



STATE OF MICHIGAN

DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS  
LIQUOR CONTROL COMMISSION

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IN RE: KMPD, INC.  
D/B/A ROCK HOUSE GRILL & TAVERN  
915 RAZORBACK DR  
HOUGHTON, MI 49931

HEARING: DECEMBER 4, 2020  
PLACE: ZOOM PLATFORM  
COMPLAINT NO. CV-508765  
BUSINESS ID NO. 220045

CLASSC SDM SS (PM)  
ADDBAR DANC-ENT OD-SERV  
SPECIFIC PURPOSE PERMITS  
(FOOD, BOWLING) EXTENDED  
HOURS PERMIT (DANC-ENT)

HOUGHTON COUNTY

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**CHARGES** – NOVEMBER 20, 2020

- (1) KMPD, Inc. and/or Andy Moyle, stockholder of the licensed establishment 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 Section 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) KMPD, Inc. and/or Andy Moyle, 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 Felipe Hall, Assistant Attorney General. The Respondent Licensee (Respondent or Licensee) was represented by Matthew Eliason, attorney at law.

The Petitioner Commission offered the Commission file which was admitted without objection. The Commission file includes in relevant part the following exhibits:

1. Violation Report
2. November 20, 2020 12:00 p.m.<sup>1</sup> Food Establishment Inspection Report with attached photographs
3. November 20, 2020 8:00 p.m. Food Establishment Inspection Report with attached social media post and photographs
4. November 23, 2020 4:00 p.m. Food Establishment Inspection Report
5. November 23, 2020 Warning Order
6. November 24, 2020 4:00 p.m.<sup>2</sup> Food Establishment Inspection Report
7. November 24, 2020 Cease and Desist Food Operations Order
8. November 25, 2020 10:45 a.m. Food Establishment Inspection Report with attached communication log<sup>3</sup>
9. November 25, 2020 8:30 p.m. Food Establishment Inspection Report with attached communication log and photographs
10. November 25, 2020 Penalty Notice
11. Answer to Complaint

The Respondent Licensee offered the following exhibits. Exhibit A was admitted without objection and Exhibits B, C, D, and E were admitted over the Petitioner Commission's foundation and relevance objections:

- A. November 20, 2020 Party Invitation
- B. November 25, 2020 CDC Provisional Death Counts for COVID-19
- C. December 1, 2020 CDC Provisional Death Counts for COVID-19
- D. Percentage of Cases
- E. Percentage of Deaths

### **FINDINGS OF FACT**

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

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<sup>1</sup> Although the document notes the time as 12:00 a.m. (midnight), the witness testimony establishes that this report occurred at 12:00 p.m. (noon).

<sup>2</sup> Although the document notes the time as 4:00 a.m. (early morning), the witness testimony establishes that this report occurred at 4:00 p.m. (afternoon).

<sup>3</sup> Exhibit 8 also includes a copy of the November 24, 2020 Cease and Desist Order (Exhibit 7).

1. Licensee allowed indoor gatherings at their licensed food service establishment on November 20, 2020.
2. Licensee allowed customers and staff to participate in indoor gatherings at their licensed establishment without requiring them to wear face masks on November 20, 2020.
3. Licensee was repeatedly warned that they were in violation but continued to allow indoor gatherings and allow customers and staff to not wear masks from November 15, 2020 to November 25, 2020. On December 4, 2020, the Licensee agreed not to allow any further in person dining.

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

Scott Barr, Sanitarian/Health Inspector Western Upper Peninsula Health Department

4. Inspector Barr has been with the Department for three years. He has been a health inspector for more than 20 years.
5. Inspector Barr went to the Licensee's establishment on November 20, 2020 at noon pursuant to complaints that the establishment remained open for in person dining in violation of the November 15, 2020 Public Health Order.
6. Inspector Barr observed that the facility was open for in person dining. Four customers entered the facility and were seated for dining; they were not wearing masks. Staff were wearing masks.
7. Inspector Barr spoke with the owner, Mr. Moyle, and told him that they were there because the restaurant remained open in violation of the Order.
8. Mr. Moyle refused to sign the complaint (Exhibit 2) because he disagreed with the Public Health Order.
9. Mr. Moyle was asked whether he would remain open and said that he would.
10. Mr. Moyle was asked about a large gathering and Mr. Moyle said that this gathering was planned.
11. Inspector Barr received 97 additional complaints that the Licensee remained open for in person dining.
12. Inspector Barr returned to the establishment on November 23, 2020 at 4:00 p.m. and hand delivered a warning order (Exhibit 5). The entertainment portion of the establishment and the restaurant were both open. There were patrons inside the restaurant eating and consuming alcoholic beverages; they were not wearing masks. Staff were not wearing masks.

13. An additional 23 consumer complaints were received and so Inspector Barr did a complaint follow up inspection at 4:30 p.m. on November 24, 2020 documenting non-compliance. There were eight patrons seated at the bar eating and drinking; they were not wearing masks.
14. Inspector Barr explained to the Licensee's manager that they were in violation of the Public Health Order and needed to shut down. The manager told Inspector Barr that the Licensee was not going to shut down.
15. The chef at the facility confronted Inspector Barr about the photographs that Inspector Barr was taking of the facility and their customers (and him).
16. Inspector Barr issued a cease and desist order to the Licensee on November 25, 2020. The establishment was not yet open for business when Inspector Barr arrived on that date.
17. Inspector Barr went to the Licensee's establishment the morning of December 4, 2020.
18. The Licensee had floor markings to note six feet of spacing.
19. The basis of the cease and desist orders was the Public Health Order.
20. There have been trace backs of COVID-19 to the Licensee including four employees who have been quarantined with end dates in September, October, and November (15<sup>th</sup>). There were also two customers who tested positive.

Tanya Rule, Environmental Health Director for the Western Upper Peninsula Health Department

21. Ms. Rule has been the Director for about two years and an inspector for more than a decade previously.
22. Ms. Rule issued a directive for the Licensee to shut down, but they did not. Ms. Rule determined that the Licensee was not going to shut down in response to their requests.
23. Ms. Rule observed the Licensee's establishment on November 20, 2020 at 8:00 p.m. She observed that the parking lot was full and observed patrons entering the facility but not exiting leading her to believe that they were congregating inside.
24. Ms. Rule issued orders allowing the Licensee to continue to remain open for carry out but not for indoor dining. The Licensee did not comply with these orders and instead remained open for indoor dining.
25. When Ms. Rule arrived at the facility on November 25, 2020, the manager told the cooks to put their masks on and called the owner.
26. The Licensee remained open for in person dining at 8:00 p.m. on November 25, 2020. There were 30+ customers inside consuming food and beverages.

27. The Licensee ceased in person dining at the end of the day on November 25, 2020.

28. The morning of December 4, 2020 the Licensee reopened for food service take out and the cease and desist order was lifted.

Ted Raymond, Investigator for Petitioner Commission

29. Investigator Raymond has been a Commission Investigator for about 13 years. In that time, he has only had a few license revocations.

Andy Moyle, Officer of the Licensee Corporation

30. The Licensee is a 30,000 square foot facility with several entertainment options including a restaurant. There are about 35 to 40 employees at any given time.

31. COVID-19 has nearly destroyed the Licensee's business. Sales are down over 40%.

32. About 15 to 20% of the establishment's revenue comes from liquor sales.

33. The establishment is now open from 12:00 p.m. to 8:00 p.m.; they were previously open from 11:00 a.m. to 12:00 midnight.

34. The Licensee's employees collectively earn about \$470,000 in wages and tips in an average year.

35. The Licensee remained open for in person dining after November 15, 2020.

36. A political group had an event on November 20, 2020 at the Licensee; the Licensee offered to host the group at their establishment. More than 200 people attended the event; they did not wear masks.

37. The staff who worked on November 20, 2020 enjoyed it. Any staff that did not want to work were not obligated to do so.

38. Employees are required to wear masks<sup>4</sup>. Hand sanitizer stations are set up. Capacity has been reduced to 20%.

39. Employees screen in every day and get a temperature check.

40. Mr. Moyle believes that the Licensee has been cooperative and doing everything else correctly since March 2020.

41. Mr. Moyle is unaware of any individual with COVID-19 coming to the restaurant.

42. Takeout orders only allow for a very few individuals work: 6 instead of 35 in a week. The Licensee will remain open for take out to keep their employees employed – they want to keep their good employees.

43. Revenue from takeout amounts to less than 2% of the establishment's revenue.

44. Most employees are in their 20s.

45. Mr. Moyle does not believe that staying open is an imminent danger.

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<sup>4</sup> The Licensee's employee mask rule is clearly not strictly enforced as multiple staff members were observed not wearing masks on various dates when inspectors visited the Licensee.

46. Several businesses in the Houghton area are in imminent danger of shutting down. There is massive unemployment.
47. Mr. Moyle believes that he is being treated differently than the Walmart in town.
48. Both the health department and the local police had told Mr. Moyle not to hold the November 20, 2020 event.
49. Individuals at the November 20, 2020 event could eat and drink both soft drinks and alcohol.
50. Mr. Moyle knew of the November 15, 2020 Public Health Order but did not believe that it was enforceable.
51. Mr. Moyle was aware of the four employees who were required to quarantine because of COVID-19. He does not believe that they contracted the disease at the establishment or that they spread it to others at the establishment.

### **CONCLUSIONS OF LAW**

The basic facts of this case are not in dispute. The Licensee allowed indoor dining on November 20, 2020 after the November 15, 2020 Public Health Order prohibited in person indoor dining. The Licensee resisted shutting down in person dining and ignored several warnings and cease and desist orders before finally complying and being reinstated for carryout only dining on December 4, 2020. No customers and only some staff wore masks. The credible and un rebutted testimony of the Investigators was supported by the photographs (Exhibits 3, 6, and 9) which show customers eating and drinking indoors and a staff member sitting with customers; none are wearing masks.



Exhibits 6 and 9

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.

The multiple warnings issued do not mean that this was not an imminent threat to the public's health, safety, and welfare requiring a summary suspension.

The Licensee argued that the multiple ignored warnings mean that there was no imminent danger. This argument is rejected. The fact that the health department showed restraint and allowed the Licensee multiple warnings and opportunities to comply does not make the Licensee's actions any less dangerous. The health department acting with restraint is to be commended; it is not evidence that the Commission's summary suspension was not warranted. It was.

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. There need not be proof of an actual injury to support a threat to public health, safety, or welfare. The Licensee is not free to do as they please until a case of COVID-19 transmission is confirmed to the Licensee's establishment. To adopt this line of reasoning would allow a licensed establishment to flout any rule until there is a negative consequence including to serve alcohol to intoxicated persons until a patron goes out and harms a member of the public; licensees are always prohibited from overserving customers from day one of their licensure, not from some arbitrary point after a customer kills another person while driving drunk.

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; only a very select few restaurants have deemed themselves above the law. Unfortunately, the Licensee was included amongst the group until finally seeing the light on December 4, 2020 after numerous warnings, cease and desist orders, and a summary suspension of their liquor license.

Further, this Licensee made only partial attempts to implement even the most basic and essential safety measure to combat this deadly disease: requiring wearing masks. It is necessarily difficult to have customers wear masks while eating and drinking, but it is entirely possible, reasonable, and essential to have staff wear masks while serving their customers. The Licensee did not rigorously enforce any rule that they may have had requiring staff to wear masks, undermining restaurants' best argument that they should be allowed to remain open: that they can and will operate safely.

COVID-19 is a dangerous and deadly disease.

The Licensee offered several exhibits to attempt to establish that COVID-19 is not as dangerous as public health officials have contended, particularly for younger Americans who are the primary patrons and staff members of the Licensee. This argument is misguided and completely misses the point. Younger people still die from this deadly disease. Younger people who attend 200+ person in person indoor gatherings with others in close proximity who are talking, eating, and drinking spread that disease to their families and friends. Some of those individuals will be older or have health conditions putting them at higher risk. Many of those individuals will die. More will have significant and potentially long lasting health conditions.

**ORDER**

With the issuance of this Order, the summary suspension is dissolved.

In determining penalty, the Administrative Law Judge considered the Licensee's total record, which shows one previous violation (a 2010 failure to provide proof of server training) since being licensed on August 14, 2009, at the above-named location under the current ownership.

The Administrative Law Judge also considers the Licensee's disregard for the health and safety of their staff and patrons by not strictly enforcing their requirement for staff to wear masks while working. The Licensee also ignored multiple warnings, requests, and cease and desist orders. Instead, the Licensee hosted a 200+ person event. Finally, the Licensee has now complied with the Public Health Emergency Order and no longer continues to dangerously operate indoor dining.

Because of the extremely serious nature of the violations, the failure to operate safely, and the extended (but thankfully no longer continuing) failure to comply with the Public Health Emergency Order, as a penalty, the Administrative Law Judge Orders the following fines and suspensions:

Count 1: a fine of \$300 and a suspension of the license for forty-five (45) continuous days from the date of the entry of this Order; and,

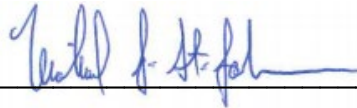
Count 2: a \$300 fine and a suspension of the license for forty-five (45) continuous days from the date of the entry of this Order.

The two fines are consecutive: the total fine is \$600. The two forty-five (45) day suspensions shall be served concurrently, not consecutively, for a total suspension of the license for forty-five (45) continuous days from the date of the entry of this Order

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 an additional suspension of thirty (30) continuous days, with this suspension to run consecutively and not concurrently with the 45 day suspension or 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 or violates the Order of the Commission.

MICHIGAN LIQUOR CONTROL COMMISSION



Michael J. St. John, Administrative Law Judge

Date Signed: December 7, 2020

Date Mailed: \_\_\_\_\_

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