



STATE OF MICHIGAN

DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
LIQUOR CONTROL COMMISSION

IN RE: GIBSON JOHNSON MANAGEMENT L.L.C. HEARING: JANUARY 13, 2021
D/B/A MINNIE'S RHYTHM CAFÉ PLACE: ZOOM PLATFORM
546 E LARNED ST COMPLAINT NO. CV-508948
DETROIT, MI 48226 BUSINESS ID NO. 259123

WAYNE COUNTY

CLASSC SS (AM & PM) ADDBAR
DANC-ENT EXT HRS (DANC-ENT)

CHARGES – DECEMBER 27, 2020

- (1) On December 27, 2020, Gibson Johnson Management, L.L.C., 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 December 18, 2020.
- (2) On December 27, 2020, Gibson Johnson Management, L.L.C., 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 sections 7 (a) and 7(c) of the Michigan Department of Health and Human Services Gatherings and Face Mask Order dated December 18, 2020.

PROCEDURAL HISTORY

On or about January 7, 2021, the Michigan Liquor Control Commission (Petitioner, Commission, or MLCC) issued an Emergency Suspension Order Pursuant to MCL 24.292(2) and Notice of Hearing (Emergency Suspension Order) to Gibson Johnson Management, L.L.C., d/b/a Minnie's Rhythm Café (Respondent or Licensee) alleging that Respondent's conduct constituted an imminent threat to the public health, safety, or welfare, pursuant to Section 92(2) of the Administrative Procedures Act of 1969, 1969 PA 306, as amended (APA), Michigan Compiled Laws (MCL) 24.201 *et seq* (APA), and with

Section 903(1) of the Michigan Liquor Control Code, 1998 PA 58, as amended, MCL 436.1901, *et seq* (Code).

On January 7, 2021, Petitioner issued a Notice of Hearing on Complaint, scheduling a videoconference hearing to convene on January 13, 2021. This matter was assigned before the duly authorized agent of the Commission, Administrative Law Judge Eric J. Feldman.

On January 13, 2021, the videoconference commenced as scheduled via the Zoom platform. The undersigned presided. Assistant Attorney General Mark Sands appeared on behalf of Petitioner. Sergeant Esther Lightfoot, Detroit Police Department; Sergeant Myron Watkins, Detroit Police Department; and Officer Kimberly Cochran, Detroit Police Department, were also present for Petitioner. Attorney Randal Toma appeared on behalf of Respondent. Yvonne Gibson, owner of Respondent-Licensee, was also present.

The record closed at the conclusion of the hearing.

WITNESS LIST

1. Yvonne Gibson, owner of Respondent/Licensee.

EXHIBIT LIST

The following exhibits were offered on behalf of Petitioner and admitted into the record unless otherwise indicated:

1. Violation Report, dated on or about December 27, 2020.
2. The Michigan Department of Health and Human Services (MDHHS) Emergency Order under MCL 333.2253 – Gatherings and Face Mask Order (Emergency Order), dated December 18, 2020.

Respondent did not offer any exhibits.

ISSUE

Whether Petitioner has properly determined that Respondent's conduct constitutes an illegal act creating an imminent threat to the public health, safety, or welfare, requiring emergency action.

APPLICABLE LAW

MCL 436.1903(1) states as follows:

The commission or any commissioner or duly authorized agent of the commission designated by the chairperson of the commission, on notice and proper hearing, may suspend or revoke any license on a violation of this act or any of the rules promulgated by the commission under this act. The commission or any commissioner or authorized agent of the commission designated by the chairperson of the commission, may assess a penalty of not more than \$300.00 for each violation of this act or rules promulgated under this act, or not more than \$1,000.00 for each violation of section 801(1), in addition to or instead of revocation or suspension of the license, which penalty must be paid to the commission and deposited with the state treasurer and must be credited to the general fund of the state...

MCL 24.292(2) states as follows:

If the agency finds that the public health, safety or welfare requires emergency action and incorporates this finding in its order, summary suspension of a license may be ordered effective on the date specified in the order or on service of a certified copy of the order on the licensee, whichever is later, and effective during the proceedings. The proceedings shall be promptly commenced and determined.

FINDINGS OF FACT

The following findings of fact are established based on the entire record in this matter, including the witness testimony and admitted exhibits:

1. Respondent currently hold a Class C license, as well as permits for Sunday sales (a.m. and p.m.), additional bar, dance, entertainment, and extended hours at its licensed location. [Pet. Exh. 1.]
2. Respondent is located at 546 E. Larned, Detroit, Michigan 48226. Yvonne Gibson is the owner of Respondent/Licensee. Respondent's license was issued on April 12, 2018. [Pet. Exh. 1.]
3. Respondent has no prior violations of the Code.
4. On December 18, 2020, the Director of the MDHHS issued an Emergency Order prohibiting indoor consumption of food and alcohol and indoor gatherings without masks. [Pet. Exh. 2.]

5. On December 27, 2020, at approximately 1:15 a.m., three police officers with the Detroit Police Department responded to a complaint about a large party at Respondent's location. The officers documented the following in the Violation Report:

[The officers] observed 10-15 vehicles parked in the lot adjacent to the location and vehicles parked in the alley behind the building.

[The officer] observed a large crowd of people through the front window not social distancing, not wearing a mask, dancing, consuming alcohol and eating food. Music was heard coming from the location. [The officer] knocked on the locked front door and identified himself. The door was not opened immediately. [The officer] observed 10 -15 people rush toward the rear of the location who was detained in the parking lot by the rest of the crew.

The door opened after approximately 4-5 minutes and the crew entered the location. [The officer] spoke with the people remaining inside but no one took the responsibility of being in charge nor would anyone answer the question of how they gained entry into the business. Alcohol and food observed on the tables and the bar.

[Pet. Exh. 1.]

6. Respondent is a bar and food service establishment that does not qualify for an exception to the indoor gathering prohibition in the December 18, 2020, Emergency Order.
7. Respondent allowed indoor gathering at the licensed establishment on December 27, 2020.
8. Respondent allowed persons to participate in indoor gatherings at the licensed establishment without requiring them to wear face masks on December 27, 2020.
9. Yvonne Gibson, owner of the license, is aware of the December 18, 2020, Emergency Order.

10. Ms. Gibson was out-of-town during the December 27, 2020, incident. A few days after the incident, she learned that one of her managers at the bar had given a private party to her girlfriend without Ms. Gibson's authorization. The party was not open to the public.
11. Immediately following this discovery, Ms. Gibson placed the manager on administrative leave for 30-days without pay.
12. Ms. Gibson's establishment has been shut down since November 17, 2020, and is only open for food takeout. Since the incident, she has taken remedial steps, including placing the manager on leave, updating her policy handbook, allowing only four staff members to open and close the business, a log keeping track of the employees on duty, re-training the staff on any state mandates, etc.
13. Ms. Gibson acknowledges each of the two violations.

CONCLUSIONS OF LAW

The facts of this case are not disputed, and Respondent acknowledged the charges. Respondent allowed indoor gathering at the licensed establishment after the December 18, 2020, Emergency Order. Respondent further allowed persons to participate in indoor gatherings at the licensed establishment without requiring them to wear face masks after the December 18, 2020, Emergency Order. Ms. Gibson, owner of the Respondent/Licensee, acknowledges the violations, but that they were not intentional.

Although Ms. Gibson was not present on the date of the incident and was not aware that one of her manager's hosted a party, she, as the owner of the establishment, is ultimately responsible for the two violations. Ms. Gibson does not dispute this. However, there are mitigating circumstances in this case that are important to consider. Since the incident, she has taken several remedial steps, including placing the manager on leave, updating her policy handbook, allowing only four staff members to open and close the business, a log keeping track of the employees on duty, re-training the staff on any state mandates, etc. Her business has been shut down since November 17, 2020, except for food takeout. She is committed to operating safely. Respondent also has no prior violations of the Code.

Respondent's actions constituted an imminent threat to the public's health, safety, or welfare. Petitioner's Summary Suspension Order under the APA was appropriate. However, the evidence shows that no other incident or violations have occurred and Respondent has committed to not allowing indoor gatherings and/or not providing alcohol services while prohibited from doing so.

Of note, both parties appeared to agree that a fine of \$300.00 per violation and a suspension of the license for 14-days from the date of the entry of this Order was appropriate.

ORDER

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

In determining penalty, the undersigned considered Respondent's total record as follows: (i) no previous violations since being licensed on April 12, 2018; (ii) Respondent's acknowledgement and taking responsibility for the two violations; (iii) several remedial steps taken since the incident; (iv) Respondent committed to not allowing indoor gatherings and/or not providing alcohol services while prohibited from doing so; and (v) Respondent committed to operating safely in the future.

In consideration of the mitigating circumstances, as a penalty, the undersigned Orders the following fines and suspensions:

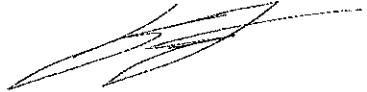
- A fine of \$300.00 for Charge No. 1;
- A fine of \$300.00 for Charge No. 2;
- A suspension of the license for fourteen (14) continuous days from the date of the entry of this Order for a violation of the charges.

The two fines are consecutive: the total fine is \$600.00.

Further, if the fine is not paid within forty-five (45) days from the mailing date of this Order, the undersigned Orders a suspension of thirty (30) continuous days, with this suspension to run consecutively and not concurrently with any other suspension Ordered by the Commission.

Respondent is warned that further fines, suspensions, or a revocation of Respondent's liquor license could result if Respondent resumes operation in violation of the law or violates the Order of the Commission.

MICHIGAN LIQUOR CONTROL COMMISSION



Eric Feldman, Administrative Law Judge

Date Signed: January 13, 2021

Date Mailed: January 14, 2021

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