



*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

April 8, 2021

**SC QUINCY LLC D/B/A SHAKING CRAB
22 COTTAGE AVENUE
QUINCY, MA 02169
LICENSE#: 03331-RS-1006
VIOLATION DATE: 12/31/2020
HEARD: 3/16/2021**

After a hearing on March 16, 2021, the Commission finds SC Quincy LLC d/b/a Shaking Crab 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: Mass. Exec. COVID- 19 Order No. 58 (Dec. 8, 2020)- Failure to comply with rules applicable to Step 1 of Phase III of the Re-Opening Plan.

Therefore, the Commission **INDEFINITELY SUSPENDS** the license of SC Quincy LLC d/b/a Shaking Crab **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
Nicole Smith, Investigator
Robert Gardner, Investigator
Nicholas Velez, Investigator
Michael Flanagan, Dept. of Labor Standards
Administration, File



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DECISION

**SC QUINCY LLC D/B/A SHAKING CRAB
22 COTTAGE AVENUE
QUINCY, MA 02169
LICENSE#: 03331-RS-1006
VIOLATION DATE: 12/31/2020
HEARD: 3/16/2021**

SC Quincy LLC d/b/a Shaking Crab (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 Tuesday, March 16, 2021, 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: Mass. Exec. COVID- 19 Order No. 58 (Dec. 8, 2020)- Failure to comply with rules applicable to Step 1 of Phase III of the Re-Opening Plan.

The following documents are in evidence:

1. Investigator Smith's Report;
2. Licensee Accela Summary, New License Application Approval, 5/12/2017;
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. 58, 12/8/2020;
6. Massachusetts Sector Specific Workplace Safety Standards for Restaurants to Address COVID-19, 12/11/2020;
7. ABCC Enforcement Memorandum, 3/12/2021.

- A. Licensee's Email to Employees re: Cancellation of Staff Holiday Events, 11/17/2020
- B. Licensee's Statement of New Year's Eve Incident, 2/8/2021;
- C. Employee Action Form, 2/4/2021;
- D. Employee Action Form-Termination, 2/10/2021.

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

FINDINGS OF FACT

1. On Thursday, December 31, 2020, at approximately 11:10 p.m., Investigators Smith, Velez and Gardner ("Investigators") conducted an investigation of SC Quincy LLC d/b/a Shaking Crab 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. While outside of the establishment Investigators were able to observe through the window approximately 15 patrons, seated and standing around two tables, consuming alcoholic beverages. Investigators observed a bottle of Hennessy cognac, a Corona beer, Truly Hard Seltzers, and shot glasses on one of the tables. Id.
3. Investigators entered the licensed premises and observed the manager, later identified as Tony Phen, motioning the other individuals inside the establishment and mouthing the word "badge." Id.
4. Investigators identified themselves to Mr. Phen. Mr. Phen initially stated all the individuals inside were employees but later admitted some of the individuals were friends. Id.
5. Investigators advised Mr. Phen of their observations and reviewed with him the COVID Order which states all patrons must exit the premises before 10:00 p.m. Id.
6. Mr. Phen apologized and agreed to have everyone leave the premises. Id.
7. Investigators advised Mr. Phen of the violations and that a report would be filed with the Chief Investigator for further review. Id.
8. Nick Wu, Licensee, attended the Commission hearing and testified that prior to the date of the Investigator's inspection, all managers and staff had been informed that COVID Orders must be followed, there would be no staff holiday events and no gatherings should take place after closing hour. (Testimony)
9. Mr. Wu acknowledged his responsibility to ensure compliance with all COVID Orders. He admitted his employees decided after closing to have a drink because it was New Year's Eve. As a result, one employee was terminated, and another given a written warning. (Testimony)
10. The Licensee has held a license under M.G.L. c. 138, § 15 since 2017 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; and

Violation of Massachusetts Executive COVID-19 Order No. 58 (December 8, 2020) – Failure to comply with rules applicable to Step 1 of Phase III of the Re-Opening Plan.

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

All customers must be seated; and

All patrons must exit the licensed premise by 10:00 p.m.

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

Direct evidence was presented through the testimony of Investigator Smith, and corroborated by the Licensee, as to patrons standing inside the establishment and the Licensee failing to ensure all patrons were off the premises by 10:00 p.m. 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 58 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: 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: Mass. Exec. COVID- 19 Order No. 58 (Dec. 8, 2020)- Failure to comply with rules applicable to Step 1 of Phase III of the Re-Opening Plan.

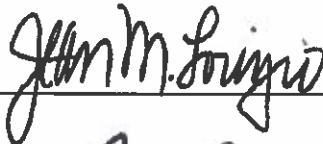
The Commission hereby **INDEFINITELY SUSPENDS** the license of SC Quincy LLC d/b/a Shaking Crab **effective forthwith** until further written order of the Commission.

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

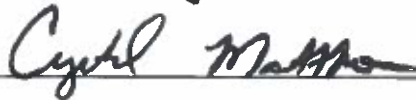
Good cause for the Commission to consider issuing a further written order revising the order of indefinite suspension will include, but not be limited to the Licensee receives approval from the Massachusetts Department of Labor Standards ("DLS") as to a reopening plan. The Licensee must submit to the 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

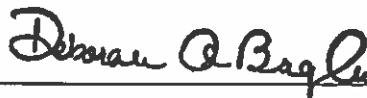
Jean M. Lorizio, Chairman



Crystal Matthews, Commissioner



Deborah A. Baglio, Commissioner



Dated: April 8, 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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