



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

Steven Grossman
Treasurer and Receiver General

Kim J. Gainsboro, Esq.
Chairman

DECISION

BILLERICA LODGE OF ELKS #2071 INC.
14 WEBB BROOK ROAD
BILLERICA, MA 01821
LICENSE#: 010600032
VIOLATION DATE: 09/18/2013
HEARD: 04/29/2014

Billerica Lodge of Elks #2071 Inc. (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, April 29, 2014, regarding an alleged violation of

- 1) 204 CMR 2.05 (2): Permitting an Illegality on the licensed premises, to wit; M.G.L. c. 140 §177A (1)-Failure to have automatic amusement devices permitted;
- 2) M.G.L. c. 138 §1 - Failure to file annually with the Commission the names and residence of each corporate officer and compensation paid to employees.

Prior to the commencement of the hearing, the Licensee stipulated to the violation alleged in Investigator Kenny's Report.

The following documents are in evidence:

1. Licensee's Stipulation of Facts;
 2. Investigator Kenny's Violation Report dated September 18, 2013; and
 3. Billerica Board of Selectmen (the "Local Board") 2013 License Certificate No. 135 for the Licensee.
- A. Copy of Licensee's Raffles-Bazaars Permit No. 275 from the Local Board.

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

FACTS

1. On Wednesday, September 18, at approximately 1:00 p. m., Investigators Guarino-Wilichoski and Kenny conducted an investigation of the business operation of Billerica Lodge of Elks #2071 Inc. to determine the manner in which its business was being conducted.
2. Investigators entered the licensed premises and observed three electronic video devices.
3. The bartender on duty, Doreen Silva, was unable to supply investigators with any permits from the Local Board for the machines.

4. Investigators left the premises and drove to Billerica Town Hall and met with the Licensing Clerk of the Local Board. The Licensing Clerk provided investigators with a copy of the Elks Lodge Liquor License.
5. Investigators noted that the license included payment information for the alcoholic beverages license as well as other licenses, e.g., Entertainment Devices. They noted that the license did not include one for electronic video devices. (Exhibit 3)
6. Investigators returned to the licensed premises, entering through an unlocked door in the front of the establishment.
7. Investigators advised Ms. Silva of the violation. Ms. Silva was uncooperative and verbalized her displeasure that the investigators had gained access to the club.
8. Ms. Silva stated that the investigators were not allowed to use any entrance but the member's door.
9. Investigator Guarino-Wilichoski advised Ms. Silva of M.G.L. Chapter 138, §§ 56, 63, and 63A.
10. Ms. Silva then became argumentative. She stated to investigators that the club didn't need a permit for the machines, that the vendor does [need a permit], and that investigators didn't know what they were talking about.
11. In an effort to de-escalate the meeting, investigators informed Ms. Silva that they would depart the premises and that a report would be submitted to the Chief Investigator for review.
12. Ms. Silva instructed investigators to exit only through the member's door.
13. Investigators subsequently issued a letter to the Licensee requesting specific documents, which it supplied to them. One of the documents indicated the income derived from the machines in 2013 as: January – \$3052; February – \$2422; March – \$3378; April – \$2103; May– \$1560; June– \$1799; July– \$2569; August– \$1955; and September– \$2699.
14. According to the Commonwealth of Massachusetts Secretary of State, Corporate Division records, this entity has filed a corporate structure change (annual reports) for the years from 2002 to 2013.
15. Administrative review of the Licensee's Commission Record indicates that this entity is a non-profit corporation and has held a license to sell alcoholic beverages pursuant to M.G.L. Chapter 138, §12 since 1963. The Licensee has not filed annual reports (to identify the names and residences of corporate officers as well as annual compensation of employees) with this agency nor with the Local Board pursuant to M.G.L. Chapter 138, §1 as required.

CONCLUSION

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

- 1) 204 CMR 2.05 (2): Permitting an Illegality on the licensed premises, to wit; M.G.L. c. 140 §177A (1)-Failure to have automatic amusement devices permitted;
- 2) M.G.L. c. 138 §1 - Failure to file annually with the Commission the names and residence of each corporate officer and compensation paid to employees.

Therefore on the first violation, the Commission **suspends the license for three (3) days of which 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, the Commission **suspends the license for three (3) days of which 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. Each suspension for three (3) days held in abeyance will run concurrently.**

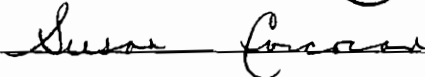
The Licensee must file with both the Commission and the local licensing authorities the appropriate annual reports pursuant to M.G.L. c. 138, §1 for the years from 2003 to 2014 within one (1) week of receipt of the Commission Decision or Licensee will be INDEFINITELY SUSPENDED.

ALCOHOLIC BEVERAGES CONTROL COMMISSION

Kathleen McNally, Commissioner



Susan Corcoran, Commissioner



Dated: May 14, 2014

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.

cc: Local Licensing Board
Frederick G. Mahony, Chief Investigator
Mark Kenny, Investigator
Caroline Guarino, Investigator
James T. Dangora Jr., Esq. via facsimile 978-670-5763
Administration
File