

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

Steven Grossman
Treasurer and Receiver General

Kim S. Gainsboro, Esq.
Chairman

NOTICE OF SUSPENSION

November 20, 2012

LEROY'S INC. DBA CRACKER'S
2083 BRIDGE ST.
DRACUT, MA 01826
LICENSE#: 029200004
HEARD: 10/30/2012

After a hearing on October 30, 2012, the Commission finds Leroy's Inc. dba Cracker's in violation of M.G.L. c. 138 §64- Failure to Comply with A Commission Modification of License.

The Commission suspends the licensee's license for a total of thirty (30) days to be served. No offer in compromise will be considered for this penalty.

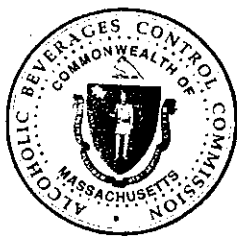
The suspension shall commence on Wednesday, December 26, 2012 and terminate on Thursday, January 24, 2013. The license will be delivered to the Local Licensing Board or its designee on Wednesday, December 26, 2012 at 9:00 A.M. It will be returned to the licensee Friday, January 25, 2013.

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

cc: Local Licensing Board
Frederick G. Mahony, Chief Investigator
Rose Bailey, Investigator
Administration
File



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

LEROY'S INC. DBA CRACKER'S
2083 BRIDGE ST.
DRACUT, MA 01826
LICENSE#: 029200004
HEARD 10/30/2012

Leroy's Inc. dba Cracker's (the "Licensee") holds an all alcoholic beverages license issued pursuant to M.G.L. c. 138, §12. The Alcoholic Beverages Control Commission (the "Commission") held a hearing on Wednesday, October 30, 2012, regarding alleged violation of M.G.L. c. 138 §65- Failure to Comply with A Commission Order and Terms of Suspension, which occurred on July 13, 2012, according to Investigator Bailey's Violation Report.

The following documents are in evidence:

1. Investigator Bailey's Violation Report dated July 27, 2012.
 - a) Investigator Bailey's Violation Report dated April 25, 2011;
 - b) Commission Decision dated September 28, 2011 for hearing held July 26, 2011; and
 - c) Four (4) Photographs of Video Poker Devices Plugged into Extension Cord.

There is one (1) audio recording of this hearing, and one witness testified.

FACTS

1. In a decision dated September 28, 2011, the Commission found that the Licensee violated:
 - 1) 204 CMR 2.05 (1) Permitting Gambling;
 - 2) 204 CMR 2.05 (2) Permitting an Illegality on the Licensed Premises, to wit: M.G.L. c. 144, §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 purpose of gambling; and
 - 3) 204 CMR 2.05 (2), 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 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.
2. The Commission **suspended the licensee's alcoholic beverages license for a period of five (5) days and ordered the licensee to not possess in or on the licensed premises any automatic amusement device or video poker machine.**

3. Administrative review of the file indicates the licensee's attorney of record, Mr. John Cox, Esquire, received the Commission decision and notice of suspension on September 27, 2011, via facsimile.
4. On June 12, 2012, the Investigative and Enforcement Unit of the Commission received an anonymous complaint which stated poker machines were inside the licensed premises, these machines are not in open view and that pay outs were being made by the Licensee.
5. On Friday, July 13, 2012, at approximately 6:00 p. m., Investigators Doyle and Bailey investigated the business operation of Leroy's Inc. dba Cracker's to determine the manner in which its business was conducted, and investigate the filed complaint.
6. Investigators identified themselves to the female bartender on duty, identified as Alyssa, and asked to speak with the owner or manager.
7. Alyssa stated that the owner, Mr. David Leriche, was not at the licensed premises, but that she would contact him.
8. Investigators conducted a visual inspection of the licensed premises and observed two (2) video poker machines located immediately upon entrance into the kitchen area, on a countertop located behind a piece of plywood.
9. Mr. Leriche arrived on the licensed premises at which time investigators identified themselves and informed him of the complaint filed and their findings during the inspection.
10. Investigators informed Mr. Leriche of the violation.
11. Mr. Leriche stated he was waiting for his son to help him remove the machines.
12. Investigators asked Mr. Leriche why the devices were plugged into an extension cord which was located next to an electrical outlet.
13. Mr. Leriche stated that he believed the cords plugged into the extension cord were for the microwave and the toaster oven.
14. Investigators then showed Mr. Leriche that the cords of the video poker devices were in fact directly connected to the extension cord.
15. Investigators took photographs of the devices and extension cord as documentation to submit with their report.
16. Investigators provided Mr. Leriche with a copy of the Commission decision dated September 28, 2011.
17. During the hearing, Mr. Leriche admitted that he was aware of the Commission order issued September 28, 2011, and the directive to not own or possess automatic amusement devices on the licensed premises.

DISCUSSION

M.G.L. c. 138, §64 provides, in pertinent part, that "[t]he licensing authorities after notice to the licensee and reasonable opportunity for him to be heard by them, may modify, ... his license upon satisfactory proof that he has violated or permitted a violation of any condition thereof, or any law of the Commonwealth." By statute, the Commission is defined as a licensing authority. M.G.L. c. 138, §1.

In the decision of September 28, 2011, the Commission found the Licensee violated a law of the Commonwealth and modified the license by imposing a condition on the license that "the licensee must not possess in or on the licensed premises any automatic amusement device or video poker machine." Based on the evidence at the hearing held on October 30, 2012, the Commission finds that on July 13, 2012, the Licensee did possess in or on the licensed premises an automatic amusement device that was a video poker machine in violation of the Commission order of September 28, 2011. Thus, the Licensee failed to comply with an order of the Commission that modified the license. This is contrary to the law of the Commonwealth and is a separate independent violation of §64 of chapter 138 of the Massachusetts General Laws.

The Licensee was cited for violating M.G.L. c. 138, §65.¹ While relevant to a licensee's failure to surrender the license and comply with an order of suspension, M.G.L. c. 138, §65 does not speak to the failure of a license holder to comply with a condition imposed as a modification of license. However, failing to comply with a modification of the license is an illegality and contrary to the laws of the Commonwealth. Failing to comply with the laws of the Commonwealth is actionable under section 64 of chapter 138. Thus, the Commission finds that the Licensee violated M.G.L. c. 138, § 64 – Failure To Comply With A Law of the Commonwealth, to wit: a Commission Order Modifying the License.

Although the machines were in the kitchen area, their presence alone was a violation of the Commission decision and order dated September 28, 2011 that modified the license by imposing a condition on the license.

CONCLUSION

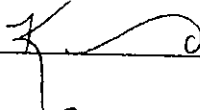
Based on the evidence, the Commission finds the licensee violated of M.G.L. c. 138, §64- Failure to Comply with A Commission Modification of License. Therefore, the Commission **suspends the license for thirty (30) days. No offer in compromise will be considered for this penalty. The suspension will commence forthwith as of December 26, 2012.**

By decision dated September 28, 2011, the Commission had previously ordered that the licensee must not possess in or on the licensed premises any automatic amusement device or video poker machine. Based on the violation found above, the licensee violated the conditions of that five (5) day suspension. The Commission hereby continues in effect the order, as a condition on the license, that the license holder shall not possess in or on the licensed premises any automatic amusement device or video poker machine. Any further violation by this Licensee will warrant more severe discipline including revocation of the license.

¹ M.G.L. c.138, §65 provides, in toto, that “[u]pon suspension, revocation, cancellation or forfeiture by the licensing authorities of a license or permit granted under this chapter, the holder thereof shall forthwith deliver the same to such authorities. Refusal so to deliver, or failure so to do for seven (7) days following a request therefor by such authorities, shall be punished by a fine of not more than one hundred (100) dollars or by imprisonment for not more than three (3) months, or both.”

ALCOHOLIC BEVERAGES CONTROL COMMISSION

Kim S. Gainsboro, Chairman

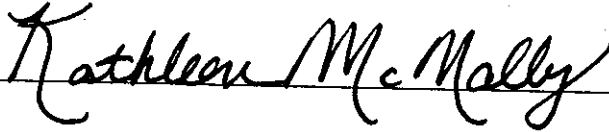


Susan Corcoran, Commissioner



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

Kathleen McNally, Commissioner



Dated: November 20, 2012

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
Rose Bailey, Investigator
Administration
File