



Jean M. Lorizio, Esq.
Chairman

Commonwealth of Massachusetts
Department of the State Treasurer
Alcoholic Beverages Control Commission
239 Causeway Street
Boston, MA 02114
Telephone: 617-727-3040
Facsimile: 617-727-1510

DECISION

DAVESTER LLC D/B/A EMBARGO
453 MAIN ST
BARNSTABLE, MA 02601
LICENSE#: 0070-00244
VIOLATION DATE: 12/17//2017
HEARD: 03/20/2018

Davester LLC d/b/a Embargo (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, March 20, 2018, regarding alleged violation of M.G.L. Ch. 138 § 69-Sale or delivery of an alcoholic beverage to an intoxicated person (1 count). Prior to the start of the hearing, the Licensee stipulated to the violation in Investigator Velez's report.

The following documents are in evidence:

1. Investigator Velez's Investigative Report; and
2. Licensee's Stipulation of Facts.

A. TIPS Certificates of Employees;
B. TIPS Certificate for Bartender; and
C. Licensee's Employee Handbook.

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

The Commission took Administrative Notice of the Licensee's record.

FINDINGS OF FACT

1. On Sunday, December 17, 2017, at approximately 11:50 p.m., Investigators Binienda and Velez ("Investigators") conducted an investigation of the business operation of Davester LLC d/b/a Embargo to determine the manner in which its business was being conducted.
2. Investigator Velez entered the licensed premises and observed a male individual, Seth Cassidy, in possession of an alcoholic beverage, who appeared to be intoxicated.
3. Investigator Binienda entered the licensed premises a short time later to make observations with Investigator Velez.

4. Investigators observed that Cassidy had bloodshot, glassy, and watery eyes with a blank stare and overheard Cassidy speaking with thick, slurred speech to a female individual while he stood near the bar.
5. Investigators observed that Cassidy appeared unsteady on his feet and he stumbled to regain his balance. His movements were slow and uncoordinated.
6. Based on their training and experience, Investigators formed the opinion that Cassidy was intoxicated.
7. Investigators observed Cassidy ordered a mixed drink, Red Bull and Captain Morgan Spiced rum, from the male bartender on duty, A. Tuse. Investigators observed Cassidy's speech was slurred and he fumbled his money when handing it to Tuse.
8. At approximately 12:15 a.m., Investigators observed Cassidy take possession of the alcoholic beverage.
9. Investigators identified themselves to the manager on duty, John Bush, and to the owner, David Noble, and they identified Cassidy to them.
10. An unidentified female patron stated she would make sure that Cassidy had safe transport home and called a car service.
11. Investigators informed Mr. Noble of the violation and that a report would be filed with the Chief Investigator for further review.

CONCLUSION

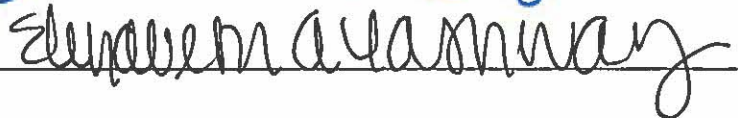
Based on the evidence, the Commission finds the Licensee violated M.G.L. Ch. 138 § 69-Sale or delivery of an alcoholic beverage to an intoxicated person (1 count). Therefore, the **Commission suspends the license for four (4) days of which one (1) day will be served and three (3) days will be held in abeyance for a period of two (2) years provided no further violations of Chapter 138 or Commission Regulations occur.**

ALCOHOLIC BEVERAGES CONTROL COMMISSION

Kathleen McNally, Commissioner



Elizabeth A. Lashway, Commissioner



Dated: March 22, 2018

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.

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cc: Local Licensing Board
Frederick G. Mahony, Chief Investigator
Nicholas Velez, Investigator
Jamie Binienda, Investigator
Robert Bianchi, Esq.
Administration, File