



*Commonwealth of Massachusetts
Alcoholic Beverages Control Commission
95 Fourth Street, Suite 3
Chelsea, Massachusetts 02150-2358*

Jean M. Lorizio, Esq.
Chairman

NOTICE OF INDEFINITE SUSPENSION

January 27, 2021

**D. MARMELO ENTERPRISES INC. D/B/A CAPTAIN'S PLACE
162 SOUTH MAIN STREET
ACUSHNET, MA 02743
LICENSE#: 00024-RS-0008
VIOLATION DATE: 10/09/2020
HEARD: 12/08/2020**

After a hearing on December 8, 2020, the Commission finds D. Marmelo Enterprises Inc. d/b/a Captain's Place violated:

- 1) 204 CMR 2.05 (2) Permitting an Illegality on the Licensed Premises, to wit: Massachusetts Executive COVID-19 Order No. 37 (June 6, 2020) - Violation of sector specific workplace safety standards for restaurants to address COVID-19;
- 2) 204 CMR 2.05 (2) Permitting an Illegality on the Licensed Premises, to wit: Massachusetts Executive COVID-19 Order No. 40 (June 19, 2020) - Violation of sector specific workplace safety standards for restaurants to address COVID-19;
- 3) 204 CMR 2.05 (2) Permitting an Illegality on the Licensed Premises, to wit: Violation of Mass. Exec. COVID-19 Order No. 52 (September 29, 2020).

Therefore, the Commission **INDEFINITELY SUSPENDS** the license of D. Marmelo Enterprises Inc. d/b/a Captain's Place **effective forthwith** until further written order of the Commission.

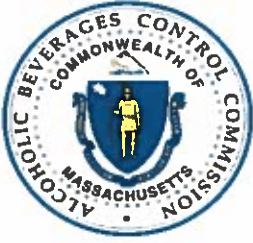
You are advised that you have the right to appeal this decision under M.G.L. c. 30A to Superior Court within thirty (30) days upon receipt of this notice.

ALCOHOLIC BEVERAGES CONTROL COMMISSION

Jean M. Lorizio
Chairman

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cc: Local Licensing Board
Frederick G. Mahony, Chief Investigator
Kyle E. Gill, Esq., Associate General Counsel
Katelyn Quinn, Investigator
Nicholas Velez, Investigator
Michael Flanagan, Dept. of Labor Standards
Nicholas A. Gomes, Esq.
Administration, File



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DECISION

**D. MARMELO ENTERPRISES INC. D/B/A CAPTAIN'S PLACE
162 SOUTH MAIN STREET
ACUSHNET, MA 02743
LICENSE#: 00024-RS-0008
VIOLATION DATE: 10/09/2020
HEARD: 12/08/2020**

D. Marmelo Enterprises Inc. d/b/a Captain's Place (the "Licensee" or "Captain's Place") holds an alcoholic beverages license issued pursuant to M.G.L. c. 138, § 12. The Alcoholic Beverages Control Commission ("ABCC" or "Commission") held a remote hearing via Microsoft Teams on Tuesday, December 8, 2020, regarding alleged violations of:

- 1) 204 CMR 2.05 (2) Permitting an Illegality on the Licensed Premises, to wit: Massachusetts Executive COVID-19 Order No. 37 (June 6, 2020) - Violation of Sector Specific Workplace Safety Standards for Restaurants to Address COVID-19;
- 2) 204 CMR 2.05 (2) Permitting an Illegality on the Licensed Premises, to wit: Massachusetts Executive COVID-19 Order No. 40 (June 19, 2020) - Violation of Sector Specific Workplace Safety Standards for Restaurants to Address COVID-19;
- 3) 204 CMR 2.05 (2) Permitting an Illegality on the Licensed Premises, to wit: Violation of Mass. Exec. COVID-19 Order No. 52 (September 29, 2020).

The above-captioned occurred October 9, 2020, according to Investigator Quinn's Report.

The following documents are in evidence:

1. Investigator Quinn's Report;
2. Copy of Form 43 License Approval, 3/15/2004;
3. Massachusetts Executive COVID-19 Order No. 37;
4. Massachusetts Executive COVID-19 Order No. 40;
5. Massachusetts Executive COVID-19 Order No. 52;
6. Sector Specific Workplace Safety Standards for Restaurants to Address COVID-19, 10/1/2020;
7. ABCC Enforcement Memorandum, 11/16/2020.

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

FINDINGS OF FACT

1. On Friday, October 9, 2020, Investigators Velez and Quinn (“Investigators”) conducted an investigation of D. Marmelo Enterprises Inc. d/b/a Captain’s Place to determine the manner in which its business was being conducted, and to ensure compliance with Massachusetts Governor Charles Baker’s Executive COVID-19 Orders. (Exhibit 1, Testimony)
2. At approximately 10:25 p.m., Investigator Quinn was travelling eastbound on Slocum Street in Acushnet when she observed the Captain’s Place. Id.
3. Initially, the licensed premises appeared to be closed. The large glass entryway at the front of the establishment appeared to be tinted or covered with a darkening film. As a result, any interior lights and activity were not clearly visible from outside. Id.
4. Investigator Quinn observed light through one of the window shades and upon further investigation, came to believe that a television was on inside the licensed premises. Investigator Quinn parked her vehicle and made observations on foot. Id.
5. Investigator Quinn observed the parking lot behind the licensed premises was somewhat full which gave the appearance that the business was operating. While walking to the front door of the premises, the Investigator observed additional cars in a side lot. Id.
6. Once at the front door, Investigator Quinn looked through the darkened glass and observed two (2) patrons seated at a table in the dining room in possession of food and alcoholic beverages. Id.
7. Investigator Quinn also observed an operational bar area on the opposite side of the licensed premises. She observed approximately 10-15 patrons seated at the bar, in close proximity to one another, with almost every seat occupied. The bar seats were not spaced to allow for social distancing, patrons were being served by employees from behind the bar, and there did not appear to be a barrier between the employees and patrons. Id.
8. Investigator Quinn found the front and side doors to be locked. Id.
9. While still outside, Investigator Quinn observed 3 people inside the establishment carrying take out containers and walking through the establishment as they made their way to the side door to leave the premise. (Testimony)
10. Investigator Velez joined Investigator Quinn and they knocked on the front door until it was answered by Jennifer Marmelo, the manager on duty, and a male individual who identified himself as the owner’s son (“Mr. Marmelo”). (Testimony, Exhibit 1)
11. Investigators identified themselves, informed Ms. Marmelo of their observations, and asked if there was plexiglass installed at the bar. Both Jennifer Marmelo and Mr. Marmelo stated there was no barrier at the bar. Id.
12. Mr. Marmelo stated the individuals inside the premises were family and friends but indicated the Licensee was still conducting alcohol sales. Id.

13. Investigators reviewed the COVID-19 guidelines and Sector Specific Safety Standards for Restaurants with the Marmelos. Investigators advised the Marmelos of the violations and that a report would be filed with the Chief Investigator for further review. Id.
14. Jennifer Marmelo, the Licensee, attended the Commission hearing and was represented by counsel.
15. Counsel for the Licensee acknowledged the Licensee did not have a plexiglass or any other type of barrier at the bar on October 9, 2020.
16. The Licensee has held a license under M.G.L. c. 138, § 12 since 2004 with no prior violations. (Exhibit 2)

DISCUSSION

Licenses to sell alcoholic beverages are a special privilege subject to public regulation and control, Connolly v. Alcoholic Beverages Control Comm'n, 334 Mass. 613, 619 (1956), for which States have especially wide latitude pursuant to the Twenty-First Amendment to the United States Constitution. Opinion of the Justices, 368 Mass. 857, 861 (1975). The procedure for the issuance of licenses and required conduct of licensees who sell alcoholic beverages is set out in Massachusetts General Laws, Chapter 138.

Chapter 138 gives the Commission the authority to grant, revoke and suspend licenses. Chapter 138 was “enacted ... to serve the public need and ... to protect the common good.” M.G.L. c. 138, § 23. “[T]he purpose of discipline is not retribution, but the protection of the public.” Arthurs v. Bd. of Registration in Medicine, 383 Mass. 299, 317 (1981). The Commission is given “comprehensive powers of supervision over licensees.” Connolly, 334 Mass. at 617.

The Licensee is charged with a violation of 204 CMR 2.05 (2). “No licensee for the sale of alcoholic beverages shall permit any disorder, disturbance or illegality of any kind to take place in or on the licensed premises.” 204 CMR 2.05 (2). More specifically the Licensee is charged with permitting an illegality on the licensed premises, to wit:

Massachusetts Executive COVID-19 Order No. 37 (June 6, 2020) - Violation of Sector Specific Workplace Safety Standards for Restaurants to Address COVID-19;

Massachusetts Executive COVID-19 Order No. 40 (June 19, 2020) - Violation of Sector Specific Workplace Safety Standards for Restaurants to Address COVID-19; and

Violation of Massachusetts Executive COVID-19 Order No. 52 (September 29, 2020).

The Executive COVID-19 Orders require adherence to all Sector Specific Workplace Safety Standards for Restaurants to Address COVID-19 (October 1, 2020) including:

Bar service permitted provided either: there are no active work areas or working staff behind the bar at least 6 feet away; or there is a physical barrier (e.g. Plexiglas) separating customers from the bar space that is at least 30 inches and a gap/opening is no more than 8 inches high;

Parties must be seated at bars (no standing service) and parties must be spaced at least 6 feet from other parties; and

Ensure separation of 6 feet between all individuals (workers, vendors, customers)...

Sector Specific Workplace Safety Standards for Restaurants to Address COVID-19 (October 1, 2020)

Direct evidence was presented through the testimony of Investigator Quinn as to her observations. People were seated less than 6 feet apart at the bar and alcoholic beverages were being served over the bar to seated patrons, with no plexiglass or other barrier on the bar despite there being an active workstation behind the bar. (Exhibit 1, Testimony)

The Commission is persuaded by the evidence that a violation of 204 CMR 2.05(2) to wit Massachusetts Executive COVID-19 Orders 37, 40 and 52 did occur.

CONCLUSION

Based on the evidence, the Commission finds the Licensee violated:

- 1) 204 CMR 2.05 (2) Permitting an Illegality on the Licensed Premises, to wit: Massachusetts Executive COVID-19 Order No. 37 (June 6, 2020) - Violation of Sector Specific Workplace Safety Standards for Restaurants to Address COVID-19;
- 2) 204 CMR 2.05 (2) Permitting an Illegality on the Licensed Premises, to wit: Massachusetts Executive COVID-19 Order No. 40 (June 19, 2020) - Violation of Sector Specific Workplace Safety Standards for Restaurants to Address COVID-19;
- 3) 204 CMR 2.05 (2) Permitting an Illegality on the Licensed Premises, to wit: Violation of Mass. Exec. COVID-19 Order No. 52 (September 29, 2020).

The Commission hereby **INDEFINITELY SUSPENDS** the license of D. Marmelo Enterprises Inc. d/b/a Captain's Place **effective forthwith** until further written order of the Commission.

The Commission will not issue any further order without a written request from the licensee showing good cause to reconsider this indefinite suspension.

Good cause for the Commission to consider issuing a further written order revising the order of indefinite suspension will include, but not be limited to the Licensee receives approval from the Massachusetts Department of Labor Standards ("DLS") as to a reopening plan. The Licensee must submit to the DLS a COVID Control Plan to reopen (see link here: <https://www.mass.gov/doc/sector-specific-workplace-safety-standards-phase-iii-step-1-for-restaurants-to-address-covid-1/download>) and operate in compliance with COVID 19 Orders Nos. 33, 37, 40 and 43, and the Restaurant Sector Specific Standards. Said plan must be submitted to both Michael Flanagan (michael.flanagan@mass.gov) and Mary Dozois (mary.dozois@mass.gov) requesting review and approval.

ALCOHOLIC BEVERAGES CONTROL COMMISSION

Deborah A. Baglio, Commissioner Deborah A. Baglio

Jean M. Lorizio, Chairman Jean M. Lorizio

Crystal Matthews, Commissioner Crystal Matthews

Dated: January 27, 2020

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