

DECISION

Hyannis Lodge #1549 of the Benevolent Order of Elks USA
852 Bearses Way
Barnstable, MA 02601
License#: 007000006
Heard: 3/22/2011

Hyannis Lodge #1549 of the Benevolent Order of Elks USA (the "Licensee") holds an all alcohol license issued pursuant to M.G.L. c. 138, §12. The Alcoholic Beverages Control Commission (the "Commission") held a hearing on Tuesday, March 22, 2011, regarding an alleged violation of 204 CMR 2.05 (1) and M.G.L. c.140, §177A. Prior to the commencement of the hearing, the licensee stipulated to the violation alleged in Investigator Jamie Binienda's report.

The following documents are in evidence:

- 1) Licensee's Stipulation of Facts; and
 - 2) Investigator Jamie Binienda's Report.
- A) Charity Record of the Hyannis Elks from April 2010 to September 2010.

FACTS

- 1) On Friday, August 20, 2010 at approximately 7:35 p.m., Investigators Kenny, Binienda and Hooton investigated the business operation of the Hyannis Lodge #1549 of the Benevolent Order of Elks USA in response to a complaint filed with the Investigation and Enforcement Division alleging cash payouts from the automatic amusement devices.
- 2) The investigators identified themselves to the manager and informed him of the complaint. They asked him where the automatic amusement devices were located.
- 3) The manager took the investigators to a back room with four (4) automatic amusement devices inside.
- 4) The president of the club and the manager informed the investigators that the club paid out a standard payoff rate per point for winnings to people that played the devices.
- 5) Administrative review of the file indicates these are the first violations by the licensee in over seventy (70) years of existence.
- 6) The licensee testified the machines were removed immediately and would not return.

CONCLUSION

Based on the evidence, the Commission finds the licensee violated 204 CMR 2.05 (1) and M.G.L. c.140, §177A and therefore issues a **WARNING**. The penalty was mitigated by the number of years without a violation and the removal of the machines.

ALCOHOLIC BEVERAGES CONTROL COMMISSION

Robert H. Cronin, Commissioner_____

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

Susan Corcoran, Commissioner_____

Dated: May 10, 2011

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
 Jamie Binienda, Investigator
 File