



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

Deborah B. Goldberg
Treasurer and Receiver General

Kim S. Gainsboro, Esq.
Chairman

NOTICE OF SUSPENSION

April 13, 2015

COLUMBIANS, INC. OF GARDNER DBA KNIGHTS OF COLUMBUS
110 SOUTH MAIN ST.
GARDNER, MA 01440
LICENSE#: 043600030
VIOLATION DATE: 06/05/2014
HEARD: 03/17/2015

After a hearing on March 17, 2015, the Commission finds the Columbians, Inc. of Gardner dba Knights of Columbus in violation of:

- 1) 204 CMR 2.05 (1) 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 (1 count).
- 2) M.G.L. c. 138, §15A Change of Officers and Directors in the corporation without authorization.

The above-captioned licensee's license is **SUSPENDED INDEFINITELY FORTHWITH** until further written order from this Commission.

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
Dennis Keefe, Investigator
Jan Kujawski, Investigator
Katie Hislop, Esq. via facsimile 781-322-1663
Mail: PO Box 1584, Duxbury, MA 02332
Administration, File



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DECISION

COLUMBIANS, INC. OF GARDNER DBA KNIGHTS OF COLUMBUS
110 SOUTH MAIN ST.
GARDNER, MA 01440
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Columbians, Inc. of Gardner dba Knights of Columbus (the "Licensee") holds an alcohol beverage license issued pursuant to M.G.L. c. 138, §12. The Alcoholic Beverages Control Commission (the "Commission") held a hearing on Tuesday, March 17, 2015, regarding the alleged violation of:

- 1) 204 CMR 2.05 (1) 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 (1 count).
- 2) M.G.L. c. 138, §15A Change of Officers and Directors in the corporation without authorization.

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

The following documents are in evidence as exhibits:

1. Investigator Keefe's Investigative Report dated June 5, 2014; and
2. Licensee's Stipulation of Facts;

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

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

FACTS

1. On Thursday, June 5, 2014, at approximately 7:30 p.m., Investigators Kujawski and Keefe investigated the business operation Columbians, Inc. of Gardner dba Knights of Columbus to determine the manner in which its business was being conducted.

2. Administrative review of the Secretary of the Commonwealth Corporations Division indicates the officers of the club to be:
 - Armand Theriault, President;
 - Roger Guitar, Treasurer;
 - Tom Marks, Secretary/Clerk;
 - Brian Bourgeois, Director, and
 - Raymond Hebert, Director.
3. Administrative review of the Commission's files for the Licensee indicates that the club has not submitted any change of officers/directors since its original application on 11/21/1986. Commission records show the officers to be:
 - Armand Theriault, President;
 - Hebert May, Treasurer;
 - Anthony Saska, Secretary/Clerk; and
 - Joseph H. Reclund, Director.
4. Investigators entered the licensed premises, identified themselves to the bartender on duty, Nancy Guitar, and told her of their inspection.
5. Ms. Guitar stated she would feel more comfortable if the manager or a board member were present so investigators suggested that she call them.
6. Investigators spoke by telephone to the manager of record who stated that he was at work but would send his father, a past president of the club, to the premises.
7. While waiting at the licensed premises, investigators observed four electronic video devices located to the left of the bar area. The devices, video poker machines, had characteristics which based on their training and experience, investigators recognized as indications that the machines were used as gambling devices.
8. Approximately ten minutes later, Armand Theriault entered the licensed premises. He stated that he was the past president of the club and that his son, Jim Theriault is the current president.
9. Investigators informed him of the inspection and the investigation of a complaint filed with this Commission.
10. Investigators looked in a cash register where they observed approximately 16 payout slips beneath a plastic money holder. The payout slips had the amount of points, a date (6/15/14) and time along with initials (NG) written in the top left hand corner. Four of the payout slips also included the initials K of C.
11. One payout slip had 300 points typed in red ink across the middle with the number 75 handwritten at the top. Based on their training and experience, investigators recognized these items as gambling slips, where each point represented twenty-five cents, thus totaling to \$75.00 (matching the number written at the top of the slip.)
12. Performing these calculations for all 16 payout slips, investigators determined these payout slips totaled to \$1200.00 paid out on June 15, 2014.
13. Investigators spoke to Mr. Theriault and Ms. Guitar, who each stated they do in fact pay out on the electronic devices.
14. Ms. Guitar stated that an individual using the device will press the print button on the machine to obtain a receipt and bring that receipt to her. Ms. Guitar then initials the receipt and pays the individual twenty-five cents per point.
15. Mr. Theriault stated that the owner of the machine is Jim Sweeney. The club splits the profits 50/50. He further stated that his son, Jim Theriault meets Mr. Sweeney twice per month to collect from the machines.
16. Investigators asked Mr. Theriault to open the electronic devices but he stated that he didn't have keys to the machines.

17. Investigators inspected the devices and observed they contained characteristics, which based on their training and experience, they know to be indications that the devices are utilized as gambling devices.
18. Investigators observed that the devices contained the following characteristics:
 - o Each machines accepted dollar bills ranging from \$1, 5, 10, and 20;
 - o Each had the capability to select the number of points (the amount to bet);
 - o Each machine registered the bet by displaying the number of points selected;
 - o Each device had a "knock off" mechanism as a button marked "collect" which printed a receipt with the amount of points and reset the credits to zero.
19. Investigator Keefe placed one dollar in one of the devices, which registered the bet and displayed four points in the top left hand corner of the screen. He then played one point and lost, pressed the collect button which printed a receipt indicating three points. Investigator Keefe observed the points on the screen returned to zero.
20. Investigators advised Mr. Theriault and Ms. Guitar of the violations and that a report would be submitted to the Chief Investigator for further action.

DISCUSSION

Licenses to sell alcoholic beverages are a special privilege subject to public regulation and control, Connolly v. Alcoholic Beverages Control Commission, 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).

In reviewing the authority of the Commission, the Supreme Judicial Court has held that "[t]he powers of the States in dealing with the regulation of the sale of intoxicating liquors are very broad. What they may wholly prohibit, they may permit only on terms and conditions prescribed by the Legislature." Supreme Malt Products Co., Inc., v. Alcoholic Beverages Control Commission, 334 Mass. ----; Ziffrin, Inc. v. Reeves, 308 U.S. 132, 138-139; Carter v. Virginia, 321 U.S. 131, 137-143. In dealing with a trade, which, because of its great potential evils, can be wholly prohibited, a wide power is given to the Legislature with respect to the delegation of discretionary powers. Connolly v. Alcoholic Beverages Control Commission, 334 Mass. 613, 619 (1956).

The SJC further held that "[t]he legislative history of [the Commission's enabling act], and of M.G.L. (Ter. Ed) Ch. 138, as amended, clearly shows that the powers of the Commission were not intended to be perfunctory or limited. Connolly v. Alcoholic Beverages Control Commission, 334 Mass. 613, 617 (1956). A licensee who wishes to transfer its license, or an interest in its alcoholic beverages license, is required to obtain prior written approval from the licensing authorities. This allows the licensing authorities to determine if the transfer is in the public interest, and if the proposed transferee is someone who qualifies to hold a license. Implicit in the transfer of a license is the surrender of control. A "transfer of a business takes place when the person introduced to it runs the business for his own account." Griffin's Brant Rock Package Store, Inc. v. Alcoholic Beverages Control Commission, 12 Mass. App. Ct. 768, 771, 429 N.E.2d 62, 65 (1981). The Commission is instructed by the cases of Cleary v. Cardullo's, Inc., 347 Mass. 337, 346-350, 198 N.E.2d 281 (1964) and Number Three Lounge, Inc. v. Alcoholic Beverages Control Commission, 7 Mass. App. Ct. 301, 304-308, 387 N.E.2d 181 (1979).

The Licensee's, Columbians, Inc., last-disclosed officers, directors, and corporate structure approved in 1986, were for Mr. Armand Theriault as President; Mr. Hebert May as Treasurer; Mr. Anthony Saska as Secretary/Clerk; and Mr. Joseph H. Reclund as Director. An Administrative review of the Commission's files for the Licensee indicates that the Licensee has not submitted any change of officers/directors for this license since 1986. Although Mr. Armand Theriault, as President of the licensee, appears to be the same name as the prior officer/individual on the license, the Commission heard testimony that the Mr.

Armand Theriault, who appears on the Secretary of State's records, is the son of the previous officer, and not the same individual who was approved by the Commission to be the President, or an officer, of this licensee.

The Licensee did not receive the statutorily required prior approval for Mr. Armand Theriault, Mr. Roger Guitar, Mr. Tom Marks, Mr. Brian Bourgeois, and Raymond Hebert to have any direct or indirect beneficial interest in this license. The Appeals Court held in Number Three Lounge, Inc. v. Alcoholic Beverages Control Commission, 7 Mass. App. Ct. 301 (1979), the concept of an ownership interest can vary from an absolute proprietary interest to a mere possessory right. A licensee must receive prior approval from both the local licensing authority, and the Commission before transferring the privilege of its license, or transferring any type of interest in its license. In contravention of the statute, no other individual has been investigated or approved to have control of, and interest in, or benefit from, this licensed business. See Griffin's Brant Rock Package Store, Inc. v. Alcoholic Beverages Control Commission, 12 Mass. App. Ct. 768, 771 (1981).

M.G.L. c. 138, §15A requires that a licensee or applicant for an alcoholic beverages license disclose all individuals who have a direct or indirect beneficial interest in the license. The Appeals Court held in Number Three Lounge, Inc. v. Alcoholic Beverages Control Commission, 7 Mass. App. Ct. 301 (1979), the concept of a "direct or indirect beneficial interest" in a license can range from an ownership interest, to an absolute proprietary interest, to a mere possessory right, and includes the right of control. The approved officers and directors of a license corporation are the control group of a corporation. The failure to disclose all individuals who have a direct or indirect beneficial interest in this license is a violation of M.G.L. c. 138, §15A.

Based on the evidence presented and the Licensee's stipulation to the facts in this matter, the Commission is convinced by satisfactory proof and finds that there were a violations of 204 CMR 2.05 (1) 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, and that there was a transfer of a direct or indirect beneficial interest in this license without first obtaining prior written approval from both the Local Board and the Commission, as required by statute, in violation of M.G.L. c. 138, §15A.

CONCLUSION

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

- 1) 204 CMR 2.05 (1) 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 (1 count).
- 2) M.G.L. c. 138, §15A Change of Officers and Directors in the corporation without authorization.

On the first violation M.G.L. c. 140, §177A (6), the Commission **suspends the license for five (5) days of which two (2) days will be served and 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.**

IN ADDITION, THE LICENSEE MUST NOT POSSESS IN OR ON THE LICENSED PREMISES ANY AUTOMATIC AMUSEMENT DEVICES OR VIDEO POKER MACHINES.

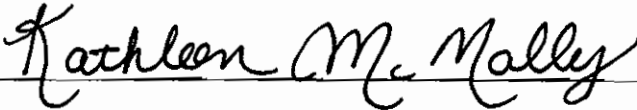
On the second violation M.G.L. c. 138, §15A, the Commission **INDEFINITELY SUSPENDS** the license of Columbians, Inc. of Gardner dba Knights of Columbus **effective forthwith**, until further written order of the Commission.

The Commission will not issue any further order without a written request from the Licensee showing good cause to reconsider this indefinite suspension and a hearing before the Commission that the Licensee attends. Good cause for the Commission to consider issuing a further written order revising the order of indefinite suspensions will include that, but not be limited to, the Licensee files with both the Commission and the local licensing authorities the appropriate application for approval of the current officers and directors of the club and that appropriate application if granted by the local licensing authorities and approved by the Commission.

The Licensee will serve a total of two (2) days which will run concurrently with the **INDEFINITE SUSPENSION** above.

ALCOHOLIC BEVERAGES CONTROL COMMISSION

Kathleen McNally, Commissioner



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

Kim S. Gainsboro, Chairman



Dated: April 13, 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.

cc: Local Licensing Board
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