



STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
LIQUOR CONTROL COMMISSION

IN RE: THE MEETING PLACE LLC

3600 OWEN RD
FENTON, MI 48430

GENESEE COUNTY

HEARING: DECEMBER 4, 2020

PLACE: ZOOM PLATFORM
COMPLAINT NO. CV-508761
BUSINESS ID NO. 260224

CLASSC SDM SS (AM & PM)
OD-SERV(1)

CHARGES – DATES LISTED BELOW:

- (1) On November 19, 2020, The Meeting Place LLC, and/or employees of the licensee engaged in an illegal occupation or illegal act upon the licensed premises, contrary to Rule 436.1011(1), specifically: allowing indoor gatherings at a food service establishment, contrary to sections 2(a)(2) and 3(b)(1) of the Michigan Department of Health and Human Services Gatherings and Face Mask Order dated November 15, 2020.
- (2) On November 21, 2020, The Meeting Place LLC, and/or employees of the licensee engaged in an illegal occupation or illegal act upon the licensed premises, contrary to Rule 436.1011(1), specifically: allowing indoor gatherings at a food service establishment, contrary to sections 2(a)(2) and 3(b)(1) of the Michigan Department of Health and Human Services Gatherings and Face Mask Order dated November 15, 2020.
- (3) On November 21, 2020, The Meeting Place LLC, and/or employees of the licensee engaged in an illegal occupation or illegal act upon the licensed premises, contrary to Rule 436.1011(1), specifically: allowing persons to participate in indoor gatherings at the licensed premises without requiring them to wear face masks, contrary to section 7(c) of the Michigan Department of Health and Human Services Gatherings and Face Mask Order dated November 15, 2020.

PROCEDURAL HISTORY

On December 4, 2020, a hearing was held virtually on the zoom platform in the above-entitled case before a duly authorized agent of the Commission, Administrative Law Judge Michael J. St. John.

Petitioner, Michigan Liquor Control Commission (Petitioner, Commission, or MLCC), was represented by Daniel Felder, Assistant Attorney General. The Respondent Licensee (Respondent or Licensee) was represented by Robert Huth, Jr., attorney at law.

EXHIBITS

The Petitioner Commission offered the following exhibits which were admitted without objection:

1. Investigation Violation Report Narrative
2. Facebook Post¹
3. Photograph of parking lot
4. Photograph of the inside of the establishment

The Respondent Licensee offered the following exhibit which was admitted over the Petitioner Commission's foundation and relevance objections:

- A. *ABC, et. al. v Whitmer, et. al.* Decision

FINDINGS OF FACT

Based on the testimony presented and the exhibits admitted at the hearing, the following facts are found:

1. Licensee allowed indoor gatherings at their licensed food service establishment on November 19 and 21, 2020.
2. Licensee allowed customers (but not staff) to participate in indoor gatherings at their licensed establishment without requiring them to wear face masks on November 21, 2020.
3. Licensee ceased allowing indoor gatherings starting on November 22, 2020.

The following represents a summary of the testimony of the witnesses. Any opinion is that of the witness:

██████████, Detective for City of Fenton

4. Detective ██████████ has been a Detective for more than 20 years.
5. Detective ██████████ observed a Facebook Post (Exhibit 2) which indicated that the Licensee remained open for indoor dining.
6. Detective ██████████ went to the Licensee's establishment on November 18, 2020; at that time, the Licensee was compliant with the Public Health Order by not having indoor dining. Detective ██████████ spoke with the Licensee's representative about what would happen if indoor dining resumed.

¹ Exhibit 2 was admitted over the Licensee's foundation and relevance objections.

██████████, Police Officer for City of Fenton

7. Officer ██████████ has been a Police Officer for 18 years including more than 6 years with Fenton.
8. Officer ██████████ went to the Licensee on November 19, 2020 at about 4:00 p.m. and contacted the employees.
9. Officer ██████████ observed two customers walking out of the restaurant without anything in their hands (no take out).
10. Employees were wearing masks.
11. Two patrons with alcoholic beverages and food at the bar were served. Other patrons also had drinks in front of them. The patrons were not wearing masks.
12. Officer ██████████ spoke with the manager, Anna, and asked why she was allowing patrons to dine in. Anna told Officer ██████████ that she wanted her employees to remain employed. Anna indicated that she was losing money by staying open but wanted to help out her employees.
13. Anna told Officer ██████████ that she was aware of the order, knew that she was in violation, and indicated that she had spoken with Detective ██████████ the day before.

██████████, Investigator for Petitioner Commission

14. Investigator ██████████ has worked for the Commission for the last nine years.
15. Investigator ██████████ searched for and found the Licensee's Facebook post on November 18, 2020 (Exhibit 2).
16. On November 21, 2020, Investigator ██████████ observed vehicles in the parking lot (Exhibit 3) and individuals inside the establishment eating and drinking without masks on (Exhibit 4). One patron was wearing a mask who was there to pick-up take-out food.
17. Investigator ██████████ attempted to take additional photographs but was confronted by a patron in the establishment who demanded that the Investigator delete her photographs (she deleted one) and not take additional photographs.
18. The hostess did not tell patrons that they could not enter if they were not wearing a mask and did not tell patrons that they had to leave if they were not wearing a mask.
19. Investigator ██████████ observed some patrons who were not seated who were not wearing masks.
20. There were over forty patrons inside the establishment, almost all for in person dining.
21. Investigator ██████████ observed the staff wearing masks.
22. Investigator ██████████ observed on subsequent Facebook posts that others had complained that in person dining had closed.

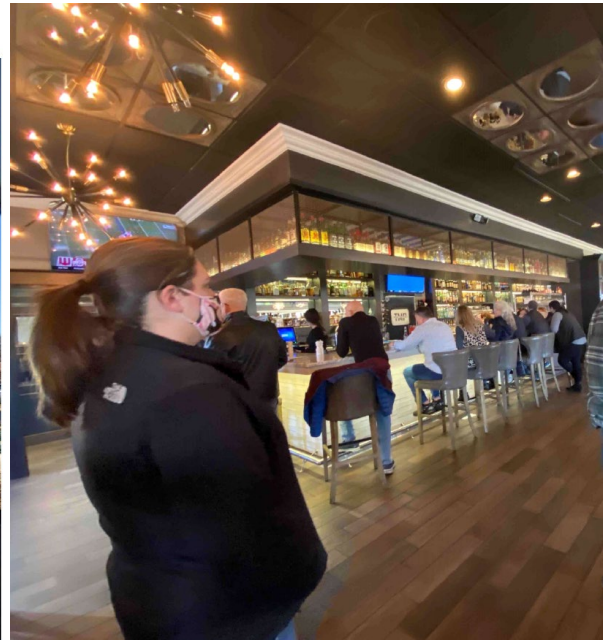
Marlene Dedivanaj, Owner of the Licensee

23. Ms. Dedivanai is the owner of the Licensee establishment The Meeting Place. She opened the restaurant two years ago, converting it from an old Bob Evans restaurant.
24. Ms. Dedivanai has a husband and seven children.
25. Ms. Dedivanai does not perform her own social media advertisements. Ms. Dedivanai placed the ad (Exhibit 2) prior to the Public Health Order.
26. Ms. Dedivanai was not at the establishment on November 18, 2020; she was told that the Detective had stopped by.
27. Ms. Dedivanai initially followed the Public Health Order and closed in person dining in accordance with the Order.
28. Ms. Dedivanai was not present on November 19, 2020. A few customers on that date were permitted by the staff to eat and drink in the restaurant on that date.
29. Ms. Dedivanai has instructed her employees to wear masks since the beginning of the pandemic.
30. On November 21, 2020, many people showed up at the restaurant for takeout and asked to sit at the restaurant which the staff allowed them to do.
31. Ms. Dedivanai understands that she made a mistake letting patrons eat inside the restaurant.
32. Ms. Dedivanai was not trying to make a political point.
33. Patrons that are not wearing masks are asked to leave.
34. Patrons waiting for a table were asked to wait outside.
35. On Sunday November 22, 2020, Ms. Dedivanai made the decision to stop serving dine in patrons and there has been no further inside dining allowed.
36. The Licensee has not served alcohol since the summary suspension of the Licensee's liquor license.
37. The Licensee will follow all Public Health Orders and will not allow in person dining until it is allowed under the Public Health Code.
38. The Licensee has about 25 employees.
39. The Licensee lost money, but the staff was able to make money during this time because of the patrons' generous tips.
40. The Licensee has permanent signage on their doors which notifies patrons that they must wear a mask in the establishment unless or until they are seated.

CONCLUSIONS OF LAW

The basic facts of this case are not in dispute. The Licensee allowed indoor dining on November 19 and 21, 2020 after the November 15, 2020 Public Health Order prohibited in person indoor dining. The customers participating in the indoor dining did not wear masks. Staff were wearing masks. The credible and un rebutted testimony of the Investigator and police was supported by the photograph of the inside of the restaurant (Exhibit 4) and the mostly full parking lot (Exhibit 3):

Establishment parking lot - nearly full (except for curbside pickup and disability spots)



Exhibits 3 and 4

Allowing in person dining is contrary to the November 15, 2020 Public Health Order and therefore contrary to MCL 333.2226(d) and therefore contrary to MLCC Rule 436.1101(1). The primary question raised at the hearing is whether the Commission has the authority to sanction a licensee for violating a non-liquor-related order or statute. They do.

ABC v Whitmer is distinguishable from this case.

The Licensee argued that the Commission lacks the authority to sanction the Licensee for a violation of a non-liquor-related order or statute and cited *ABC v Whitmer* (Exhibit A) as the primary authority for that position. In *ABC*, the Court of Claims ruled that it was not permitted to add penalties found in another statute into an executive order. That is not what occurred here. Unlike Executive Order 2020-97 which references a MIOSHA statute, the November 15, 2020 Public Health Order does not reference the Michigan Liquor Control Code. Had the Public Health Order made a violation of that order a *per se* violation of the Liquor Control Code, that would have been impermissible. The November 15, 2020 Order did not do so.

ABC explicitly contemplates overlap between violating an executive order and another statute noting that “any violation under MIOSHA will be subject to the penalties available under that separate statutory scheme.” (Page 7). Here the Commission alleges that there was a violation of the LCC Rules by the Licensee when the Licensee committed an illegal act by violating the November 15, 2020 Order. The Commission is correct in that assertion.

The Licensee is in violation of the November 15, 2020 Public Health Emergency Order and MCL 333.2253(1).

If the director determines that control of an epidemic is necessary to protect the public health, the director by emergency order may prohibit the gathering of people for any purpose and may establish procedures to be followed during the epidemic to insure continuation of essential public health services and enforcement of health laws. Emergency procedures shall not be limited to this code.
MCL 333.2253(1)

On November 15, 2020, the Michigan Department of Health and Human Services Director determined that control of the COVID-19 epidemic was necessary to protect the public health and issued an emergency order prohibiting the gathering of people and establishing procedures to be followed. That Order specifically prohibited indoor gatherings at food establishments with certain exceptions that are not applicable here (Order 3(b)(1)) and required face masks (Order 7(a)). By allowing indoor dining and not requiring either patrons or staff to wear masks, the Licensee is in violation of the November 15, 2020 Order.

The MLCC Rules prohibit any illegal acts on the licensed premises.

The clerk, servant, agent, or employee of a licensee shall not engage in an illegal occupation or illegal act on the licensed premises. ...
Rule 436.1101(1)

The Licensee engaged in illegal acts on the licensed premises by remaining open for in person dining despite the Public Health Emergency Order not to do so. By committing this illegal act, the Licensee is in violation of Rule 436.1101(1) and subject to discipline.

The Licensee’s actions constitute an imminent threat to the public’s health, safety, and welfare. The Commission’s summary suspension under the Administrative Procedures Act was appropriate.

Circumstances for restaurants are dire but this does not allow the Licensee to pick and choose which orders, rules, and statutes to follow.

There is no dispute that the COVID-19 pandemic has hit some industries and groups harder than others. Restaurant owners and employees have been hit especially hard. Many restaurants have been forced to close; some of these restaurants will not reopen. Restaurant employees have lost wages and jobs.

Economic necessity does not allow the Licensee to pick and choose which laws to comply with. Almost all restaurants in the state have complied with the Order despite the hardship that has resulted; thankfully as of November 22, 2020, this includes the Licensee.

The Licensee took some steps to ensure their customers' safety by making them wait outside while waiting for a table and requiring masks when not seated (although this rule was not universally followed). Most importantly, the Licensee did take measures to protect staff by requiring them to wear masks.

The Administrative Law Judge is left with the distinct impression that the Licensee allowed customers who showed up to dictate the terms of service. Some customers showed up thinking that they could dine in because of the ill-timed advertisement Facebook post and the Licensee acquiesced. This happened to a small degree on November 19, 2020 and to a large extent on November 21, 2020. On November 22, 2020, the Licensee made the very wise decision to shut down all in person dining operations. The owner also was not fully involved in these decisions because of circumstances outside of her control. All these factors mitigate against more substantial fines and further suspensions.

Detective [REDACTED]'s previous warning to the Licensee, however, is troubling. The Licensee knew that in person dining was not allowed and knew that there would be consequences for allowing in person dining and did so to a limited extent on November 19, 2020 and to a full extent on November 21, 2020.

In determining penalties, the violation of allowing in person dining on November 19, 2020 was relatively small in scope and warrants a less than maximum fine. The violation of allowing in person dining on November 21, 2020 was substantial and requires a maximum fine. The violation for allowing indoor gathering without masks is mostly encompassed in Count 2 and a substantial fine is not warranted since staff were wearing masks and there was an attempt by the Licensee to implement mask wearing by customers when practical.

The Licensee's license has already been summarily suspended. Because the Licensee has acknowledged their mistake, ceased in person dining, and has committed to following the law going forward, further suspension is unwarranted. No further suspension is ordered for the three violations. The Administrative Law Judge considers the Licensee to have served their suspension during the period of the summary suspension.

ORDER

With the issuance of this Order, the summary suspension is dissolved. The Licensee may resume alcohol sales.

In determining penalty, the Administrative Law Judge considered the Licensee's total record, which shows no previous violations since being licensed on May 30, 2018 at the above-named location under the current ownership.

The Administrative Law Judge also considers the Licensee's disregard of the initial warning by the Detective but also the Licensee's safety precautions requiring staff to wear masks and the Licensee's understanding that they made a mistake and the actions that they have taken to correct the mistake that they made: namely ceasing in person dining and complying with the summary suspension by not serving alcohol.

Because of the serious nature of the violations, as a penalty, the Administrative Law Judge Orders the following fines:

Count 1: a fine of \$200; and,

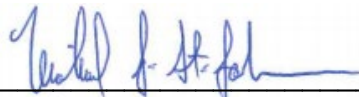
Count 2: a fine of \$300; and

Count 3: a fine of \$100.

The three fines are consecutive: the total fine is \$600. Further, if the fine is not paid within forty-five (45) days from the mailing date of this Order, the Administrative Law Judge Orders that a suspension of thirty (30) continuous days, with this suspension to run consecutively and not concurrently with any other suspension Ordered by the Commission.

The Licensee is warned that further fines, suspensions, or a revocation of the Licensee's liquor license could result if the Licensee operates in violation of the law.

MICHIGAN LIQUOR CONTROL COMMISSION



Michael J. St. John, Administrative Law Judge

Date Signed: December 7, 2020

Date Mailed: _____

Daniel Felder
Assistant Attorney General
25680 W. 8 Mile Rd.
Southfield, MI 48033

Robert Hurth, Jr.
Attorney at Law
19500 Hall Rd., Suite 100
Clinton Township, MI 48038