



*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

March 5, 2021

**BEVERLY FRANCO AMERICAN CLUB, INC. D/B/A FRANCO AMERICAN
44 PARK STREET
BEVERLY, MA 01915
LICENSE#: 00022-CL-0100
VIOLATION DATE: 12/22/2020
HEARD: 2/10/2021**

After a hearing on February 10, 2021, the Commission finds Beverly Franco American Club, Inc. d/b/a Franco American 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: Mass. Exec. COVID-19 Order No. 57 (Dec. 8, 2020).

Therefore, the Commission **INDEFINITELY SUSPENDS** the license of Beverly Franco American Club, Inc. d/b/a Franco American **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

This document is important and should be translated immediately.
Este documento es importante y debe ser traducido inmediatamente.
Este documento é importante e deve ser traduzido imediatamente.
Ce document est important et devrait être traduit immédiatement.
Questo documento è importante e dovrebbe essere tradotto immediatamente.
Το έγγραφο αυτό είναι σημαντικό και θα πρέπει να μεταφραστούν αμέσως.
这份文件是重要的，应立即进行翻译。

cc: Local Licensing Board
Frederick G. Mahony, Chief Investigator
Kyle E. Gill, Esq., Associate General Counsel
Dennis Keefe, Investigator
Joseph Di Cicco, Investigator
Michael Flanagan, Dept. of Labor Standards
Administration, File



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

Jean M. Lorizio, Esq.
Chairman

DECISION

**BEVERLY FRANCO AMERICAN CLUB, INC. D/B/A FRANCO AMERICAN
44 PARK STREET
BEVERLY, MA 01915
LICENSE#: 00022-CL-0100
VIOLATION DATE: 12/22/2020
HEARD: 2/10/2021**

Beverly Franco American Club, Inc. d/b/a Franco American (the "Licensee") 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 Wednesday, February 10, 2021, 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. 57 (Dec. 8, 2020).

The above-captioned occurred December 22, 2020 according to Investigator Keefe's Report.

The following documents are in evidence:

1. Investigator Keefe's Report;
2. Form 43 License Approval, 12/12/63;
3. Massachusetts Executive COVID-19 Order No. 37, 6/6/2020;
4. Massachusetts Executive COVID-19 Order No. 40, 6/19/2020;
5. Massachusetts Executive COVID-19 Order No. 57, 12/8/2020;
6. Massachusetts Sector Specific Workplace Safety Standards for Restaurants to Address COVID-19, 12/11/2020;
7. ABCC Decision, 5/4/2016;
8. ABCC Decision, 10/12/2016;
9. ABCC Enforcement Memorandum, 2/8/2021.

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

FINDINGS OF FACT

1. On Tuesday, December 22, 2020, at approximately 10:15 p.m., Investigators Di Cicco and Keefe ("Investigators") conducted an investigation of Beverly Franco American Club, Inc. d/b/a Franco American 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. (Testimony, Exhibit 1)
2. Upon arrival at the licensed premises, Investigators were unable to see inside the premises from outside as the windows were covered with blinds. Id.
3. Investigators rang the doorbell and a male individual wearing his mask below his chin opened the door to Investigators. Id.
4. Investigators entered the licensed premises and observed a female bartender, later identified as Bree Baumann, without any facial covering. She later put on her mask while Investigators were on premise. Id.
5. Investigators observed nine (9) individuals seated at two separate tables. One table had six (6) individuals with alcoholic beverages on the table. The other table had three (3) individuals who were in possession of bottles of beer. Most patrons did not have masks on. Id.
6. Investigators spoke to Ms. Baumann and Bob Halpern, a member of the club's Board of Directors, and informed them of their observations. Id.
7. Investigators reviewed the COVID guidelines and Sector Specific Safety Standards with Ms. Baumann and Mr. Halpern. Id.
8. As they spoke with Ms. Baumann and Mr. Halpern, Investigators observed some of the patrons put on masks and began to exit the licensed premises. Id.
9. Investigators informed Ms. Baumann and Mr. Halpern of the violations and a report would be filed with the Chief Investigator for review. Id.
10. Marc Millett, the President of the Licensee, and Bob Halpern, a member of the club's Board of Directors, appeared before the Commission. Mr. Halpern testified the club had just finished up a board meeting which ran late. All drinks on the tables were nearly empty and members were getting ready to leave. Mr. Millett also testified as to efforts taken to comply with COVID restrictions. Id.
11. The Licensee has held a license under M.G.L. c. 138, § 12 since 1963, with two prior violations. (Exhibit 2, Commission Records)

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

Massachusetts Executive COVID-19 Order No. 57 (December 8, 2020).

The Executive COVID-19 Orders require adherence to all Sector Specific Workplace Safety Standards for Restaurants¹ to Address COVID-19 (December 11, 2020) including:

Face coverings [must be worn by] all customers (unless in the actual act of eating and drinking) and workers at all times;

Restaurants must closed to the public by 9:30 pm and may not re-open to the public before 5:00 am the following day (“mandatory closing period”);

During mandatory closing period, restaurants must not admit any customers, patrons, or members of the public, except for the limited purposes of take-out dining, and may not provide in-person, on-premises service or consumption. Table service customers seated before the start of the mandatory closing period may remain at the table to finish any food and beverages that have been ordered and served to them before 9:30pm, but they must exit the premises by 10pm at the latest.

¹ “All establishments providing service under a Food Service Establishment Permit, including private clubs and organizations must follow these guidelines.” Sector Specific Workplace Safety Standards for Restaurants to Address COVID-19 (December 11, 2020)

Sector Specific Workplace Safety Standards for Restaurants to Address COVID-19 (December 11, 2020)

Direct evidence was presented through the testimony of Investigator Keefe as to individuals failing to wear facial coverings inside the premises and patrons on the premises after the mandatory closing hour. While Mr. Halpern stated the Licensee does require masks to be worn at all times, he acknowledged that he and the other members along with an employee were not wearing facial coverings at the time of the Investigator's arrival.

The Commission is persuaded by the evidence that a violation of 204 CMR 2.05(2), to wit: Massachusetts Executive Orders 37, 40, and 57 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. 57 (Dec. 8, 2020).

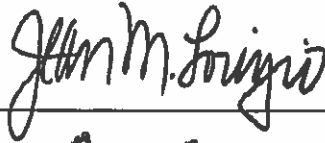
The Commission hereby **INDEFINITELY SUSPENDS** the license of Beverly Franco American Club, Inc. d/b/a Franco American **effective forthwith** until further written order of the Commission.

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

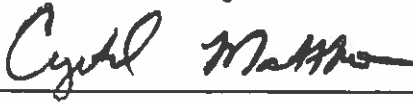
Good cause for the Commission to consider issuing a further written order revising the order of indefinite suspension will include, but not be limited to the Licensee receives approval from the Massachusetts Department of Labor Standards ("DLS") as to a reopening plan. The Licensee must submit to the DLS a COVID Control Plan to reopen (see link here: <https://www.mass.gov/doc/sector-specific-workplace-safety-standards-for-restaurants-to-address-covid-19-030121/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

Jean M. Lorizio, Chairman



Crystal Matthews, Commissioner



Deborah A. Baglio, Commissioner



Dated: March 5, 2021

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.

This document is important and should be translated immediately.
Este documento es importante y debe ser traducido inmediatamente.
Este documento é importante e deve ser traduzido imediatamente.
Ce document est important et devrait être traduit immédiatement.
Questo documento è importante e dovrebbe essere tradotto immediatamente.
Το έγγραφο αυτό είναι σημαντικό και θα πρέπει να μεταφραστούν αμέσως.
这份文件是重要的，应立即进行翻译。

cc: Local Licensing Board
Frederick G. Mahony, Chief Investigator
Kyle E. Gill, Esq., Associate General Counsel
Dennis Keefe, Investigator
Joseph Di Cicco, Investigator
Michael Flanagan, Dept. of Labor Standards
Administration, File