



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

AMENDED
NOTICE OF SUSPENSION

January 14, 2014

ARLINGTON ATHLETIC & SOCIAL CLUB, INC.
564 HAMPSHIRE ST
LAWRENCE, MA 01840
LICENSE#: 059400043
VIOLATION DATE: 05/23/2013
HEARD: 12/03/2013

After a hearing on December 3, 2013, the Commission reconsiders and reverses its prior order of **INDEFINITE SUSPENSION** of Arlington Athletic & Social Club, Inc. license.

The Commission **suspends the licensee's license for a total of forty-one (41) days to be served. The suspension shall commence on Wednesday, January 15, 2014, and terminate on Monday, February 24, 2014.** The license has been delivered to the Local Licensing Board or its designee. It will be returned to the licensee Tuesday, February 25, 2014. **No offer in compromise will be considered for this penalty.**

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.

Kim S. Gainsboro
Chairman

cc: Local Licensing Board
Frederick G. Mahony, Chief Investigator
Rose Bailey, Investigator
Jan Kujawski, Investigator
Robert F. Kelley, Esq. via Facsimile 978-975-1658
Administration
File



The Commonwealth of Massachusetts
Department of the State Treasurer
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**MEMORANDUM AND ORDER ON LICENSEE'S
REQUEST FOR RECONSIDERATION OF
INDEFINITE SUSPENSION**

Kim J. Gransboro, Esq.
Chairman

ARLINGTON ATHLETIC & SOCIAL CLUB, INC.
564 HAMPSHIRE ST
LAWRENCE, MA 01840
LICENSE#: 059400043
VIOLATION DATE: 05/23/2013
HEARD: 12/03/2013

Arlington Athletic & Social Club, Inc. (the "Licensee") holds an all alcoholic beverages club-type license issued pursuant to M.G.L. c. 138, §12. The Alcoholic Beverages Control Commission (the "Commission") held a hearing on Tuesday, October 22, 2013, regarding an alleged violation of M.G.L. c. 138 §64 - Failure to Comply With a Commission Order and Terms of Suspension.

On December 8, 2011, the Commission issued a decision finding the licensee in violation of:

204 CMR 2.05 (1) Permitting Gambling;

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;

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.

By decision dated December 8, 2011, the Commission **suspended the license for five (5) days of which five (5) days would 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.**

By decision dated October 23, 2013, the Commission found the licensee committed a violation for failure to comply with a Commission Order. The Commission **INDEFINITELY SUSPENDED** the license of Arlington Athletic & Social Club, Inc. **effective forthwith**, until further written order of the Commission.

On May 23, 2013, an investigation was conducted at the premises, at which time a violation was issued, as it was found that the two (2) gaming machines were still on the premises, in defiance of a Commission Order.

A hearing was held on October 22, 2013, for the violation of Failure to Comply with a Commission Order. Investigator Bailey testified that on the May 23, 2013 investigation date, the machines were still

on the premises. Investigator Bailey testified that on this date, she advised the licensee of the Commission Order to remove the machines, and the licensee was given a copy of the Commission Order.

Mr. Kevin Kiley, Treasurer of the Licensee, attended the hearing on October 22, 2013, with Counsel for the Licensee. Mr. Kiley did not testify at the October 22, 2013 hearing. Counsel for the licensee stated that Mr. Kiley told him that he was not certain if the machines had been removed. Counsel stated at the hearing on October 22, 2013, that to the best of their knowledge, the machines had been at the premises recently, however, he believed that the machines were in an isolated area of the club and were unplugged and not being utilized.

Mr. Kiley is the club Treasurer and has not been at the premises as of late. He does the financial books for the club, and the books are brought to his home. Counsel for the Licensee represented to the Commission that if the machines were still on the premises, they would be removed immediately within 24 hours.

By decision dated October 23, 2013, the Commission found the licensee violated M.G.L. c. 138 §64 Failure to Comply with a Commission Order and Terms of Suspension. The Commission **INDEFINITELY SUSPENDED** the license of Arlington Athletic & Social Club, Inc. **effective forthwith**, until further written order of the Commission.

The Commission stated that it would consider issuing a further order upon written request of 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, but not be limited to, the Licensee **removing any automatic amusement device or video poker machine from the licensed premises**.

The Licensee filed a written request to reconsider the indefinite suspension. Mr. Kevin Kiley and Mr. Bruce Andrew along with Counsel for the Licensee, attended the December 3, 2013 hearing, and argued that good cause exists to reconsider the indefinite suspension.

In support thereof, the licensee stated, *in contradiction to what was represented to the Commission at the October 22, 2013 hearing*, that the machines had been removed by the supplier on May 24, 2013, the day after the May 23, 2013 violation.

The Commission reminded the Licensee of the representations made to the Commission at the October 22, 2013 hearing. The Licensee represented that their memory of what was reported to the Commission was inconsistent with the memory of the Commission.

The Licensee stated that the Commission must have misunderstood or misconstrued what the licensee represented at that October 22, 2013 hearing. During the hearing, the Commission took a brief recess and listened to the electronic recording of the October 22, 2013 hearing.

At the October 22, 2013 hearing, the Licensee represented that the machines were possibly still on the premises. Counsel for the Licensee represented to the Commission that he would ensure that, if the machines were still on the premises as of the hearing date, then he would make sure that the machines were removed immediately.¹

The Commission then resumed the hearing and notified the Licensee as to the representations made at the October 22, 2013 hearing, and how inconsistent they were with the representations made at the December, 2013 hearing.

The Commission finds the demeanor of both Mr. Kiley and Mr. Andrews who attended the hearing, to be quite alarming to the Commission. The Commission finds that both men, who are officers of the Licensee, fail to recognize the gravity of the situation in flagrantly flouting a Commission Order. The Commission finds the behavior and attitude of the two members to be an aggravating circumstance.

Furthermore, the Commission is extremely concerned with the lack of management of this license premises, and the failure of the licensee to comply with a Commission Order for a period of almost TWO YEARS.

CONCLUSION

Based on the evidence, the Commission reconsiders and reverses its prior order of **INDEFINITE SUSPENSION** of Arlington Athletic & Social Club, Inc. license **effective forthwith**. **The indefinite suspension is reconsidered and reversed to a suspension of one hundred and twenty (120) days.**

By decision dated December 8, 2011, the Commission suspended the license for five (5) days of which five (5) days would be held in abeyance for a period of two (2) years provided no further violations of Chapter 138 or Commission Regulations occur. Based on the violation found above, the licensee violated the conditions of that five (5) day suspension being held in abeyance. The Commission hereby orders that suspension to be served on and after the 120 day suspension. The licensee will serve a total of 125 days.

The license has been suspended since October 23, 2013, and thus has served eighty-four (84) days in the aggregate pursuant to the prior order of indefinite suspension. The balance of the suspension to be served is forty-one (41) days. No offer in compromise will be considered for this penalty.

Furthermore, the Commission is extremely concerned about the utter and total lack of management of this license. The Commission finds that the management of this licensed premises is not operating in compliance with Massachusetts General Laws and Commission Regulations. **Therefore, the Commission orders that an application for a new manager be filed with the Local Board and submitted to the Commission for its consideration of approval in the usual administrative process. The Commission will NOT approve any change of manager application unless there is an Informational hearing held before the Commission which the Licensee attends to determine the fitness and character of the manager applicant.**

The Commission refers this matter to the Investigative Unit for further investigation regarding compliance with the application for a new manager.

¹ An inspection of the premises was conducted by Lawrence Police Lieutenant Conway on November 14, 2013. Lt. Conway reported that there was no evidence of any automatic amusement devices or video poker machines found on the licensed premises.

ALCOHOLIC BEVERAGES CONTROL COMMISSION

Kathleen McNally, Commissioner

Kathleen McNally

Susan Corcoran, Commissioner

Susan Corcoran

DATE: January 14, 2014

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
Rose Bailey, Investigator
Robert F. Kelley, Esq. via fax 978-975-1638
Administration
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