

STATE OF FLORIDA  
DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION

In Re:           Emergency Suspension of License

Name:                                   James M Thompson Two LLC  
  d/b/a Rustys Raw Bar and Grill  
License Number:                       BEV 4606799, Series 4COP SFS Dual  
DBPR Case Number:                   2020-038988

**Order of Emergency Suspension of License**

The Department of Business and Professional Regulation (or “Department”), hereby ORDERS the emergency suspension of the alcoholic beverage license of James M Thompson Two LLC d/b/a Rustys Raw Bar and Grill, License Number BEV4606799, Series 4COP SFS Dual (or “Suspended Licensee.”). The Suspended Licensee’s address of record is 20041 S Tamiami Trail, Suite 9, Estero, FL 33928. The following Findings of Fact and Conclusions of Law support this decision:

**Findings of Fact**

1. Novel Coronavirus Disease 2019 (or “COVID-19”) is a severe acute respiratory illness that can spread among humans through respiratory transmission and presents with symptoms similar to those of influenza.
2. On March 9, 2020, the State of Florida’s Governor, Ron DeSantis (or “Governor DeSantis”), issued Executive Order Number 20-52 and declared a state of emergency for the entire State of Florida as a result of COVID-19, which was extended on May 8, 2020, through Executive Order 20-114.
3. On March 20, 2020, Governor DeSantis issued Executive Order Number 20-71. In order to protect the public health, safety, and welfare from the dangers associated with COVID-19,

Governor DeSantis suspended all sales of alcoholic beverages for consumption on the premises by all vendors licensed to sell alcoholic beverages for consumption on the premises.

4. On April 29, 2020, Governor DeSantis issued Executive Order 20-112, Phase 1: Safe. Smart. Step-by-Step. Plan for Florida's Recovery, effective May 4, 2020. Under Phase 1, bars, pubs, and nightclubs that derive more than 50% gross revenue from the sale of alcoholic beverages were directed to continue to suspend the sale of alcoholic beverages for on-premises consumption.
5. The Department was directed to utilize its authorities under Florida law to implement and enforce the provisions of the order as appropriate. Executive Order 20-122, effective May 18, 2020, extended Executive Order 20-112 to all Florida counties.
6. On June 3, 2020, Governor DeSantis issued Executive Order 20-139, Phase 2: Safe. Smart. Step-by-Step. Plan for Florida's Recovery, effective June 5, 2020, based on the recommendations published for Phase 2 of the plan by the Task Force to Re-Open Florida. Under Phase 2, restaurants, bars and other vendors licensed to sell alcoholic beverages for consumption on the premises, were permitted to operate at 50% of their indoor capacity, excluding employees. Bars could reopen with seated service. Night clubs were not permitted to reopen.
7. During the month of June 2020, the number of individuals testing positive for COVID-19 increased significantly in the State of Florida, especially among younger individuals. Some of these cases involving younger individuals are suspected to have originated from visits to establishments that sell alcoholic beverages for consumption on the premises.
8. On June 26, 2020, the Department issued Emergency Order 2020-09, thereby suspending the sales of alcoholic beverages by licensed vendors for consumption on the premises who derive

more than 50% of gross revenue from such sales of alcoholic beverages. Sales of alcoholic beverages by such vendors for consumption off the premises and in sealed containers were not suspended. In addition, vendors who are licensed as public food service establishments and “restaurants” under chapter 509, Florida Statutes, were permitted to serve food and beverages at tables for on-premises consumption, so long as the gross revenue from on-premises alcohol sales did not exceed 50%.

9. On July 1, 2020, the Department issued Amended Emergency Order 2020-09, thereby clarifying that vendors licensed for consumption on the premises, but not licensed to offer food service, must suspend sales of alcoholic beverages for consumption on the premises.
10. On August 8, 2020, the Suspended Licensee, which operates as a special food service establishment, was open and operating in violation of the terms of Executive Order 20-139. Specifically, the number of patrons at the Suspended Licensee’s premises exceeded 50% of its occupancy capacity. The Suspended Licensee’s maximum occupancy capacity is 188 people. At 50%, fewer than 100 patrons are currently allowed inside the premises. On August 8, however, more than 200 patrons were observed inside the premises with a long line of patrons waiting to enter outside.
11. Additionally, patrons were packed inside and standing shoulder-to-shoulder while congregating at the bar area being served and dancing on the dance floor. Social distancing measures were not being enforced.
12. Due to the Suspended Licensee’s failure to abide by the explicit terms of Executive Order 20-139 and the Suspended Licensee’s disregard of the well-known dangers of COVID-19, it is likely that the Suspended Licensee will continue its harmful business practices and behavior.

13. Given the dangers of COVID-19 and the increased likelihood of infection in potentially large groups of people at the Suspended Licensee's licensed premises, the Suspended Licensee's continued operation, in violation of Phase 2, Executive Order 20-139 and the Department's Emergency Order 2020-09, causes an immediate and ongoing threat to the public health, safety, and welfare.

#### **Conclusions of Law**

14. The Department has the authority to suspend a license if there is an "immediate serious danger to the public health, safety, or welfare...." §120.60(6), Fla. Stat. (2019).

15. Through Executive Order Number 20-139, Governor DeSantis ordered the Department to utilize its authorities under Florida law to further implement and enforce the provisions of Executive Order Number 20-139 and take additional measures with respect to restaurants and other establishments, and bars and other vendors licensed to sell alcoholic beverages for consumption on the premises, as necessary to protect the public health, safety and welfare.

16. Pursuant to section 561.29, Florida Statutes, the Division also has full power and authority to revoke or suspend the license of any person when it is determined or found by the Department upon sufficient cause appearing of (i) a violation by the licensee or his or her agents, officers, servants, or employees, on the licensed premises, or elsewhere while in the scope of employment, of any of the laws of this state or of the United States, or violation of any municipal or county regulation in regard to the hours of sale, service, or consumption of alcoholic beverages or license requirements of special licenses issued under section 561.20, Florida Statutes, or engaging in or permitting disorderly conduct on the licensed premises, or permitting another on the licensed premises to violate any of the laws of this state or of the United States; (ii) a violation by the licensee or, if a corporation, by any officers thereof, of

any laws of this state or any state or territory of the United States; (iii) maintaining a nuisance on the licensed premises; (iv) maintaining licensed premises that are unsanitary or are not approved as sanitary by the Division of Hotels and Restaurants of the Department of Business and Professional Regulation, the Department of Agriculture and Consumer Services, the county board of health, or the Department of Health, whichever has jurisdiction thereof.

17. The Suspended Licensee failed to abide by the provisions of Executive Order 20-139. Pursuant to Executive Order 20-139, the Suspended Licensee was only permitted to serve food and beverages at tables for on-premises consumption. The Suspended Licensee was not permitted to serve patrons standing and congregating at the bar area. The Suspended Licensee was also not permitted to exceed 50% of its total occupancy capacity.
18. Due to the highly infectious nature of COVID-19, the difficulty or inability to identify or locate specific persons infected or in contact with positive cases of COVID-19, and the Suspended Licensee's disregard of the lawful restrictions already imposed on its operation, the Department finds that nothing short of outright suspension of the license is sufficient to protect the public health, safety, and welfare. Otherwise, the Suspended Licensee will likely cause great harm by remaining open to the public in violation of Executive Order 20-139, thereby causing an ongoing threat to the public health, safety, and welfare.
19. The Suspended Licensee's continued operation poses an immediate serious danger to the public health, safety, or welfare due to the dangers associated with COVID-19.
20. The Division has weighed the private and public interests, and finds that the least restrictive means of protecting the public health, safety, or welfare is the immediate suspension of the Suspended Licensee's license to sell alcoholic beverages to the public.

21. The basis for this emergency suspension far outweighs the continuation of sales of alcoholic beverages, is fair under the circumstances, and is the only viable method to protect the public health, safety, and welfare due to the ongoing state of emergency declared by Governor DeSantis and the serious dangers posed by the transmission of COVID-19.

WHEREFORE, in accordance with the provisions of section 120.60(6), Florida Statutes, it is hereby ORDERED:

- a. That the license of James M Thompson Two LLC d/b/a Rustys Raw Bar and Grill, License Number BEV4606799, Series 4COP SFS Dual is hereby SUSPENDED from the sale of alcoholic beverages until such time as this ORDER is lifted or a FINAL ORDER is issued;
- b. A formal proceeding shall be promptly instituted and acted upon in compliance with sections 120.569, 120.57, and 120.60(6), Florida Statutes; and
- c. That the Division's employee who serves this ORDER shall note the date, time, and place of this ORDER, and the person upon whom the same was served, on the original and one copy thereof.

DONE and ORDERED on this 10th day of August, 2020.

FLORIDA DEPARTMENT OF BUSINESS  
AND PROFESSIONAL REGULATION



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Halsey Beshears, Secretary  
2601 Blair Stone Road  
Tallahassee, Florida 32399

NOTICE OF RIGHT TO JUDICIAL REVIEW

Pursuant to Sections 120.60 and 120.68, Florida Statutes, the Department's findings of immediate danger, necessity, and procedural fairness shall be judicially reviewable. Review proceedings are governed by the Florida Rules of Appellate Procedure. Such proceedings are commenced by filing one copy of a Petition for Review, in accordance with Florida Rule of Appellate Procedure 9.100, with the Department of Business and Professional Regulation and a second copy of the petition accompanied by a filing fee prescribed by law with the District Court of Appeal within (30) days of the date this Order is filed.