

Jean M. Lorizio, Esq.
Chairman

*Commonwealth of Massachusetts
Department of the State Treasurer
Alcoholic Beverages Control Commission
239 Causeway Street
Boston, MA 02114
Telephone: 617-727-3040
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NOTICE OF SUSPENSION

July 25, 2017

**MAYRA GARCIA D/B/A PLAYBOY CLUB
80 JACKSON STREET
LAWRENCE, MA 01841
LICENSE#: 059400028
VIOLATION DATE: 12/29/2016
HEARD: 07/11/2017**

After a hearing on July 11, 2017, the Commission finds Mayra Garcia d/b/a Playboy Club violated 204 CMR 2.05 (1): Permitting Gambling.

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.

The suspension shall commence on Wednesday, September 6, 2017 and terminate on Thursday, September 7, 2017. The license will be delivered to the Local Licensing Board or its designee on Wednesday, September 6, 2017 at 9:00 A.M. It will be returned to the Licensee Friday, September 8, 2017.

You are advised that pursuant to the provisions of M.G.L. c. 138 §23, you may petition the Commission to accept an offer in compromise in lieu of suspension within twenty (20) calendar days following such notice of such suspension. If accepted, you may pay a fine using the enclosed form, which must be signed by the Licensee and a Massachusetts Licensed Accountant.

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.

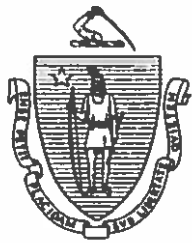
ALCOHOLIC BEVERAGES CONTROL COMMISSION

A handwritten signature in cursive script, reading "Jean M. Lorizio".

Jean M. Lorizio
Chairman

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cc: Local Licensing Board
Frederick G. Mahony, Chief Investigator
Joseph Di Cicco, Investigator
Christopher Temple, Investigator
Administration, File



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DECISION

**MAYRA GARCIA D/B/A PLAYBOY CLUB
80 JACKSON STREET
LAWRENCE, MA 01841
LICENSE#: 059400028
VIOLATION DATE: 12/29/2016
HEARD: 07/11/2017**

Mayra Garcia d/b/a Playboy Club (the "Licensee") holds an alcohol license issued pursuant to M.G.L. c. 138, § 12. The Alcoholic Beverages Control Commission (the "Commission" or "ABCC") held a hearing on Tuesday, July 11, 2017, regarding an alleged violation of 204 CMR 2.05 (1): Permitting Gambling. The above-captioned occurred on December 29, 2016 according to Investigator Di Cicco's Report.

The following documents are in evidence:

1. Investigator Di Cicco's Investigative Report;
2. Photograph of Video Machines;
3. Photograph of Video Machine;
4. Photograph of Screen of Device'
5. Photograph of Gaming Screen; and
6. Photograph of Knock-off Device Button.

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 Thursday, December 29, 2016, at approximately 1:15 p.m., Investigators Temple and Di Cicco ("Investigators") investigated Mayra Garcia d/b/a Playboy Club to determine the manner in which its business was being conducted.
2. Investigators entered the licensed premises and observed four electronic video gaming devices; one of the devices was being used by a patron.
3. Investigators identified themselves to the bartender on duty, Jose Lantigue. A man named Brian identified himself as a relative of Mr. Lantigue, and offered to translate for the Investigators as Lantigue spoke mostly Spanish.

4. Investigators observed the following characteristics which, based on their training and experience, indicated these electronic video gaming devices were being used for illegal gambling:
 - Each device accepted U. S. Currency in bills;
 - Each device was marked “for amusement only”;
 - Each had the capability to select the number of points (the amount to bet);
 - Each had the capability to double the bet using a double-up button;
 - Each had a “knock off” mechanism, a push button on the back of the machine, which when pressed locked the player’s score and displayed the word “TILTED” in red.
5. Mr. Lantigue informed Investigators that the club made pay outs on the electronic video gaming devices and he showed them a pouch, kept behind the bar, used to pay out winnings on the devices.
6. Lantigue stated to Investigators that when a player wanted to cash out, he would press a button on the back of the machine which would lock the players score.
7. Investigator Temple placed \$1.00 in U.S. Currency into the electronic video device and received 4 points, which indicated the value of one credit was twenty-five cents. He played a few hands of poker, betting multiple points at a time and doubling his bet.
8. When Investigator Temple had 7 points, he asked Mr. Lantigue how to cash out. Mr. Lantigue showed Investigators the push button located at the back of the machine and pressed the button. The 7 points remaining turned red and the word “TILTED” appeared on the screen.
9. Mr. Lantigue informed Investigators that the points would reset to zero when a new player put money into the electronic gaming device.
10. Investigators informed Mr. Lantigue of the violation and that a report would be submitted to the Chief Investigator for review.

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 Chapter 138.

Chapter 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.

The law is well-settled that “the responsibility of the licensee is to exercise sufficiently close supervision so that there is compliance with the law on the premises. A vendor who sells alcohol is ‘bound at his own peril to keep within the condition of his license.’” Rico’s of the Berkshires, Inc. v. Alcoholic Beverages Control Comm’n, 19 Mass. App. Ct. 1026, 1027 (1985) (quoting Commonwealth v. Gould, 158 Mass. 499, 507, (1893)).

The Licensee is charged with a violation of 204 CMR 2.05(1), which provides that:

[s]lot machines or any other devices which furnish anything besides merchandise of a quantity and quality commensurate with the price deposited therein are prohibited on licensed premises. Gambling of any sort, except those games of chance authorized by the Legislature and/or local licensing authorities, shall not be permitted on any license premises. 204 CMR 2.05(1).

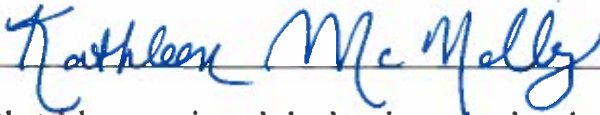
There must be substantial evidence that a violation of 204 CMR 2.05(1) has occurred. “Substantial evidence of a violation is more than a mere scintilla. It means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.” Consol. Edison Co. of New York v. N.L.R.B., 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 this violation occurred, there is substantial evidence that the Licensee permitted gambling on the licensed premises. The Licensee’s bartender admitted to the Investigators that the Licensee paid out on the electronic video gaming devices. That was corroborated by the pouch kept behind the bar used to make the pay-outs. Moreover, the Investigators testified that the machines had characteristics which, based on their training and experience, indicated the machines were being used for illegal gambling.

CONCLUSION

Based on the evidence, the Commission finds the Licensee violated 204 CMR 2.05 (1): Permitting Gambling on License Premises. Therefore, 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.**

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.

Elizabeth A. Lashway, Commissioner



Dated: July 25, 2017

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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