



*Commonwealth of Massachusetts*  
*Alcoholic Beverages Control Commission*  
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**Jean M. Lorizio, Esq.**  
Chairman

**DECISION**

**HONG'S, INC. D/B/A BAMBOO HOUSE RESTAURANT**  
**2223 NORTHAMPTON ST.**  
**HOLYOKE, MA 01040**  
**LICENSE# 0540-00102**  
**VIOLATION DATES: 6/27/2018; 8/01/2018; 8/08/2018.**  
**HEARD: 12/11/2018**

Hong's, Inc. d/b/a Bamboo House Restaurant (the "Licensee") holds a Seasonal alcohol license issued pursuant to M.G.L. c. 138, § 12. The Alcoholic Beverages Control Commission (the "Commission") held a hearing on Tuesday, November 13, 2018, regarding an alleged violation of 204 CMR 2.05 (2) Permitting an illegality on the licensed premises, to wit: M.G.L. C. 23K, § 37, Unlawful conduct or operation of game or gaming device in violation of chapter. The above-captioned occurred on various dates according to Investigator Di Cicco's report.

The following documents are in evidence:

1. Investigator Di Cicco's Investigative Report; and
2. Office of the Attorney General State Police Detective Unit, Gaming Enforcement Division Report.

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, September 12, 2018, the Alcoholic Beverages Control Commission ("ABCC") Investigation and Enforcement Division ("IED") received a summary report of an investigation conducted by Massachusetts State Police Officers ("Troopers" or "Undercover Officers") assigned to the Office of the Attorney General State Police Detective Unit, Gaming Enforcement Division ("AGO-GED").
2. The report indicates that Troopers assigned to the AGO-GED conducted undercover surveillance of Hong's, Inc. d/b/a Bamboo House Restaurant located at 2223 Northampton Street, Holyoke, Massachusetts on June 27, 2018, August 1, 2018, and August 8, 2018.

3. The report states that Troopers observed an electronic gaming machine on the Licensed premises, and when they played it, they received a printed receipt with a dollar value, which they then cashed out with a cashier. The Troopers concluded that the electronic machine was being used as an illegal gambling device pursuant to G.L. c. 23K, § 37(a) without the Licensee having the proper gaming license.
4. Based solely on the Troopers' report, IED charged the Licensee with 204 CMR 2.05 (2) to wit: M.G.L. C. 23K, § 37, and the Commission held a hearing on December 11, 2018. At the hearing, Investigator DiCicco, the Licensee's attorney, and the owner of the Licensee appeared.

### DISCUSSION

The alleged violation presents the Commission with issues regarding the admissibility of hearsay evidence and the weight accorded hearsay during a hearing. In this matter, the Investigators produced no percipient witnesses or direct evidence regarding the incidents as alleged in the Trooper's report. The only persons who addressed the Commission at the hearing were Investigator DiCicco and the Licensee's attorney, neither of whom was present during the underlying investigation. The only document marked as an exhibit is the Investigator's report, which relies entirely on the attached report of the Trooper.

The manner in which the evidence was introduced during the hearing before the Commission constitutes hearsay. A decision of a board that rests entirely upon hearsay evidence cannot be sustained. See Moran v. School Committee of Littleton, 317 Mass. 591, 596-597 (1945) (citations omitted); Braintree Brew House LLC d/b/a The Brew House (ABCC Decision March 27, 2013) (violation of § 69 disapproved where all of the evidence presented to the Commission constituted hearsay). The Investigators have the burden of proving that a violation occurred. In the present case, no direct evidence was offered to prove that a violation of M.G.L. c. 23K, § 37 occurred. Consequently, the Commission finds no violation of 204 CMR 2.05 (2) to wit: M.G.L. c. 23K, § 37.

### CONCLUSION

Based on the evidence, the Commission finds NO VIOLATION of 204 CMR 2.05 (2) Permitting an illegality on the licensed premises, to wit: M.G.L. C. 23K, § 37, Unlawful conduct or operation of game or gaming device in violation of the chapter occurred.

**ALCOHOLIC BEVERAGES CONTROL COMMISSION**

Elizabeth A. Lashway, Commissioner Elizabeth A. Lashway

Jean M. Lorizio, Chairman Jean M. Lorizio

Dated: December 19, 2019

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  
Joseph Di Cicco, Investigator  
Thomas N. Wilson, Esq. via facsimile (413) 533-1468  
Administration, File