



*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. Gainsboro, Esq.*  
*Chairman*

**DECISION**

**WILLIAM L. CONLIN JR. D/B/A CONLIN'S CORNER**  
**110 CLEGHORN STREET**  
**FITCHBURG, MASSACHUSETTS 01420**  
**LICENSE#: 039400009**  
**VIOLATION DATES: 04/02/2015 to 07/22/2015**  
**HEARD: 08/18/2015**

William L. Conlin Jr. d/b/a Conlin's Corner (the "Licensee" or "Conlin's") 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, August 18, 2014, regarding alleged violations of:

- 1) 204 CMR 2.05 (1): Permitting Gambling;
- 2) M.G.L. C. 23K §37 (a) Operating or permitting to be operated a game or gaming device;
- 3) 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.
- 4) 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 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.
- 5) 204 CMR 4.03 (1)(a) Offering free drinks.

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;
2. Licensee's Stipulation of Facts; and
3. "Affidavit" of Massachusetts State Trooper Shawn McIntyre;
4. Copy of Ledger with Names and Dates;
5. Copy of Bank Envelopes;
6. Copy of Notebook;
7. Viana Distributing Inc. Printout of Cash Values;

8. Photo of Cash Box Behind the Bar;
9. Copy of Nascar Race Pool Ledger; and
10. Copy of Daily Quarter Pool Ledger.

The Commission took Administrative Notice of the Licensee's Commission files.

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

### FACTS

1. On Wednesday, July 22, 2015, at approximately 10:30 a.m., Chief Investigator Ted Mahony, along with Investigators Dennis Keefe, Lisa Lordan, Joseph DiCicco, and Michael Teehan (the "Investigators") investigated the business operation of William L. Conlin Jr. d/b/a Conlin's Corner to determine the manner in which their business was being conducted. (Testimony, Exhibit 1)
2. At the same time, Troopers from the Massachusetts State Police executed a search warrant of the premises. The search warrant was issued based upon an affidavit of Trooper Shawn McIntyre. Trooper McIntyre's affidavit provided specific information relative to illegal gambling at the licensed premises, primarily through the use of electronic video devices. During the course of this investigation, a Massachusetts State Trooper working in an undercover capacity (the "undercover trooper" or "UC") was tasked to purchase narcotics and participate in the illegal gambling. (Testimony, Exhibit 1, Exhibit 3)
3. On April 2, 2015, the UC placed two five dollar (\$5.00) bills into an electronic video device. The UC played the device until he had accumulated a score of 900 points when he advised the bartender on duty, Brenda Rivera. Ms. Rivera then approached the electronic video device and manipulated the device to enter the UC's initials. Ms. Rivera then entered his initials, C.R., and his score into a notebook. (Testimony, Exhibit 1, Exhibit 3)
4. The UC entered into conversation with an individual at the bar who explained that the UC could be paid for his winnings on the device by "Bill" who would be at the licensed premises at 10:00 a.m. the next morning. The individual said "Bill" could also leave the cash payout with the bartender. (Testimony, Exhibit 1, Exhibit 3)
5. While at the licensed premises, the UC overheard several patrons asking the bartender whether or not "Bill" was around. These patrons stated that they were looking for their envelopes from him. (Testimony, Exhibit 1, Exhibit 3)
6. On Tuesday, April 7, 2015, at approximately 12:30 p.m., the UC entered Conlin's Corner. Ms. Rivera stated to the UC that owner of the bar had asked who "C.R." was. Ms. Rivera asked the UC for his name, so that she could write it and his cash winnings into the ledger. (Testimony, Exhibit 1, Exhibit 3)
7. Ms. Rivera told the UC that his envelope [the cash payout] was behind the bar, and to make sure that the bartender on duty knows how to get it. Ms. Rivera then yelled to the bartender on duty, "that's C.R." referring to the UC. The bartender then got a beer for the UC and proceeded to an area behind the bar underneath the beer tap. From here the bartender retrieved a red envelope and handed it to the UC. The envelope was a red Santander Bank envelope the back of which

was notated "C.R." and "45". These notations indicated the name of the UC and his cash winnings of \$45.00. The UC observed a \$20.00 bill and five \$5.00 bills in U.S. currency. (Testimony, Exhibit 1, Exhibit 3)

8. On Thursday, April 9, 2015, the UC arrived at the licensed premises and inserted U.S. currency into the electronic video device. He began playing but did not receive a winning score. The UC was told that the device had been "cold" since someone had won \$7,000.00 a few days earlier. (Testimony, Exhibit 1, Exhibit 3)
9. On Wednesday, May 6, 2015, at approximately 12:20 p.m., the UC entered the licensed premises and placed a \$5.00 bill in U.S. currency into an electronic video device. The UC played the device until he accumulated a score of 900, at which point he advised Ms. Rivera. Ms. Rivera approached the electronic video device and manipulated the device to enter the UC's initials. She then entered his initials and score into her notebook. (Testimony, Exhibit 1, Exhibit 3)
10. On this same day, the UC played a dice game at the bar. In this dice game, the patron pays the bartender \$1.00 in U.S. currency per roll of five dice. The five dice are tossed on a makeshift game board which is similar in design to a wooden laptop serving tray. Depending on what is rolled, the patron can win money or free drinks. The UC did not win. (Testimony, Exhibit 1, Exhibit 3)
11. A male patron seated next to the UC at the bar paid the bartender \$1.00 in U.S. currency for a roll of the dice. The patron rolled "four of a kind". The patron told the UC that this meant he had just won two free beers. (Testimony, Exhibit 1, Exhibit 3)
12. On Monday, May 11, 2015, at approximately 2:15 p.m., the UC entered the premises where Ms. Rivera asked him if he forgot something. Ms. Rivera referred to the UC's envelope of recent winnings from the electronic video device. Ms. Rivera retrieved a zipper-locked bag from behind the bar, opened the bag and removed from it a red bank deposit envelope. On the back of this red envelope were the UC's initials and the number "45". The "45" denoted the amount of cash in the UC had won. Ms. Rivera handed this envelope to the UC and returned the bag to its place behind the bar. (Testimony, Exhibit 1, Exhibit 3)
13. On Thursday, May 28, 2015, at approximately 1:25 p.m., the UC entered the premises with a second undercover State Trooper. The UC asked Ms. Rivera if he could play the dice game. Ms. Rivera brought the game over to the UC who handed her \$1.00 in U.S. currency. The UC rolled the dice and got four of a kind. Ms. Rivera told him he had won two free drinks. These free drinks were paid out to the UC in the course of his time at the bar. (Testimony, Exhibit 1, Exhibit 3)
14. The undercover officers observed an individual playing one of the two electronic video devices, who had won \$55.00 gambling on the device. The undercover officers observed Ms. Rivera go over, with a ledger retrieved from behind the bar, to the individual. Ms. Rivera then entered the individual's winnings into the ledger and into the device itself. (Testimony, Exhibit 1, Exhibit 3)
15. The UC then place a total of \$20.00 in U.S. currency into the electronic video device but it did not yield any winnings. (Testimony, Exhibit 1, Exhibit 3)
16. On Wednesday, July 22, 2015, during the Commission investigation, Investigators Keefe and Teehan entered the office area where they located a trash barrel which contained a paper with multiple handwritten entries. The handwritten entries indicated the name, date, points, and dollar amount. The trash barrel also contained a Santander bank envelope with a handwritten entry

indicating the day, name, and 700 [points]. These items corresponded to the notebook and envelopes as being used for the recording and issuance of illegal gambling payments. (Testimony, Exhibit 1, Exhibit 5)

17. Investigators also observed in the office several documents which indicated the financial reconciliation between the Licensee and Viana Distributing, the company that supplied the electronic video devices. Investigators asked William L. Conlin, Jr., the Licensee, to explain these items. Mr. Conlin stated that the bar does pay out U.S. currency to individuals that win on the electronic video devices. (Testimony, Exhibit 1, Exhibit 7)
18. Mr. Conlin stated that once an individual wins on the device and has completed play, the winner informs the bartender on duty who then handwrites the name, date, and points in a notebook kept behind the bar. Mr. Conlin stated that he places the winnings, in the form of U.S. currency, in a red Santander bank envelope which he keeps on his person, and he pays out the winnings to the individuals the next day. Mr. Conlin further stated that the device vendor is Viana Distributing, and the split is 50% of the net revenue for the bar and 50% of the net revenue for Viana Distributing. (Testimony, Exhibit 1, Exhibit 6)
19. The bartender, Brenda Rivera, stated to Investigators that Mr. Conlin also places the winner's envelopes in a metal box located in a draw behind the bar so that the bartender on duty can also pay the individual their winnings. (Testimony, Exhibit 1, Exhibit 8)
20. Investigators asked Mr. Conlin and Ms. Rivera to demonstrate how the electronic video devices function and what actions they take to document winnings and reset the devices. (Testimony, Exhibit 1)
21. Investigator Teehan inserted U.S. currency into the device and selected the number of points to bet. The device registered the bet by displaying the number of points selected. (Testimony, Exhibit 1)
22. Ms. Rivera then demonstrated the "knock off" mechanism to reset the winning points to zero. She selected a new game which displayed on the screen and then selected the menu button. Investigators observed the points reset to zero. This type of "knock off" mechanism, known to Investigators and based on their training and experience, indicates the electronic video device is being utilized for illegal gambling. (Testimony, Exhibit 1)
23. Investigators observed a white paper document with handwritten markings behind the bar. The markings indicated a Nascar Race Pool with additional markings to indicate name, date, and "PD" beneath each date. Mr. Conlin stated that the Nascar Race pool is a weekly pool with a \$5.00 entry fee, where the individual who selects the race winner receives a cash prize. The prize is paid out from the monies collected to enter the pool. (Testimony, Exhibit 1, Exhibit 9)
24. Mr. Conlin further stated to Investigators that the bar runs a daily quarter pool, where an individual pays twenty-five cents in U.S. currency and receives a number from the bartender. The bartender records the person's name and number in a notebook. At some point during the day, the bartender spins a wheel of numbered balls, with the winnings going to the individual who has the corresponding number. Mr. Conlin stated that the pool can carry over for weeks until someone wins. (Testimony, Exhibit 1, Exhibit 10)
25. Investigators informed Mr. Conlin of the above violations and that a report would be submitted to the Commission for further action. Mr. Conlin has indicated an interest in selling the license. (Testimony, Exhibit 1)

## 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). The procedure for the issuance of licenses and required conduct of licensees who sell alcoholic beverages is set out in M.G.L. c. 138.

M.G.L. c. 138 gives the Commission the authority to grant, revoke and suspend licenses. Chapter 138 was "enacted ... to serve the public need and ... to protect the common good." M.G.L. c. 138, §23. "[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 Commission is given "comprehensive powers of supervision over licensees." Connolly, 334 Mass. at 617.

A Commission regulation promulgated at 204 CMR 2.05(2) provides that "[n]o licensee for the sale of alcoholic beverages shall permit any disorder, disturbance or illegality of any kind to take place in or on the licensed premises. The licensee shall be responsible therefore, whether present or not." The law is well-settled that "under the regulation, [204 CMR 2.05(2)] the responsibility of the licensee is to exercise sufficiently close supervision so that there is compliance with the law on the premises." Rico's of the Berkshires, Inc. v. Alcoholic Beverages Control Comm'n., 19 Mass. App. Ct. 1026, 1027 (1985). A vendor who sells alcohol is "bound at his own peril to keep within the condition of his license." Commonwealth v. Gould, 158 Mass. 499, 507, (1893); Burlington Package Liquors, Inc. v. Alcoholic Beverages Control Comm'n., 11 Mass. App. Ct. 785, 788 (1981).

There must be substantial evidence that a violation of 204 CMR 2.05(2) 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 evidence in this case passes the substantial evidence test. Not only is there more than a mere scintilla of evidence that these violations occurred, there is no dispute that the violations occurred. Over the course of almost two months, a Massachusetts State Trooper, while working in an undercover capacity, observed and engaged in numerous gambling activities and witnessed the offering of and was the recipient of free drinks. (Exhibits 1, 3-10; Testimony) The Licensee has stipulated to these violations. (Exhibit 2)

The Commission notes that the copy of Trooper McIntyre's "affidavit" entered as Exhibit 3 is not actually an affidavit, as it was not sworn to or signed under the penalties of perjury. O'Brien, Russell & Co v. LeMay, 370 Mass. 243, 245 (1976); McCauliff v. O'Sullivan, 2000 WL 33170919 \*1 (September 26, 2000) (Fecteau, J.) ("an affidavit is 'a statement under oath by a person having direct knowledge of the facts which he verifies, except as otherwise clearly stated in the affidavit itself'") (Emphasis added). While unsigned letters and documents usually are "not persuasive to the Commission," Metro Dining, Inc., Boston (September 13, 2012), Trooper McIntyre's unsigned "affidavit" bears sufficient indicia of reliability as it was the basis for a superior court judge to grant and issue a search warrant of the Licensee's premises. See, e.g., El Manahri The Hermit, Inc., Framingham (ABCC Decision September 9, 2014), and cases cited. Trooper McIntyre's "affidavit," combined with the other evidence and Licensee's stipulation to violations, constitutes substantial evidence.

## CONCLUSION

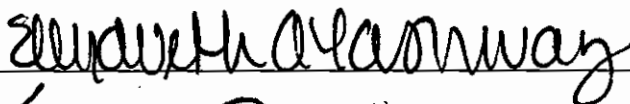
Based on the evidence, the Commission finds the Licensee violated:

- 1) 204 CMR 2.05 (1): Permitting Gambling;
- 2) M.G.L. C. 23K §37 (a) Operating or permitting to be operated a game or gaming device;
- 3) 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.
- 4) 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 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.
- 5) 204 CMR 4.03 (1)(a) Offering free drinks.

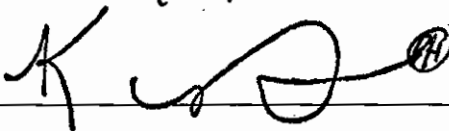
As the Commission has **INDEFINITELY SUSPENDED** the license of William L. Conlin Jr. d/b/a Conlin's Corner until further written order of the Commission, no penalty for these violations is necessary. See In re: William L. Conlin Jr. d/b/a Conlin's Corner, Fitchburg (ABCC decision dated September 10, 2015 for violation of 204 CMR 2.05 (2), to wit: M.G.L. c. 94C (7 Counts)).

## ALCOHOLIC BEVERAGES CONTROL COMMISSION

Elizabeth A. Lashway, Commissioner



Kim S. Gainsboro, Chairman



Dated: September 10, 2015

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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cc: Local Licensing Board  
Frederick G. Mahony, Chief Investigator  
Michael Teehan, Investigator  
Dennis Keefe, Investigator  
Joseph Di Cicco, Investigator  
Lisa Lordan, Investigator  
Administration  
File