



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

**Jean M. Lorizio, Esq.**  
*Chairman*

**DECISION**

**EAST END SOCIAL CLUB OF LOWELL INC.  
15 WEST FOURTH STREET  
LOWELL, MA 01982  
LICENSE#: 00104-CL-0630  
VIOLATION DATE: 12/09/2020  
HEARD: 1/13/2021**

East End Social Club of Lowell Inc. (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, January 13, 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. 54 (Nov. 2, 2020).<sup>1</sup>

The above-captioned occurred December 9, 2020 according to Investigator Guarino's Report.

The following documents are in evidence:

1. Investigator Guarino's Report;
2. Form 43 New License Application Approval, 4/6/1970;
3. ABCC decision, 11/30/1995;
4. Massachusetts Executive COVID-19 Order No. 37, 6/6/2020;
5. Massachusetts Executive COVID-19 Order No. 40, 6/1/2020;
6. Massachusetts Executive COVID-19 Order No. 54, 11/2/2020;
7. Massachusetts Sector Specific Workplace Safety Standards for Restaurants to Address COVID-19, 11/05/2020; and

---

<sup>1</sup> At the Commission hearing, the charge of an alleged violation of Massachusetts Executive COVID-19 Order No. 54 was withdrawn.

8. ABCC Enforcement Memorandum, 1/12/2021.

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

#### FINDINGS OF FACT

1. On Wednesday, December 9, 2020, at approximately 7:50 p.m., Investigator Guarino ("Investigator") conducted an investigation of East End Social Club of Lowell Inc. 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. Investigator entered the licensed premises and observed approximately nine (9) patrons sitting at the bar with no indication of food service. Id.
3. Investigator Guarino asked the bartender if there was a kitchen facility. The bartender stated there was not. Id.
4. Investigator Guarino observed a crock pot and other small appliances in and around the bar area. All the appliances were clean with no food in them. Id.
5. Investigator Guarino inspected only the main floor of the licensed premises. (Testimony)
6. Investigator Guarino informed the bartender of the violations and that a report would be filed with the Chief Investigator for review. (Testimony, Exhibit 1)
7. Mark Briere, President of the Club and Manager of Record, attended the Commission hearing. Mr. Briere testified the club has a meeting on the 2<sup>nd</sup> Wednesday of each month and the subject of the meeting this night was the club's annual elections. Mr. Briere as President conducted the meeting. He testified those present were officers of the club and the establishment was otherwise closed to members and guests. The meeting concluded at 7:00 p.m. and all evidence of food service had been cleared before the Investigator arrived. Mr. Briere had left the establishment at the conclusion of the meeting and informed the Commission the licensed premises was closed. (Testimony)
8. Mr. Briere stated the bartender misunderstood the Investigator's inquiry as to a kitchen facility on the premises. The bartender believed the Investigator had asked if the kitchen was open. Mr. Briere testified that there is a fully licensed kitchen on the lower level. (Testimony)
9. The Licensee has held a license under M.G.L. c. 138, § 12 since 1970. (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; and

Massachusetts Executive COVID-19 Order No. 40 (June 19, 2020) - Violation of sector specific workplace safety standards for restaurants to address COVID-19.

The Executive COVID-19 Orders require adherence to all Sector Specific Workplace Safety Standards for Restaurants to Address COVID-19 (November 5, 2020) including:

Alcoholic beverages may only be served for on-site consumption if accompanied by food prepared on-site.

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

While the Investigator did not observe any food service and no evidence was presented regarding alcohol service, direct evidence was presented through the testimony of Mark Briere, President of the Licensee Club and Manager of Record, as to food service having concluded before the Investigator arrived.

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 Orders 37 and 40.

### CONCLUSION

Based on the evidence, the Commission finds NO VIOLATION of 204 CMR 2.05(2) to wit: Massachusetts Executive Orders 37 and 40 occurred.

**ALCOHOLIC BEVERAGES CONTROL COMMISSION**

Crystal Matthews, Commissioner



Jean M. Lorizio, Chairman



Deborah A. Baglio, Commissioner



Dated: February 2, 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  
Caroline Guarino, Investigator  
Michael Flanagan, Dept. of Labor Standards  
Administration, File