

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. Gainstoro, Esq.
Chairman

NOTICE OF SUSPENSION

April 13, 2016

BEVERLY LODGE #1309 OF B.P.O.E. OF THE U.S.A.
39 BOW STREET
BEVERLY, MA 01915
LICENSE#: 010000001
VIOLATION DATE: 11/30/2015
HEARD: 3/29/2016

After a hearing on March 29, 2016, the Commission finds Beverly Lodge #1309 of B.P.O.E. of the U.S.A. violated:

- 1) 204 CMR 2.05 (2) Permitting an illegality on the licensed premise to wit: M.G.L. c. 23K, §37 Unlawful conduct or operation of game or gaming device in violation of chapter; employing of unlicensed or unregistered individuals; working without required license or registration; placing of game or gaming device into play or receipt of compensation without permission of commission; conduct or operation of game or gaming device upon expired license; failure to exclude persons placed on excluded persons list; failure to report or pay license fee or tax; penalties;
- 2) 204 CMR 2.05 (2) Permitting an illegality on the licensed premises to wit: M.G.L. c. 140, §177A (6) No person keeping or offering for operation or allowing to be kept or offered for operation any automatic amusement device licensed under this section shall permit the same to be used for the purpose of gambling; and
- 3) 204 CMR 2.05 (2) Permitting an illegality on the licensed premises to wit: M.G.L. c. 271, § 17 Keeping a building or room, or any part thereof, with apparatus, books or any device for registering bets, upon the result of a machine; knowingly permitting the same to be used or occupied for such purpose, knowingly permitting to be therein kept, exhibited, used or employed, any device or apparatus for registering such bets.

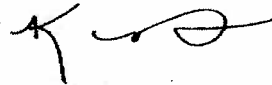
The Commission **suspends the license for five (5) days of which two (2) days will be served and three (3) days will be held in abeyance for a period of two (2) years provided no further violations of Chapter 138 or Commission Regulations occur. In addition, the Licensee must not possess in or on the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

The suspension shall commence on Wednesday, June 8, 2016, and terminate on Thursday, June 9, 2016. The license will be delivered to the Local Licensing Board or its designee on Wednesday, June 8, 2016 at 9:00 A.M. It will be returned to the Licensee Friday, June 10, 2016.

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.

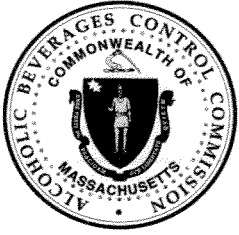
ALCOHOLIC BEVERAGES CONTROL COMMISSION



Kim S. Gainsboro
Chairman

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这份文件是重要的，应立即进行翻译。

cc: Local Licensing Board
Frederick G. Mahony, Chief Investigator
Joseph DiCiccio, Investigator
Jan Kujawski, Investigator
James Dangora, Jr. Esq. via facsimile 978-670-5763
Administration
File



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DECISION

**BEVERLY LODGE #1309 OF B.P.O.E. OF THE U.S.A.
39 BOW STREET
BEVERLY, MA 01915
LICENSE#: 010000001
VIOLATION DATE: 11/30/2015
HEARD: 3/29/2016**

Beverly Lodge #1309 of B.P.O.E. of the U.S.A. (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, March 29, 2016, regarding alleged violations of:

- 1) 204 CMR 2.05 (2) Permitting an illegality on the licensed premise to wit: M.G.L. c. 23K, §37 Unlawful conduct or operation of game or gaming device in violation of chapter; employing of unlicensed or unregistered individuals; working without required license or registration; placing of game or gaming device into play or receipt of compensation without permission of commission; conduct or operation of game or gaming device upon expired license; failure to exclude persons placed on excluded persons list; failure to report or pay license fee or tax; penalties;
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- 3) 204 CMR 2.05 (2) Permitting an illegality on the licensed premises to wit: M.G.L. c. 271, § 17 Keeping a building or room, or any part thereof, with apparatus, books or any device for registering bets, upon the result of a machine; knowingly permitting the same to be used or occupied for such purpose, knowingly permitting to be therein kept, exhibited, used or employed, any device or apparatus for registering such bets.

Prior to the commencement of the hearing, the Licensee stipulated to the violations alleged in Investigator Di Cicco's report

The following documents are in evidence:

1. Investigator Di Cicco's Report dated December 1, 2015; and
2. Licensee's Stipulation of Facts.

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

The Commission took administrative notice of the Licensee's file.

FACTS

1. On Monday, November 30, 2015 at approximately 12:30 pm, Investigators Di Cicco, Kujawski, Doyle, and Keefe ("Investigators") conducted an investigation of the business operation of Beverly Lodge #1309 of B.P.O.E. of the U.S.A. to determine the manner in which the business was being conducted.
2. Investigators entered the licensed premises and observed five electronic video devices located to the right of the bar.
3. Investigators Kujawski and Doyle identified themselves to the bartender on duty and a man later identified as Dan Dailey, and stated that they observed electronic video devices.
4. Mr. Dailey stated that he was the Secretary for the club.
5. Investigator Di Cicco asked Mr. Dailey who was in charge of the electronic devices.
6. Mr. Dailey stated that Ben Marcheterre took care of the machines.
7. Mr. Dailey called Mr. Marcheterre and informed him that the ABCC wanted to speak with him about the machines.
8. Mr. Marcheterre informed Investigators that he would meet them at the club.
9. While Investigators were waiting to speak with Mr. Marcheterre, Investigators Di Cicco and Doyle observed the electronic video devices while Investigators Kujawski and Keefe spoke to the bar tender on duty.
10. Investigators Di Cicco and Keefe made the following observations that based on their training and experience indicate that the five electronic video devices are utilized as gambling devices:
 - The devices accepted bills ranging from \$1, \$5, \$10, and \$20.
 - Signs near the devices that said "VIDEO MACHINES ARE FOR AMUSEMENT ONLY."
 - Some electronic video devices had "AMUSEMENT ONLY you MUST be 18 years of age to play this game."
 - The capability to raise a bet by selecting the raise credit button.
 - The capability to place large bets by selecting the BIG button.
 - The capability to double a bet by selecting the DOUBLE button.
 - The electronic video devices all had the capability to print paper tickets, indicating the electronic video devices "knock off" mechanism.
11. The five electronic video devices in question were numbered by Investigators and had the following names:

- Device 1- Cheers
 - Device 2- Play to Win
 - Device 3- Queen Bee
 - Device 4- Play to Win
 - Device 5- Jack Pot Fever
12. Investigators were met by Mr. Marcheterre who informed Investigators that he was in charge of the electronic devices.
 13. Mr. Marcheterre informed Investigators that the club did pay out on the electronic video devices and that the split was 60%/40% between the club and 4- Star Vending.
 14. Mr. Marcheterre informed Investigators that the split was in the club's favor and they received 60 percent.
 15. Mr. Marcheterre informed Investigators that the money was collected from the machines and the hits (player's winnings) were paid off before the split.
 16. Mr. Marcheterre stated that the electronic video devices made about \$1,100 a week for the club after the payouts and split.
 17. Mr. Marcheterre stated that when a player wants to cash out they take the slip that the electronic video device prints and brings the slip to the bar. The bar will then put the slip in a box and pay out what the ticket indicates.
 18. Mr. Marcheterre offered to open all of the electronic video devices so Investigators could inspect them.
 19. Investigators Di Cicco and Keefe conducted an audit of the electronic video devices while Investigators Kujawski and Doyle inspected the bar area and spoke with Mr. Dailey and the bartender on duty.
 20. Investigators Di Cicco and Keefe made the following observations while conducting an audit of the electronic video device that they labeled as #3.
 21. Investigators entered \$1 of U.S. currency into the electronic video device and received 20 credits (5 cents per credit).
 22. Investigators were able to choose the number of credits to bet by how many times they pressed the "bet" button.
 23. Investigators chose to bet 2 credits (10 cents) by pressing the button twice, leaving a balance of 18 credits indicating that the electronic video device had registered the bet.
 24. Investigators played their bet, lost their bet, and then chose to cash out by pressing the "push for ticket" button.
 25. The electronic video device then printed a paper ticket indicating the balance of points (18 points) and reset the credits displayed on the screen of the electronic video device to zero. This function served as the electronic video devices "knock off" mechanism.
 26. Investigator Di Cicco and Keefe then inspected the internal workings of the electronic video devices starting with the electronic video device they had just labeled as number 3.
 27. Inside the electronic video device, Investigators observed a pair of dial meters and two small push buttons.
 28. Investigator Keefe pressed one of the buttons and the electronic video device displayed the following information:
 - COIN 12929650
 - PAYOUT 0
 - KEYIN 0
 - KEY OUT 7398259

- TOTAL TIMES 3043921
 - TOTAL PLAYED 53531623
 - TOTAL WON 48000324
29. Investigator Keefe then pressed the "Start" button to reset the screen on the electronic video device.
30. Investigator Keefe then pressed the second small button located inside the electronic video device and the following information was displayed on the screen:
- COIN.... 5
 - KEYIN.... 1
 - PAYOUT.... 1
 - KEYOUT.... 1
 - TICKET OUT.... 1
 - MIN PLAY.... 1
 - MAX PLAY.... 64
 - DEMO MUSIC.... NO
 - DEMO SHOW.... YES
 - GAME LIMIT.... 5000
 - WIN RATE.... 55
 - REEL SPEED.... FAST
 - HOLD FUNC.... YES
 - D-UP FUNC.... YES
 - RE-D-UP FUN.... YES
 - HALF D-UP FUNC.... YES
 - D-UP LEVEL.... 2
 - D-UP LIMIT.... 5000
 - MAX PLAY TOKENS.... 300
 - MAX PRIZE.... YES
31. Investigators Di Cicco and Keefe conducted similar audits of the other electronic video devices.
32. Most of the machines had the same two small buttons located inside and when pressed would display the electronic video devices internal data including: games played, odd/ winning percentage rate, and other data.
33. While Investigators Di Cicco and Keefe were conducting audits of the electronic video devices, Investigator Kujawski and Doyle were talking to the bartender on duty, Dailey and Mr. Marcheterre.
34. Investigators Kujawski and Doyle obtained a paper document labeled "Elks closing procedures."
35. One of the bullet points on the document read, "Put poker hits for Ben in building fund box."
36. Investigators Kujawski and Doyle also obtained a paper document labeled "Beverly/ Salem Elks Lodge 1309 Profit & Loss Budget vs. Actual April through September 2015." This document listed Machines 19,878. This chart indicated how much money the club made on the electronic video devices for months April through September.
37. Investigators Kujawski and Doyle were informed by the bartender on duty that the money made from the machines was kept in a separate lock box and the envelopes with payout information and dates were thrown in the trash after they were no longer needed.

38. Investigators informed the Licensee that a report would be filed and submitted to the Chief Investigator for review.

CONCLUSION

Based on the evidence, the Commission finds the Licensee violated:

- 1) 204 CMR 2.05 (2) Permitting an illegality on the licensed premise to wit: M.G.L. c. 23K, §37 Unlawful conduct or operation of game or gaming device in violation of chapter; employing of unlicensed or unregistered individuals; working without required license or registration; placing of game or gaming device into play or receipt of compensation without permission of commission; conduct or operation of game or gaming device upon expired license; failure to exclude persons placed on excluded persons list; failure to report or pay license fee or tax; penalties;
- 2) 204 CMR 2.05 (2) Permitting an illegality on the licensed premises to wit; M.G.L. c. 140, §177A (6) No person keeping or offering for operation or allowing to be kept or offered for operation any automatic amusement device licensed under this section shall permit the same to be used for the purpose of gambling; and
- 3) 204 CMR 2.05 (2) Permitting an illegality on the licensed premises to wit: M.G.L. c. 271, § 17 Keeping a building or room, or any part thereof, with apparatus, books or any device for registering bets, upon the result of a machine; knowingly permitting the same to be used or occupied for such purpose, knowingly permitting to be therein kept, exhibited, used or employed, any device or apparatus for registering such bets.

On the first violation, 204 CMR 2.05 (2) to wit: M.G.L. c. 23K, §37, 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.**

On the second violation, 204 CMR 2.05 (2) to wit: M.G.L. c. 140, §177A (6), 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. The suspension shall be served concurrently with the above.**

On the third violation, 204 CMR 2.05 (2) to wit: M.G.L. c. 271, § 17, 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. The suspension shall be served concurrently with those above.**

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

Kathleen McNally

Elizabeth A. Lashway, Commissioner

Elizabeth A. Lashway

Dated: April 13, 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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