



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

Jean M. Lorizio, Esq.
Chairman

DECISION

**N.A.R.H. INC. D/B/A WINE, BEER & MORE
1440 PLEASANT STREET, SUITE D & E
BRIDGEWATER, MA 02324
LICENSE#: 00057-PK-0136
VIOLATION DATE: 3/24/2021
HEARD: 4/14/2021**

N.A.R.H. Inc. d/b/a Wine, Beer & More (the "Licensee") holds an alcoholic beverages license issued pursuant to M.G.L. c. 138, § 15. The Alcoholic Beverages Control Commission ("ABCC" or "Commission") held a remote hearing via Microsoft Teams hearing on Wednesday, April 14, 2021, regarding an alleged violation of 204 CMR 2.05(2)- Permitting an illegality on the licensed premises, to wit: Mass. Exec. COVID- 19 Order No. 55 (Nov. 2, 2020) – Patron or employee failing to wear a mask or cloth face covering over their mouth and nose when in a public location. The above-captioned occurred March 24, 2021 according to Investigator Guarino's report.

The following documents are in evidence:

1. Investigator Guarino's Report;
 2. ABCC Form 43 New License Approval, 5/28/2004;
 3. Massachusetts Executive COVID-19 Order No. 55, 11/2/2020;
 4. ABCC Decision, 7/29/2009;
 5. Licensee's Record Request for Complaint, April 6-7, 2021;
 6. Massachusetts Sector Specific Workplace Safety Standards for Retail Business to Address COVID-19, 3/18/2021.
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- A. Affidavit of Alain Hauvuy, 4/12/2021;
 - B. Affidavit of Vickie Champagne, 4/9/2021;
 - C. Licensee's Letter to Ms. Clancy.

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

FINDINGS OF FACT

1. On Wednesday, March 24, 2021, at approximately 7:20 p.m., Investigators Carey and Guarino ("Investigators") conducted an investigation of N.A.R.H. Inc. d/b/a Wine, Beer & More to determine the manner in which the business was being conducted, and to ensure compliance with Massachusetts Governor Charles Baker's Executive COVID-19 Orders. (Testimony, Exhibit 1)
2. Investigators entered the licensed premises and observed an employee behind the counter, without any facial covering. The employee was later identified as Vickie. Investigators observed a second employee, mopping the floor without a facial covering. The second employee was later identified as Cathy. Id.
3. Investigators identified themselves to Vickie and Cathy and requested that they call the owner. Vickie indicated the owner's business card was on the counter and told Investigators to call him directly. Id.
4. Investigators asked Vickie if she had a facial covering. She informed them she did not have to wear a facial covering. Investigator Carey asked Cathy if she had a facial covering. Cathy responded yes and she put on a facial covering over her nose and mouth. Id.
5. Investigators informed Vickie of the violation and that a report would be filed with the Chief Investigator for review. Id.
6. A person who identified himself as the owner, Alain, called Investigators after they had left the premises. Investigators advised Alain of the complaint. Alain stated he provides facial coverings for all his employees. Id.
7. Alain Hauvuy, the Licensee and Manager of Record, attended the Commission hearing and testified he was familiar with Order No. 55 and it was his understanding his employees must wear a mask unless they claim an exception. He testified that employees are in fact required to wear a mask unless he is informed of a medical condition. He testified he requested Vickie Champagne wear a mask and was informed she has a medical condition. ~~Mr. Hauvuy testified he requested that Catherine Clancy wear a mask and was informed she has trouble breathing with a mask on. He testified Ms. Clancy's statement led him to believe she had a medical condition and he felt he could not ask further questions. He testified he knows Ms. Clancy to have trouble breathing when performing duties at the licensed premises, i.e., moving boxes. (Testimony)~~
8. Mr. Hauvuy testified it was only after receiving the hearing notice from the Commission that he inquired further, and Catherine told him that she does not have a diagnosed medical condition, but has trouble breathing while wearing a mask. Mr. Hauvuy informed Ms. Clancy in writing that she must wear a mask when working on the licensed premises. (Testimony, Exhibit A)
9. Vickie Champagne appeared at the Commission hearing and agreed to discuss her medical condition. She testified she was aware of the mask mandate and believed she was exempt from the requirement because she has a documented medical condition. She testified when working at the licensed premises she remains behind a shield which was installed at the

counter. Ms. Champagne additionally provided an affidavit as to her medical condition. (Testimony, Exhibit B)

10. The Licensee has held a license under M.G.L. c. 138, § 15 since 2004 with one prior violation which occurred more than 10 years ago. (Commission records, Exhibit 4)

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:

Violation of Massachusetts Executive COVID-19 Order No. 55 (November 2, 2020).

The Executive COVID-19 Orders require adherence to all Sector Specific Workplace Safety Standards for Retail Business to Address COVID-19 (March 18, 2021) including:

Require face coverings for all customers and workers at all times, except where an individual is unable to wear a face covering due to medical condition or disability;

Sector Specific Workplace Safety Standards for Retail Business to Address COVID-19 (March 18, 2021)

While the Investigators observed two employees on the licensed premises without facial coverings, direct evidence was presented that both employees were given an accommodation and allowed to work at the licensed premises without facial coverings. Said accommodations were based on their representations to the Licensee as to a medical or disabling condition. Although Mr. Hauvuy could have requested documentation to verify the conditions, he was not required to do so pursuant to Massachusetts Executive COVID-19 Order 55 (November 2, 2020).

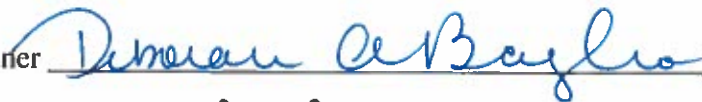
The Commission is not persuaded that substantial evidence exists to support a finding that the Licensee violated 204 CMR 2.05(2), to wit: Massachusetts Executive COVID-19 Order 55 (November 2, 2020).

CONCLUSION

Based on the evidence, the Commission finds NO VIOLATION of 204 CMR 2.05(2): Permitting an illegality on the licensed premises, to wit: Mass. Exec. COVID- 19 Order No. 55 (Nov. 2, 2020) – Patron or employee failing to wear a mask or cloth face covering over their mouth and nose when in a public location, occurred.

ALCOHOLIC BEVERAGES CONTROL COMMISSION

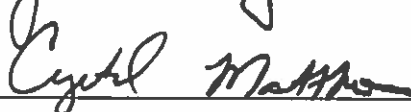
Deborah A. Baglio, Commissioner



Jean M. Lorizio, Chairman



Crystal Matthews, Commissioner



Dated: August 19, 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.

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cc: Local Licensing Board
Frederick G. Mahony, Chief Investigator
Kyle E. Gill, Esq., Associate General Counsel
Caroline Guarino, Investigator
Jack Carey, Investigator
Michael Flanagan, Dept. of Labor Standards
William Gens, Esq.
Administration, File