

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

FALMOUTH LODGE #2380 B.P.O.E. OF U.S.A. INC.
140 PALMER AVE.
FALMOUTH, MA 02540
LICENSE#: 039000049
VIO. DATE: 07/27/2012
HEARD: 11/13/2012

After a hearing on November 13, 2012, the Commission finds Falmouth Lodge #2380 B.P.O.E. of U.S.A. Inc. in violation of 204 CMR 2.05 (1): Permitting Gambling.

The Commission **suspends the licensee's license for a total of twenty-five (25) days to be served. The suspension shall commence on Wednesday, January 9, 2013 and terminate on Saturday, February 2, 2013.** The license will be delivered to the Local Licensing Board or its designee on Wednesday, January 9, 2013 at 9:00 A.M. It will be returned to the licensee Sunday, February 3, 2013.

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. All checks must be certified and accompanied by the enclosed form, which must be signed by 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

cc: Local Licensing Board
Frederick G. Mahony, Chief Investigator
Jan Kujawski, Investigator
Administration
File

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DECISION

FALMOUTH LODGE #2380 B.P.O.E. OF U.S.A. INC.
140 PALMER AVE.
FALMOUTH, MA 02540
LICENSE#: 039000049
VIO. DATE: 07/27/2012
HEARD: 11/13/2012

Falmouth Lodge #2380 B.P.O.E. of U.S.A. Inc. (the "Licensee") holds an alcohol license issued pursuant to M.G.L. c. 138, §15. The Alcoholic Beverages Control Commission (the "Commission") held a hearing on Tuesday, November 13, 2012, regarding an alleged violation of 204 CMR 2.05 (1): Permitting Gambling. Prior to the commencement of the hearing, the licensee stipulated to the violation alleged in Investigator Teehan's Report.

The following documents are in evidence:

1. Investigator Teehan's Investigative Report dated July 27, 2012;
2. Licensee's Stipulation of Facts; and.

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

FACTS

1. On Friday, July 27, 2012, at approximately 9:00 p.m., Chief Investigator Mahony along with Investigators Velez and Teehan conducted an investigation of the business operation of Falmouth Lodge #2380 B.P.O.E. of U.S.A. Inc. to determine the manner in which their business was being conducted.
2. Upon entering the premises, Investigators observed five (5) automatic amusement devices, labeled as Super Poke (3), Magic Poker (1) and Cherry Master (1). These devices were located in a room adjacent to the bar area.
3. Investigators also observed in this room adjacent to the bar area an electronic device for dispensing "Pull-Tabs".
4. Investigators identified themselves to the bartender on duty, later identified as Mr. Jay Wells, informed him of the complaint and inspected the bar area.
5. Investigators observed a manila envelope, in plain view at the bar area, that read "Pull Tabs". The manila envelope contained United States currency.
6. Mr. Wells stated that the licensee does pay out United States currency for winning Pull Tab tickets.

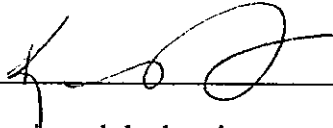
7. Mr. Wells escorted investigators to the storage room of the premises where investigators observed sixteen (16) sealed boxes of Pull-Tabs that were not issued by the Massachusetts Lottery.
8. Investigators confiscated the sixteen (16) sealed boxes of Pull-Tabs and secured them as evidence. The total number of tickets taken as evidence was seventy-nine thousand nine hundred and twenty (79,920).
9. Based on information recorded on the box labels, gross sales value of these confiscated tickets is estimated to be seventy-seven thousand and one hundred sixty (77, 160) dollars, with a profit percentage averaging twenty (20) percent, or fifteen thousand five hundred seventy-seven dollars and fifty cents (\$15,577.50).
10. The Pull-Tabs seized as evidence typically sold for one (1) dollar with prizes as high as three hundred (300) dollars. The names of the games included Stud Muffin, Get a Clue, Diamond Duo, Bonus America, and Snap Happens.
11. Investigators observed the following characteristics, that they know from their training and experience, which are indications that electronic devices are being utilized as gambling devices:
 - o The video devices accepted dollar bills ranging from \$1, 5, 10, and 20;
 - o The devices had the capability to select the number of points (amount to bet);
 - o Devices registered the bet by displaying the number of points selected;
 - o Devices had a double up button enabling a player to double the bet;
 - o Each video device had markings, "for amusement only";
 - o Each video device had a print button (knock off switch) that, when pressed, printed out a slip indicating the number of credit points with the date, time, and number of the machine.
 - o The print button acted as a knock off switch as it also reset the device to show zero credit points.
12. On Monday, July 30, 2012, at approximately 11:30 a. m., Investigators Binienda and Teehan further investigated business operation of Falmouth Lodge #2380 B.P.O.E. of U.S.A. Inc.
13. Investigators proceeded to the Pull-Tab device identified as The Master.
14. The Pull-Tab device accepted dollar bills ranging from \$1, 5, 10, and 20. The device had four (4) buttons on the front of the machine ranging in price from fifty (50) cents to one (1) dollar. The display window showed five (5) columns of Pull-Tabs.
15. The machine had a sign on the front that read, "Elks Members only can play for elk \$ dollars."
16. Investigators informed Mr. Wells of the violations and that a report would be submitted to the Chief Investigator for further action.

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 a period of forty (40) days with twenty-five (25) days to be served, and fifteen (15) days to 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 device or video poker machine.**

ALCOHOLIC BEVERAGES CONTROL COMMISSION

Kim S. Gainsboro, Chairman _____



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

Kathleen McNally, Commissioner _____



DATE: 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
Jan Kujawski, Investigator
Administration
File