



The Commonwealth of Massachusetts
Department of the State Treasurer
Alcoholic Beverages Control Commission
Boston, Massachusetts 02114

Deborah B. Goldberg
Treasurer and Receiver General

Kim J. Gainsboro, Esq.
Chairman

NOTICE OF SUSPENSION

November 2, 2016

RAY-MOR INC. D/B/A ELBOW CAFE
386 WALNUT ST. EXT.
AGAWAM, MA 01001
LICENSE#: 001200039
VIOLATION DATE: 04/05/2016
HEARD: 10/25/2016

After a hearing on October 25, 2016, the Commission finds Ray-Mor Inc. d/b/a Elbow Cafe violated 204 CMR 2.05 (1): Permitting gambling on Licensed Premises.

The Commission **suspends the license for five (5) days of which two (2) days will be served and three (3) days will be held in abeyance for a period of two (2) years provided no further violations of Chapter 138 or Commission Regulations occur. In addition, the Licensee must not possess in or on the licensed premises any automatic amusement devices or video poker machines.**

The suspension shall commence on Wednesday, January 4, 2017 and terminate on Thursday, January 5, 2017. The license will be delivered to the Local Licensing Board or its designee on Wednesday, January 4, 2017 at 9:00 A.M. It will be returned to the Licensee Friday, January 6, 2017.

You are advised that pursuant to the provisions of M.G.L. c. 138 §23, you may petition the Commission to accept an offer in compromise in lieu of suspension within twenty (20) calendar days following such notice of such suspension. If accepted, you may pay a fine using the enclosed form, which must be signed by the Licensee and a Massachusetts Licensed Accountant.

You are advised that you have the right to appeal this decision under M.G.L. c. 30A to Superior Court within thirty (30) days upon receipt of this notice.

ALCOHOLIC BEVERAGES CONTROL COMMISSION



Kim S. Gainsboro
Chairman

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cc: Local Licensing Board
Frederick G. Mahony, Chief Investigator
Jan Kujawski, Investigator
Nicholas Velez, Investigator
Donald W. Blakerley, Esq. via facsimile 413-731-0626
Administration, File



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DECISION

RAY-MOR INC. D/B/A ELBOW CAFE
386 WALNUT ST. EXT.
AGAWAM, MA 01001
LICENSE#: 001200039
VIOLATION DATE: 04/05/2016
HEARD: 10/25/2016

Ray-Mor Inc. d/b/a Elbow Cafe (the "Licensee") holds an alcohol license issued pursuant to M.G.L. c. 138, §12. The Alcoholic Beverages Control Commission (the "Commission") held a hearing on Tuesday, October 25, 2016, regarding an alleged violation of 204 CMR 2.05 (1): Permitting gambling on Licensed Premises. Prior to the commencement of the hearing, the Licensee stipulated to the violation alleged in Investigator Kujawski's Report.

The following documents are in evidence:

1. Investigator Kujawski's Investigative Report;
2. Licensee's Stipulation of Facts;
3. Photo of Money;
4. Photo of Gaming Device; and
5. Photo of Gaming Device in Room.

The Commission took Administrative Notice of the Licensee's Commission files.

There is one (1) audio recording of this hearing.

FINDINGS OF FACT

1. On Thursday, April 5, 2016¹, at approximately 3:40 p.m., Investigators Velez and Kujawski ("Investigators") investigated Ray-Mor Inc. d/b/a Elbow Cafe to determine the manner in which their business was being conducted.

¹ The hearing notice incorrectly indicated that the date of the violation was May 5, 2016, but the hearing notice attached a copy of the Investigative Report, which properly states in the body of the report that the violation occurred on April 5, 2016. The error was not brought to the Commission's attention at the hearing and there is no claim of prejudice to the Licensee.

2. Investigators entered the licensed premises and identified themselves to the owner, Raymond Rossi.
3. Investigators observed an automatic amusement device located near the kitchen. The device was labeled New Fruit Bonus 96 (#1).
4. Investigators observed the following characteristics which, based on their training and experience, indicated these electronic video devices were being used as gambling devices:
 - Each accepted U. S. Currency in bills ranging from \$1, \$5, \$10, \$20;
 - Each had the capability to select the number of points (the amount to bet);
 - Each had the capability to double up the bet by selecting a double-up button;
 - Each registered the bet by displaying the number of points selected;
 - Each had a "knock off" mechanism to reset the credits earned to zero.
5. Investigator Velez inserted one U.S. dollar into the electronic video device labeled Double Up (#2) and received four credits, which indicated that the value of one credit or point was twenty-five cents. He selected 1 credit which the machine registered, showing 3 credits remaining. Investigator Velez then pressed the knock off button on the left rear of the machine which reset the credits to zero.
6. Investigators conducted an internal audit of the electronic video devices. The machine contained \$20.00 in U.S. currency.
7. Investigators interviewed Mr. Rossi. Mr. Rossi stated that the club pays out in cash. The bartender on duty verifies the points on the machine and notifies Rossi who will pay the individual.
8. Investigators informed Mr. Rossi of the violation and that a report would be submitted to the Chief Investigator for review.

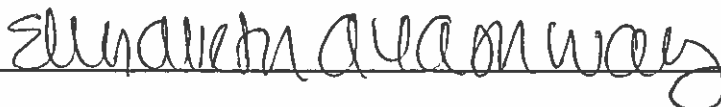
CONCLUSION

Based on the evidence, the Commission finds the Licensee violated 204 CMR 2.05 (1): Permitting gambling on Licensed Premises. Therefore, the Commission **suspends the license for five (5) days of which two (2) days will be served and three (3) days will be held in abeyance for a period of two (2) years provided no further violations of Chapter 138 or Commission Regulations occur. In addition, the Licensee must not possess in or on the licensed premises any automatic amusement devices or video poker machines.**

ALCOHOLIC BEVERAGES CONTROL COMMISSION

Kathleen McNally, Commissioner 

I, the undersigned, hereby certify that I have reviewed the hearing record and concur with the above decision.

Elizabeth A. Lashway, Commissioner 

Dated: November 2, 2016

You have the right to appeal this decision to the Superior Courts under the provisions of Chapter 30A of the Massachusetts General Laws within thirty (30) days of receipt of this decision.

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