

*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

September 4, 2020

**SWEETHART CORP. INC. D/B/A KITTENS
99 BRIDGE ROAD
SALISBURY, MA 01952
LICENSE#: 00073-GP-1066
VIOLATION DATE: 8/14/2020
HEARD: 9/01/2020**

After a hearing on September 1, 2020, the Commission finds Sweethart Corp. Inc. d/b/a Kittens 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 Massachusetts Executive COVID-19 Order No. 46 (August 7, 2020).

Therefore, the Commission **INDEFINITELY SUSPENDS** the license of Sweethart Corp. Inc. d/b/a Kittens **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
Jamie Binienda, Investigator
Michael Flanagan, Dept. of Labor Standards
Arthur Broadhurst, Esq.
Administration, File



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DECISION

**SWEETHART CORP. INC. D/B/A KITTENS
99 BRIDGE ROAD
SALISBURY, MA 01952
LICENSE#: 00073-GP-1066
VIOLATION DATE: 8/14/2020
HEARD: 9/01/2020**

Sweethart Corp. Inc. d/b/a Kittens (the "Licensee") holds an all alcoholic beverages license issued pursuant to M.G.L. c. 138, § 12. The Alcoholic Beverages Control Commission ("ABCC" or "Commission") held a hearing on Tuesday, September 1, 2020, 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 Massachusetts Executive COVID-19 Order No. 46 (August 7, 2020).

Prior to the commencement of the hearing, the Licensee partially stipulated to the facts alleged in Investigator Quinn's Report.

The following documents are in evidence:

1. Investigator Quinn's Report;
2. Licensee Partial Stipulation of Facts;
3. Copy of New Seasonal License Application approved 3/11/2004;
4. Copy of Annual License Application approved 3/02/2011;
5. Massachusetts Executive COVID-19 Order No. 37;
6. Massachusetts Executive COVID-19 Order No. 40;
7. Massachusetts Executive COVID-19 Order No. 46;
8. Massachusetts COVID-19 Sector Specific Workplace Safety Standards, 8/10/2020;

9. ABCC Enforcement Memorandum, 9/1/2020.

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

FINDINGS OF FACT

1. On Friday, August 14, 2020, at approximately 8:30 p.m., Investigators Di Cicco and Quinn (“Investigators”) conducted an investigation of Sweethart Corp. Inc. d/b/a Kittens 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.
2. While inside the licensed premises, Investigators DiCicco and Quinn identified themselves and spoke with the manager, Kevin, regarding a complaint received.
3. Investigators observed patrons walk up to the bar where they were directly served alcoholic beverages. Investigators observed other patrons, without any facial covering, walking around the premises in possession of alcoholic beverages. Investigators observed patrons seated at tables in possession of alcoholic beverages. Food was observed on many tables, but some tables did not have food.

4. Investigators observed that some staff members wore a facial covering while other staff members, including the dancer performing on stage, did not wear a facial covering.
5. Investigators observed staff members without facial coverings mingling in close contact with patrons who stood and sat at tables.
6. Investigators observed staff members providing lap dances to patrons, with neither the staff member nor the patron wearing a facial covering.
7. Investigators observed a pool table in operation with two individuals standing next to it.
8. Massachusetts Executive COVID-19 Order No. 46 (August 7, 2020) provides in part that licensees “(r)equire 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; and ensure that: All customer-facing workers (e.g., servers, bus staff) must minimize time spent within 6 feet of customers; Musical and other performances must follow the latest Theater and Performance Venue guidance, including distance between performers and attendees. Alcoholic beverages may only be served for on-site consumption if accompanied by food prepared on-site.” (Emphasis supplied.)
9. Investigators advised Kevin of the violations and advised that a report would be filed with the Chief Investigator for further action.
10. The Licensee stipulated to the facts in the investigator’s report, with one exception. The Licensee contended that there was only one employee and one patron without masks. (Exhibit 2)
11. The Licensee has held a license under M.G.L. c. 138, § 12 since 2004 with no prior violations.

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. 46 (August 7, 2020).

Counsel for the Licensee informed the Commission that precautions were being taken at the licensed premise, and the Licensee believed they were compliant with all COVID-19 orders. However, while the Licensee contested the allegation that multiple patrons and staff members were not wearing face coverings, the Licensee did admit that one employee and one patron were not wearing any face coverings. Investigator DiCicco testified that he and Investigator Quinn observed numerous patrons and staff who were not wearing face coverings. The Commission is persuaded by the evidence that a violation of 204 CMR 2.05(2), to wit: Massachusetts Executive Orders 37, 40 and 46 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. 46 (August 7, 2020).

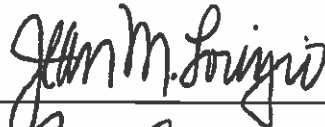
The Commission hereby **INDEFINITELY SUSPENDS** the license of Sweethart Corp Inc d/b/a Kittens **effective forthwith** until further written order of the Commission.

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

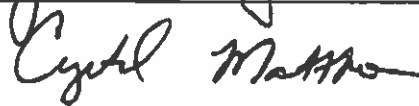
Good cause for the Commission to consider issuing a further written order revising the order of indefinite suspension shall include, but not be limited to, the Licensee's receiving approval from the Massachusetts Department of Labor Standards ("DLS") as to a reopening plan. The Licensee must submit to the DLS a COVID Control Plan to reopen 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.doziis@mass.gov) requesting review and approval.

ALCOHOLIC BEVERAGES CONTROL COMMISSION

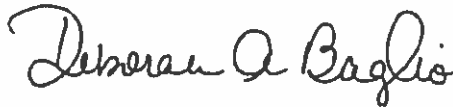
Jean M. Lorizio, Chairman _____



Crystal Matthews, Commissioner _____



Deborah A. Baglio, Commissioner _____



Dated: September 4, 2020

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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