



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

*Deborah B. Goldberg*  
*Treasurer and Receiver General*

*Kim J. Gainsboro, Esq.*  
*Chairman*

**NOTICE OF SUSPENSION**

November 16, 2016

**GRAND DUKE LITHUANIA VYTAUTUS CLUB LOWELL MA  
447 CENTRAL & UNION  
LOWELL, MA 01852  
LICENSE#: 063000011  
VIOLATION DATE: 04/28/2016  
HEARD: 10/25/2016**

After a hearing on October 25, 2016, the Commission finds Grand Duke Lithuania Vytautus Club Lowell MA violated:

- 1) 204 CMR 2.05 (2): Permitting an Illegality on the licensed premises, to wit: M.G.L. C. 23K §37 (a) Operating or permitting to be operated a game or gaming device;
- 2) 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.
- 3) M.G.L. C. 138 § 15A- Change of Officers and Directors in the non-profit corporation without authorization.

**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, January 11, 2017 and terminate on Thursday, January 12, 2017. The license will be delivered to the Local Licensing Board or its designee on Wednesday, January 11, 2017 at 9:00 A.M. It will be returned to the Licensee Friday, January 13, 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**



Kim S. Gainsboro  
Chairman

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Το έγγραφο αυτό είναι σημαντικό και θα πρέπει να μεταφραστούν αμέσως.  
这份文件是重要的，应立即进行翻译。

cc: Local Licensing Board  
Frederick G. Mahony, Chief Investigator  
Brad Doyle, Investigator  
Rose Bailey, Investigator  
Administration, File



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*Alcoholic Beverages Control Commission*  
*Boston, Massachusetts 02114*

*Deborah B. Goldberg*  
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*Kim J. Gainsboro, Esq.*  
*Chairman*

**DECISION**

**GRAND DUKE LITHUANIA VYTAUTUS CLUB LOWELL MA**  
**447 CENTRAL & UNION**  
**LOWELL, MA 01852**  
**LICENSE#: 063000011**  
**VIOLATION DATE: 04/28/2016**  
**HEARD: 10/25/2016**

Grand Duke Lithuania Vytautus Club Lowell MA (the "Licensee") holds an alcohol license issued pursuant to M.G.L. c. 138, §12. The Alcoholic Beverages Control Commission (the "Commission") held a hearing on Tuesday, October 25, 2016, regarding alleged violations of:

- 1) 204 CMR 2.05 (2): Permitting an Illegality on the licensed premises, to wit: M.G.L. C. 23K §37 (a) Operating or permitting to be operated a game or gaming device;
- 2) 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.
- 3) M.G.L. C. 138 § 15A- Change of Officers and Directors in the non-profit corporation without authorization.

Prior to the commencement of the hearing, the Licensee stipulated to the violations alleged in Investigator Doyle's Report.

The following documents are in evidence:

1. Investigator Doyle's Investigative Report;
2. Licensee's Stipulation of Facts;
3. Licensee's Records of Income from Gaming Devices;
4. Photo of Gaming Devices;
5. Ticket Printout from Gaming Devices; and
6. Licensee's Annual Reports.

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, April 28, 2016, at approximately 4:30 p.m., Investigators Velez and Kujawski ("Investigators") investigated Grand Duke Lithuania Vytautas Club Lowell MA to determine the manner in which their business was being conducted and to address a complaint filed with this Commission.
2. Investigators were buzzed into the licensed premises and identified themselves to the bartender on duty. Investigators asked to speak with an officers or directors of the club. The bartender stated she would call the club president.
3. Mark Leavitt arrived at the club and identified himself to Investigators as the president and manager of record. Investigators informed Mr. Leavitt of the complaint and asked him who owned the automatic amusement devices.
4. Mr. Leavitt stated the machines were owned by 4-Star Vending and the profits were split between the club and the vending company, with the club getting 60% and the vending company getting 40%. Someone from the vending company comes to the club once a week to collect their earnings. Mr. Leavitt showed Investigators a permit for the devices.
5. Investigators asked Leavitt how customers collected winnings on these devices. Mr. Leavitt stated that the machines print out a ticket which the individual brings to the bartender on duty. The bartender then pays each person according to the credits on the ticket. Investigators asked Mr. Leavitt if any records were kept regarding the devices.
6. At this time, David Bendzewicz approached Investigators and identified himself as the treasurer of the club. Mr. Bendzewicz and Mr. Leavitt went into the office followed by Investigators.
7. Investigators asked Mr. Bendzewicz to open a locked metal cabinet which Investigators observed contained a binder with bi-weekly records of income for the club. Mr. Bendzewicz identified income from the devices were listed under "scholarship fund." These records covered a period from January 15, 2015 to April 18, 2016. (Exhibit 3)
8. Investigators observed three automatic amusement devices (video draw poker) located within the lounge area. Investigators observed the following characteristics which, based on their training and experience, indicated these electronic video devices were being used as gambling devices:
  - Each video amusement device had marking which indicated, "for amusement only";
  - Each accepted U. S. Currency in bills ranging from \$1, \$5, \$10, \$20;
  - Each had a "knock off" mechanism to reset the credits earned to zero.
9. Investigator Doyle inserted one U.S. dollar into electronic video device #1 and received four credits, which indicated that the value of one credit or point was twenty-five cents. He selected 2 credits to play which the machine registered, showing 2 credits remaining. Investigators then pressed a white button marked, "Ticket" on the front of the device. This

button was the “knock off” button which printed a slip of paper reflecting 2 points and also reset the credits to zero.

10. Electronic video devices #2 and #3 each had a white “Ticket” button which reset the credits to zero and printed a slip showing the remaining credits.
11. Investigators asked Mr. Leavitt how often the Officers and Directors of the club changed. Mr. Leavitt stated that elections were held year and the board had had the same people on it for the last seven years without any changes.
12. Investigators asked Mr. Leavitt if the current Officers and Directors were approved by the City of Lowell and the Commission. Mr. Leavitt stated that he filed an annual report every year with the Secretary of the Commonwealth but he did not recall a hearing at the City of Lowell Licensing Board to approve the current Officers and Directors.
13. Investigators informed Mr. Leavitt and Mr. Bendzewicz of the violation and that a report would be submitted to the Chief Investigator for review.
14. Investigators conducted an administrative review of the Licensee’s file which shows that the most recent application for Officers and Directors dated back to 1963. The Licensee had submitted its annual report to the Commission dating back to the 1960s. Comparison of the annual reports filed with the Secretary of the Commonwealth reveals that the Officers and Directors have been changed on numerous occasions but none of these changes were approved by the Lowell Licensing Board and the Commission as required by M.G.L. c. 138, § 15A.

### CONCLUSION

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

- 1) 204 CMR 2.05 (2): Permitting an Illegality on the licensed premises, to wit: M.G.L. C. 23K §37 (a) Operating or permitting to be operated a game or gaming device;
- 2) 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.
- 3) M.G.L. C. 138 § 15A- Change of Officers and Directors in the non-profit corporation without authorization.

On the first two charges, 204 CMR 2.05 (2) to wit, M.G.L. C. 23K §37 (a) and 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 third charge, M.G.L. C. 138 § 15A, the Commission issues a **WARNING**. The Commission issues a warning because although the Licensee failed to file applications and receive approval for the change of officers and directors from the Local Board and the Commission, the Licensee has repeatedly filed its annual reports with both the Local Board and the Commission pursuant to M.G.L. C. 138 § 1, annually notifying each of its changes of officers and directors.

**ALCOHOLIC BEVERAGES CONTROL COMMISSION**

Kathleen McNally, Commissioner Kathleen McNally

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

Elizabeth A. Lashway, Commissioner Elizabeth A. Lashway

Dated: November 16, 2016

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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