

*Commonwealth of Massachusetts  
Department of the State Treasurer  
Alcoholic Beverages Control Commission  
239 Causeway Street  
Boston, MA 02114  
Telephone: 617-727-3040  
Facsimile: 617-727-1510*

**Jean M. Lorizio, Esq.**  
*Chairman*

**DECISION**

**STACKHOUSE FAIR GROUNDS CLUB INC.  
16 FAITH STREET  
DARTMOUTH, MA 02748  
LICENSE#: 0266-00011  
VIOLATION DATE: 04/05/2017  
HEARD: 09/05/2017**

Stackhouse Fair Grounds Club 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, September 5, 2017, regarding an alleged violation of 204 CMR 2.05(1) Permitting Gambling. The above mentioned occurred on April 5, 2017, according to Investigator Teehan's Report.

The following documents are in evidence:

1. Investigator Teehan's Investigative Report; and
2. Photocopy of gift certificates.

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 Wednesday, April 5, 2017, at approximately 1:25 p.m., Investigators Kenny and Teehan ("Investigators") investigated Stackhouse Fair Grounds Club Inc., a § 12 licensee, to determine the manner in which its business was being conducted. (Testimony, Exhibit 1)
2. Investigators entered the licensed premises and observed three electronic video devices near the bar. They identified themselves to the bartender on duty but had difficulty communicating with him. Therefore, a member of the club called Tony Vassal, the license manager of record, who arrived a short while later. (Testimony, Exhibit 1)
3. Investigators identified themselves to Vassal and inspected the bar area. Behind the bar in plain view, Investigators observed two gift certificates with markings which indicated the name of the club, presented to, date, amount of thirty dollars (\$30.00), and the name of person issuing the gift certificate. (Testimony, Exhibits 1, 2)
4. Mr. Vassal stated to Investigator Teehan that the club does payoff for winnings on the electronic video devices and that the payoffs are in the form of gift certificates to the club. He explained that upon winning on the devices, an individual prints a ticket and hands it to the bartender/employee on duty. (Testimony, Exhibit 1)

5. The bartender then writes the name of the winner on the gift certificate. Gift certificates for the club may be used to purchase food or alcoholic beverages. (Testimony, Exhibits 1, 2)
6. Investigators conducted an audit of the electronic video devices and observed the machines had the following characteristics which, based on their training and experience, indicated these video machines were being used as gambling devices: (Testimony, Exhibit 1)
  - Each device accepted U. S. Currency in bills ranging from \$1, \$5, \$10, \$20, \$50, and \$100.
  - Each had the capability to select the number of points (the amount to bet);
  - Each device registered the bet by displaying the number of credits selected;
  - Each had the capability to double the bet using a double-up button;
  - Each had a “knock off” mechanism, a print button on the front console or as a push button on the back of the machine, which when pressed printed a slip indicating the number of points and also resets the credits to zero. (Testimony, Exhibit 1)
7. The licensee owns the three electronic video devices, which have been on the premises for approximately six years. (Testimony, Exhibit 1)
8. The points won on the machines are used by members/players for gift certificates for food and non-alcoholic drinks, or used by club members to put towards food, non-alcoholic drinks, and rental of the hall for private events. Mr. Vassal denied telling Investigators that alcoholic beverages were included in the winnings of the gift certificates or included in the points won by the participating members. (Testimony, Exhibits 1, 2)
9. The electronic video devices generate to the Licensee a weekly income of \$300.00 to \$400.00. (Testimony)
10. Administrative review of the Licensee’s Commission file indicates that the Licensee has been in business for more than 50 years with no previous violations. (Testimony, Commission records)

### DISCUSSION

Licenses to sell alcoholic beverages are a special privilege subject to public regulation and control, Connolly v. Alcoholic Beverages Control Comm’n., 334 Mass. 613, 619 (1956), for which States have especially wide latitude pursuant to the Twenty-First Amendment to the United States Constitution. Opinion of the Justices, 368 Mass. 857, 861 (1975).

Chapter 138 was “enacted . . . to serve the public need and . . . to protect the common good.” M.G.L. c. 138, § 23. In order to effectuate the purpose of Chapter 138, the Commission has “general supervision of the conduct of the business of manufacturing, importing, exporting, storing, transporting and selling alcoholic beverages. . . .” M.G.L. c. 10, § 71. As part of these “comprehensive powers of supervision over licensees,” Connolly, 334 Mass. at 617, the Commission has the authority to grant, revoke and suspend licenses. “[T]he purpose of discipline is not retribution, but the protection of the public.” Arthurs v. Bd. of Registration in Medicine, 383 Mass. 299, 317 (1981) (emphasis supplied).

The law is well-settled that “the responsibility of the licensee is to exercise sufficiently close supervision so that there is compliance with the law on the premises. A vendor who sells alcohol is “bound at his own peril to keep within the condition of his license.” Rico’s of the Berkshires, Inc. v. Alcoholic Beverages Control Comm’n, 19 Mass. App. Ct. 1026, 1027 (1985) (quoting Commonwealth v. Gould, 158 Mass. 499, 507 (1893), and citing Burlington Package Liquors, Inc. v. Alcoholic Beverages Control Comm’n, 7 Mass. App. Ct. 186, 190 (1979)).

In order for the Commission to make a finding, there must be substantial evidence that a violation has occurred. “Substantial evidence of a violation is more than a mere scintilla. It means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.” Consol. Edison Co. of New York v. N.L.R.B., 305 U.S. 197, 229 (1938); accord Charlesbank Rest. Inc. v. Alcoholic Beverages Control Comm’n, 12 Mass. App. Ct. 879 (1981).

The Licensee is charged with a violation of 204 CMR 2.05(1), which provides that:

[s]lot machines or any other devices which furnish anything besides merchandise of a quantity and quality commensurate with the price deposited therein are prohibited on licensed premises. Gambling of any sort, except those games of chance authorized by the Legislature and/or local licensing authorities, shall not be permitted on any license premises. 204 CMR 2.05(1).

Investigator Teehan testified that the machines had characteristics which, based on his training and experience, indicated the machines were being used for gambling. Mr. Vassal, the license manager, admitted that the licensee paid out using gift certificates on the electronic video gaming devices. Furthermore, the Licensee did not introduce any evidence that it was authorized by the Local Licensing Authorities to operate these machines inside its licensed premises.

The Licensee argues that the operation of these electronic machines did not constitute gaming because the Licensee was not paying out or awarding alcoholic beverages or cash to the winning players. It argued the award of points won on the machines are used by the players for gift certificates for food and non-alcoholic beverages, or used by club members to put towards the purchase of food, non-alcoholic drinks, and the rental of the upstairs hall for private events.

The Commission is not persuaded by the Licensee’s argument. 204 CMR 2.05(1) does not require that in order to constitute a gambling violation, the award or payoff must be given in cash or alcoholic beverages. All it requires is that there is a device that “furnish[es] anything besides merchandise of a quantity and quality commensurate with the price deposited therein....” 204 CMR 2.05(1). Therefore, the Commission finds substantial evidence that the Licensee committed a violation of 204 CMR 2.05(1).

### CONCLUSION

Based on the evidence, the Commission finds the Licensee violated 204 CMR 2.05(1) Permitting Gambling. Therefore, the Commission **suspends the license for five (5) days of which five (5) days will be held in abeyance for a period of two (2) years provided no further violations of Chapter 138 or Commission Regulations occur.**

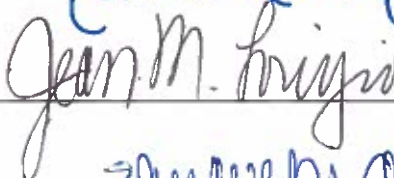
**In addition, the Licensee must not possess in or on the licensed premises any automatic amusement devices or video poker machines.**

### ALCOHOLIC BEVERAGES CONTROL COMMISSION

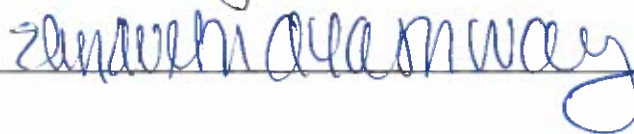
Kathleen McNally, Commissioner



Jean M. Lorizio, Chairman



Elizabeth A. Lashway, Commissioner



Dated: November 3, 2017

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.

This document is important and should be translated immediately.  
Este documento es importante y debe ser traducido inmediatamente.  
Este documento é importante e deve ser traduzido imediatamente.  
Ce document est important et devrait être traduit immédiatement.  
Questo documento è importante e dovrebbe essere tradotto immediatamente.  
Το έγγραφο αυτό είναι σημαντικό και θα πρέπει να μεταφραστούν αμέσως.  
这份文件是重要的，应立即进行翻译。

cc: Local Licensing Board  
Frederick G. Mahony, Chief Investigator  
Michael Teehan, Investigator  
Mark Kenny, Investigator  
Donald R. Perry, Esq., via facsimile 508-996-3751  
Administration, File