelleher conducted an investigation of the business operation of The Next Place, LLC dba The Greatest Bar, to determine the manner in which its business was being conducted.
2. At approximately 11:30 p. m., Investigator Kelleher observed an individual, Jonathon McKenna, whose actions, indicated signs of intoxication.
3. Investigator Kelleher observed that Mr. McKenna was unsteady on his feet and stumbling into people. At one point, Mr. McKenna nearly fell down, bumping Investigator Kelleher and then attempting to dance with her.
4. Investigator Kelleher testified that Mr. McKenna grabbed her arm and she pushed him away. Mr. McKenna then grabbed other patrons.
5. Investigator Kelleher testified that she was close enough to patrons McKenna and Twigg to hear both patrons speaking. She observed both patrons (Twigg and McKenna) to be unsteady on their feet.

6. Investigators observed that Mr. McKenna continued aggressively grabbing random people and trying to dance with them. Some of the people Mr. McKenna attempted to dance with were already dancing with a partner. These couples pushed Mr. McKenna away but that did not deter him from continuing this behavior.
7. Investigators observed that Mr. McKenna appeared confused at times, with droopy eyelids and glassy eyes. He continued to walk in an unsteady manner, walking into people and laughing as he did so.
8. Investigators observed Mr. McKenna make his way to the bar and meet a friend, Dylan Twigg, who also showed signs of intoxication.
9. Investigators observed Mr. McKenna and Mr. Twigg assist each other to stand up by placing their arms around each other as they walked to the dance floor area in front of the bar.
10. Investigators observed that Mr. Twigg slurred his words as he spoke and had nearly closed eyes.
11. Prior to the midnight toast, investigators observed the bartender on duty give Mr. Twigg two glasses of champagne. Investigators observed that Mr. Twigg and Mr. McKenna drank the champagne in one motion, as though it were a shot of alcohol.
12. At approximately 12:10 a. m., investigators observed that Mr. McKenna and Mr. Twigg made their way to the bar area, yelling and waving their arms in an attempt to get the bartender's attention. Mr. Twigg appeared to lean against the bar in an attempt to maintain his balance.
13. Investigators observed that Mr. McKenna fumbled with his wallet in an uncoordinated manner as he attempted to pay the bartender.
14. Investigators observed the bartender on duty serve two shots and two cups of beer to McKenna and Twigg. Each man quickly drank the shots at the bar.
15. Investigators identified themselves to Mr. McKenna and Mr. Twigg and asked them to move to an area where investigators could interview them.
16. Initially Mr. McKenna and Mr. Twigg resisted going with the investigators and at that point the Licensee's security staff removed the cups of beer from each individual's hand, placed the beer on the bar, and escorted the men towards the door.
17. Upon exiting the premises, Mr. Twigg stated, "Is this because we peed in the flower pot?" He continued to repeat this statement several times.
18. Based on their training and experience, investigators advised Mr. McKenna and Mr. Twigg that investigators believed they were both intoxicated.
19. Mr. McKenna responded, "Yeah, we're drunk, fuck it. It's New Year's Eve." Both men continued to repeat themselves several times.
20. Investigators observed the men were unsteady on their feet, had slurred speech, with droopy eyelids and glassy eyes.
21. Investigators presented the two men to the general manager on duty, James Ferola.
22. Investigators observed several other intoxicated individuals on the premises.
23. Investigators informed Mr. Ferola of the violation and that a report would be filed with the Commission for review.
24. Investigators further advised Mr. Ferola that he should do his best to guide the intoxicated individuals on the premises toward safe transport home. ..
25. Chief Investigator Mahony testified that on this evening, it was New Year's Eve. He testified that this is a large premises and he felt that the licensee did not have control of the bar that evening.
26. Mr. James Ferola, the general manager testified at the Commission hearing that this was the second New Year's Eve that he has worked at the premises. This premises operates with four (4) floors for patrons.
27. Mr. Ferola testified that he was roaming the premises and did not see Mr. Twigg or Mr. McKenna while they were inside the premises. He saw them after the Investigators brought both patrons to the attention of Mr. Ferola.

DISCUSSION

Massachusetts General Law chapter 138, section 69 provides that “[n]o alcoholic beverage shall be sold or delivered on any premises licensed under this chapter to an intoxicated person.” To prove a violation of M.G.L. Ch. 138, section 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.

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. Milford Keg, Inc. 385 Mass. 323, 327 (1982).

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. Ch. 138, s.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). The Superior Court has also held that to prove a claim of negligent service to an intoxicated person, evidence must be presented that a license holder sold or delivered alcoholic beverages to a person at a time when a reasonable person in the position of that defendant would have known that [the patron] 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). To meet that burden, “a plaintiff must come forward with some evidence that the patron's intoxication was apparent at the time he was served by the defendant [emphasis added].” Douillard v. LMR, Inc., 433 Mass. 162, 164-165 (2001). “The negligence lies in serving alcohol to a person who already is showing discernible signs of intoxication.” Vickowkki v. Polish American Citizens Club, 422 Mass. 406, 610 (1996), and cases cited.

In this case we have undisputed proof that two individuals (Mr. McKenna and Mr. Twigg) were inside a licensed premises. We also have persuasive evidence in the testimony of Investigators Temple and Kelleher that a sale and delivery of two (2) shots of alcohol, two (2) beers, and two (2) glasses of champagne occurred. Investigators Temple and Kelleher testified that they observed the patrons, Mr. McKenna and Mr. Twigg approach the bar. They then observed Mr. McKenna and Mr. Twigg order drinks from a bartender. Investigators then observed the patron, Mr. McKenna fumble with his wallet as he attempted to get money out of his wallet to pay the bartender. Mr. McKenna then paid the bartender \$48.00 for the four drinks of alcohol. Investigators Temple and Kelleher testified that they observed the bartender deliver two (2) glasses to each patron. There is also persuasive evidence that the two individuals displayed visible signs of intoxication. Investigators Kelleher and Temple testified that each patron was observed to be unsteady on their feet and holding one another upright. They were grabbing patrons to dance, after they tried to dance with Investigator Kelleher. They also admitted to the Investigators that they were intoxicated as it was New Year's Eve. They exhibited visible signs of intoxication with slurred speech, droopy eyelids, and glassy eyes.

Mr. Ferola testified that after the Investigators brought both patrons to his attention, he did not observe them to be intoxicated. Mr. Ferola testified that in his opinion these patrons were fine. Mr. Ferola also testified that in his opinion he had enough staff working that evening and that he was in control of the premises.

The Commission finds that there is sufficient evidence presented that both patrons exhibited visible, generally recognized, signs of intoxication, and finds that the bartender/employees/staff knew, or should have known, that these patrons were intoxicated.

The Commission finds that given the evidence and the testimony presented during the course of the hearing that the bartender/employees/staff knew, or should have known, that these patrons were intoxicated. The Commission finds that these patrons were obviously and visibly intoxicated and the licensee's employee served them alcoholic beverages. The Commission finds that there were violations of M. G.L. c. 138 §69.

CONCLUSION

Based on the evidence, the Commission finds the licensee violated 204 CMR 2.05 (2), to wit: M.G.L. c. 138 §69 (2 counts). Therefore, the Commission **suspends the license for a period of eight (8) days of which four (4) 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 6, 2012, the Commission had previously ordered a three (3) day suspension but had held the suspension 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 three (3) day suspension being held in abeyance. The Commission hereby orders that suspension to be served on and after the four (4) day suspension.

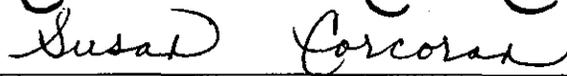
By decision dated May 23, 2012, the Commission had previously ordered a one (1) day suspension day suspension but had held the suspension in abeyance for a period of two (2) years provided no further violations occurred. Based on the violation found above, the licensee violated the conditions of that one (1) day suspension being held in abeyance. The Commission hereby orders that suspension to be served on and after the above-mentioned suspensions. The licensee will serve a total eight (8) days.

ALCOHOLIC BEVERAGES CONTROL COMMISSION

Kathleen McNally, Commissioner



Susan Corcoran, Commissioner



Dated: October 3, 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
Tara Kelleher, Investigator
Chris Temple, Investigator
Caroline Guarino-Wilichoski, Investigator
James A. Murphy, Esq. via facsimile 617-254-5522
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