



STATE OF MICHIGAN

DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS  
LIQUOR CONTROL COMMISSION

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IN RE: DOWNEY'S LAKEVIEW LOUNGE INC.  
D/B/A LAKEVIEW LOUNGE  
640-642 CAPITAL AVE SW  
BATTLE CREEK, MI 49015

HEARING: JANUARY 15, 2021  
PLACE: ZOOM PLATFORM  
COMPLAINT NO. CV-508972  
BUSINESS ID NO. 867

CALHOUN COUNTY

CLASSC SDM SS (PM)

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**CHARGES** – THE LICENSEE OR THE LICENSEE'S AGENT, CLERK, OR EMPLOYEE:

- (1) On December 28, 2020, Downey's Lakeview Lounge Inc., 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 28, 2020, Downey's Lakeview Lounge Inc., 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 December 18, 2020.
- (3) On December 30, 2020, Downey's Lakeview Lounge Inc., 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.
- (4) On December 30, 2020, Downey's Lakeview Lounge Inc., 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 December 18, 2020.

### **PROCEDURAL HISTORY**

On or about January 11, 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 Downey's Lakeview Lounge, Inc., d/b/a Lakeview Lounge (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 12, 2021, Petitioner issued a Notice of Hearing on Complaint, scheduling a videoconference hearing to convene on January 15, 2021. This matter was assigned before the duly authorized agent of the Commission, Administrative Law Judge Eric J. Feldman.

On January 15, 2021, the videoconference commenced as scheduled via the Zoom platform. The undersigned presided. Assistant Attorney General Daniel Felder appeared on behalf of Petitioner. Thomas Foote, Investigator for MLCC; and Ryan Armstrong, Investigator for MLCC, were also present for Petitioner. Norman Downey, President/Owner, appeared on behalf of Respondent.

The record closed at the conclusion of the hearing.

### **WITNESS LIST**

1. Norman Downey, President and 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 December 28, 2020.
2. Video, dated December 28, 2020.
3. Supplemental Report, dated January 13, 2021.
4. Video, dated December 30, 2020.
5. Video, dated December 30, 2020.

6. 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 holds a Class C and specially designated merchant licenses, as well as a permit for Sunday sales (p.m.) at its licensed location. [Pet. Exh. 1.]

2. Respondent is located at 640-642 Capital Ave SW, Battle Creek, Michigan 49015. Norman Downey is the President/Owner of Respondent/Licensee. Respondent's license was issued on April 21, 1981. [Pet. Exh. 1.]
3. Respondent has approximately four violations since being issued the license. However, the most recent violation was in 2014 for a non-sufficient funds (NSF) check violation.
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. 6.]
5. On December 28, 2020, at approximately 10:56 a.m., an MLCC investigator conducted surveillance of Respondent's location. The investigator subsequently entered Respondent's location and documented/recorded the following:

At approximately 11:45 am, after not seeing the female subject or male subject exit the establishment, [the MLCC Investigator] entered while and surreptitiously recording a video inside, while pretending to talk on the cell phone. I walked to the end of the bar and waited for the bartender.

[The MLCC Investigator] found 3 male subjects sitting at the bar. All three were drinking a beverage and none were wearing a mask. The male subject furthest from me appeared to have a bottle of unknown beer in front of him. The middle subject had an unknown beverage and a plate of unknown food. The closest subject to me was the individual that entered at 11:22 am and was drinking an unknown beverage.

The female who was seen entering at 11:06 am was tending the bar. When She approached me, I advised her that 'Some friends wanted to meet me here for lunch.' She advised that they were only doing 'Take Out' orders. The bartender was not wearing a mask. I advised that I would be going elsewhere and subsequently left the establishment and returned to the state vehicle.

[Pet. Exhs. 1 and 2.]

6. On December 30, 2020, another MLCC investigator conducted a supplemental surveillance of Respondent's location. The investigator subsequently entered Respondent's location and documented/recorded the following:

[The MLCC Investigator] enters the establishment and takes a seat at the bar. A female patron is seen taking a seat at a table. And 2 females and a male are seated at the end of the bar. The two females appear to have bottles of beer in front of them and the male subject is drinking an unknown beverage. [The MLCC Investigator] is approached by the female bartender (who is not wearing a mask) and takes [the MLCC Investigator's] order. [The MLCC Investigator] ordered a draft of Coors Light and a beer was poured in a plastic cup and presented to [the MLCC Investigator].

[The video] continues to show the individuals at the end of the bar but also shows the female who sat at the table behind [the MLCC Investigator] was talking on the phone and had been served a plate of food. A receipt was provided.

[Pet. Exhs. 1, 4, and 5.]

7. 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.
8. Respondent allowed indoor gathering at the licensed establishment on December 28 and 30, 2020.
9. Respondent allowed persons to participate in indoor gatherings at the licensed establishment without requiring them to wear face masks on December 28 and 30, 2020.
10. Norman Downey, President of the Licensee, is aware of the December 18, 2020, Emergency Order.
11. Mr. Downey acknowledges the mistake and was open due to financial reasons. The establishment is his only source of income. The establishment has been shut down since being provided the Emergency Suspension Order on January 12, 2021. [Pet. Exh. 3.]
12. Mr. Downey acknowledges each of the four 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. Mr. Downey acknowledges the violations.

Mr. Downey is ultimately responsible for the four violations. Mr. Downey does not dispute this. However, there are mitigating circumstances in this case that are important to consider. Since being provided Emergency Suspension Order on January 12, 2021, the business has been shut down. He has the ability to provide food takeout, but has chosen not to provide such a service to avoid any potential violations. He is committed to operating safely. Respondent has approximately four violations since being issued the license in April of 1981. However, the most recent violation was in 2014 (NSF check violation).

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 since being served the Summary Suspension Order and Respondent has committed to not allowing indoor gatherings and/or not providing alcohol services while prohibited from doing so.

### 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) approximately four violations since being issued the license in April of 1981, with the most recent violation in 2014 (NSF check violation); (ii) Respondent's acknowledgement and taking responsibility for the four violations; (iii) Respondent shutting down the business after being provided the January 11, 2021, Summary Suspension Order; (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:

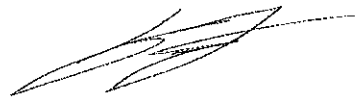
- A fine of \$300.00 for Charge No. 1;
- A fine of \$300.00 for Charge No. 2;
- A fine of \$300.00 for Charge No. 3;
- A fine of \$300.00 for Charge No. 4;
- A suspension of the license for fourteen (14) continuous days from the date of the entry of this Order for a violation of the charges.

The four fines are consecutive: the total fine is \$1,200.00.

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 15, 2021

Date Mailed: January 19, 2021

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EF: CV-508972/AL/jw