

*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 19, 2021

**FRITZ RESTAURANT GROUP LLC D/B/A BRACK'S GRILLE & TAP
1280 BELMONT STREET, UNIT 5
BROCKTON, MA 02301
LICENSE#: 04739-RS-0144
VIOLATION DATE: 11/19/2020
HEARD: 12/21/2020**

After a hearing on December 21, 2020, the Commission finds Fritz Restaurant Group LLC d/b/a Brack's Grille & Tap violated:

- 1) 204 CMR 2.05 (2) Permitting an Illegality on the Licensed Premises, to wit: Mass. Exec. 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: Mass. Exec. 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: Massachusetts Executive COVID- 19 Order No. 53 (Nov. 2, 2020)- Failure to have patrons exit licensed premises before 10:00 PM.;
- 4) 204 CMR 2.05 (2) Permitting an Illegality on the Licensed Premises, to wit: Violation of Massachusetts Executive COVID-19 Order No. 54 (Nov. 2, 2020);
- 5) 204 CMR 2.05(2)- Permitting an illegality on the licensed premises, to wit: Massachusetts Executive 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.

Therefore, the Commission **INDEFINITELY SUSPENDS** the license of Fritz Restaurant Group LLC d/b/a Brack's Grille & Tap **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.

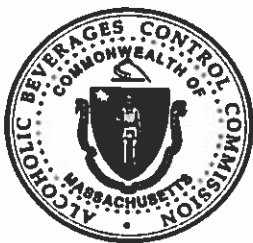
ALCOHOLIC BEVERAGES CONTROL COMMISSION



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cc: Local Licensing Board
Frederick G. Mahony, Chief Investigator
Kyle E. Gill, Esq., Associate General Counsel
Christopher Temple, Investigator
Nicole Smith, Investigator
Michael Flanagan, Dept. of Labor Standards
Matthew S. Porter, Esq.
Administration, File



*Commonwealth of Massachusetts
Alcoholic Beverages Control Commission
95 Fourth Street, Suite 3
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DECISION

**FRITZ RESTAURANT GROUP LLC D/B/A BRACK'S GRILLE & TAP
1280 BELMONT STREET, UNIT 5
BROCKTON, MA 02301
LICENSE#: 04739-RS-0144
VIOLATION DATE: 11/19/2020
HEARD: 12/21/2020**

Fritz Restaurant Group LLC d/b/a Brack's Grille & Tap (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 Monday, December 21, 2020, regarding alleged violations of:

- 1) 204 CMR 2.05 (2) Permitting an Illegality on the Licensed Premises, to wit: Mass. Exec. 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: Mass. Exec. 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: Massachusetts Executive COVID- 19 Order No. 53 (Nov. 2, 2020)- Failure to have patrons exit licensed premises before 10:00 PM.;
- 4) 204 CMR 2.05 (2) Permitting an Illegality on the Licensed Premises, to wit: Violation of Massachusetts Executive COVID-19 Order No. 54 (Nov. 2, 2020);
- 5) 204 CMR 2.05(2)- Permitting an illegality on the licensed premises, to wit: Massachusetts Executive 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 November 19, 2020 according to Investigator Temple's report.

The following documents are in evidence:

1. Investigator Temple's Report;
2. License Application Approval, 3/08/2019;
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. 53, 11/2/2020;
6. Massachusetts Executive COVID-19 Order No. 54, 11/2/2020;
7. Massachusetts Executive COVID-19 Order No. 55, 11/2/2020;
8. Massachusetts Sector Specific Workplace Safety Standards for Restaurants to Address COVID-19, 11/5/2020;
9. ABCC Enforcement Memorandum, 12/18/2020.
10. Photographs of the Interior of the Licensed Premise.

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

FINDINGS OF FACT

1. On Thursday, November 19, 2020, at approximately 10:22 p.m., Investigators Smith and Temple ("Investigators") conducted an investigation of Fritz Restaurant Group LLC d/b/a Brack's Grille & Tap 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. Investigators approached the rear entrance and found it was locked. Through the glass door, Investigators observed approximately 10-15 patrons inside the premises, several were in possession of and/or consuming alcoholic beverages. Investigators observed several individuals standing and leaning against the bar in possession of and/or consuming alcoholic beverages. They did not observe a plexiglass or any other type of barrier at the bar. Id.
3. Investigators observed that the bartender and other staff members were not wearing any facial coverings, and some patrons were walking around the premises without any facial covering. Id.
4. Outside the premises, Investigators were approached by the owner, Frank Brack. Investigators identified themselves and informed Mr. Brack of their observations. Mr. Brack informed Investigators that the premise was closed. Id.
5. Investigators reviewed the COVID-19 guidelines and Sector Specific Safety Standards for Restaurants with Mr. Brack. Id.
6. Investigators advised Mr. Brack of the violations and that a report would be filed with the Chief Investigator for further review. Id.
7. Mr. Brack attended the Commission hearing, along with Christopher Mather, a partner in the Licensee entity. Mr. Brack and Mr. Mather were represented by Counsel who offered mitigating factors regarding the situation observed by Investigators. It was acknowledged

that there were patrons in the establishment after 10:00 p.m.; the establishment closed at 10:00 p.m. and employees were in the process of closing out patrons' tabs when Investigators arrived. It was conceded that as employees worked to get patrons out of the establishment, some safety protocols were not followed.

8. The Licensee does not have a barrier at the bar as patrons are not allowed to sit at the bar. On the night of the incident, patrons approached the bar to pay their bill and an employee allowed them to do so. (Testimony, Exhibit 10)
9. Mr. Mather testified as to steps taken since the night of the incident. The Licensee now offers last call at an earlier time and ensures all patrons are off the premise by 10:00 p.m. In addition, a safety meeting with employees was conducted to reinforce the importance of compliance. (Testimony)
10. The Licensee has held a license under M.G.L. c. 138, § 12 since 2019 with no prior violations. (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;

Massachusetts Executive COVID-19 Order No. 53 (November 2, 2020) – Failure to have patrons exit the premises before 10:00 P.M.;

Violation of Massachusetts Executive COVID-19 Order No. 54 (November 2, 2020); and

Massachusetts Executive COVID-19 Order No. 55 (November 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 Executive COVID-19 Orders require adherence to all Sector Specific Workplace Safety Standards for Restaurants to Address COVID-19 (November 5, 2020). The Safety Standards mandate the following:

Face coverings must be worn by customers and workers at all times, except where an individual is unable to wear a face covering due to medical condition or disability;

Customers must wear face coverings unless seated at tables;

Tables must be positioned so as to maintain a distance of at least 6-feet from all other tables and any high foot traffic areas;

Bar seating is permitted provided there are no active work areas or working employees behind the bar are at least 6 feet away, or there is a physical barrier separating customers from employees behind the bar;

Customers must be seated, with eat-in service to standing customers prohibited.

Sector Specific Workplace Safety Standards for Restaurants to Address COVID-19 (November 5, 2020)

Massachusetts Executive COVID-19 Order No. 53 (Nov. 2, 2020) mandates Licensees must close their premises to the public by 9:30 p.m. with all patrons exiting the premise by 10:00 PM.

Massachusetts Executive COVID-19 Order No. 53 (November 2, 2020)

Direct evidence was presented through the testimony of Investigator Christopher Temple who observed approximately 10 to 15 patrons inside the establishment, some standing and leaning against the bar, some without facial coverings. Investigator Temple observed employees without facial coverings. He also witnessed business being conducted at the bar, without any barrier between employees and patrons.

The Licensee, through Counsel, admitted patrons were on the premise after 10:00 p.m. and also acknowledged a lapse in safety protocols.

The Commission is persuaded by the evidence that a violation of 204 CMR 2.05(2) to wit Massachusetts Executive Orders 37, 40, 53, 54 and 55 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;
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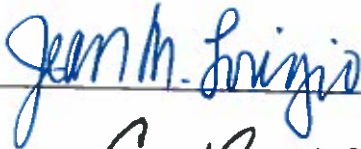
The Commission hereby **INDEFINITELY SUSPENDS** the license of Fritz Restaurant Group LLC d/b/a Brack's Grille & Tap **effective forthwith** until further written order of the Commission.

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

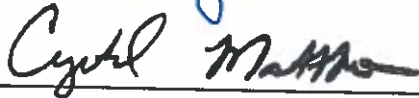
Good cause for the Commission to consider issuing a further written order revising the order of indefinite suspension will include, but not be limited to the Licensee receives approval from the Massachusetts Department of Labor Standards ("DLS") as to a reopening plan. The Licensee must submit to the DLS a COVID Control Plan to reopen (see link here: <https://www.mass.gov/doc/phase-iii-step-1-restaurants-checklist-92220/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: January 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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