



*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*

MEMORANDUM AND ORDER ON LICENSEE'S  
REQUEST FOR RECONSIDERATION

**ITALIAN AMERICAN CITIZENS CLUB OF WARD #2 INC.**  
**121 PEARL ST.**  
**MALDEN, MA 02148**  
**LICENSE#: 064600036**  
**VIOLATION DATE: 11/21/2013**  
**HEARD: 06/28/2016**

Italian American Citizens Club of Ward #2 Inc. (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, May 13, 2014, regarding an alleged violation of 204 CMR 2.05(1) Permitting Gambling.

By decision dated May 20, 2014, the Commission found the Licensee in violation of the charges and suspended the license for a total of two (2) days to be served. In addition, the Commission issued a condition that "the licensee must not possess in or on the licensed premises any automatic amusement device or video poker machines."

By letter dated April 1, 2016, the Licensee requested a hearing to reconsider the terms of the suspension. The Licensee requested permission to install recreational video games, such as Trivial Pursuit, Bowling, Shuffleboard, Golden Tee (a golf video game), and a music video machine, for entertainment purposes only.

The Commission held a hearing on Tuesday, June 28, 2016, where the Licensee argued that good cause exists to reconsider the terms of the suspension. The Licensee understands that it cannot possess any gaming devices, but wishes to generate additional revenue to remain solvent. It believes it can do so by using the proposed machines.

There is one (1) audio recording of this hearing. The Commission took administrative notice of the Commission records regarding this Licensee.

## DISCUSSION

Licenses to sell alcoholic beverages are a special privilege subject to public regulation and control for which states have especially wide latitude pursuant to the Twenty-First Amendment to the United States Constitution. Connolly v. Alcoholic Beverages Control Comm'n, 334 Mass. 613, 619 (1956); Opinion of the Justices, 368 Mass. 857, 861 (1975). The procedure for the issuance of licenses to sell alcoholic beverages is set out in M.G.L. c. 138. Retail licenses must be approved by both the local licensing authorities and the Commission. M.G.L. c. 138, §§ 12, 67; Beacon Hill Civic Ass'n v. Ristorante Toscano, Inc., 422 Mass. 318, 321 (1996).

The Commission is given "comprehensive powers of supervision over licensees," Connolly v. Alcoholic Beverages Control Comm'n, 334 Mass. 613, 617 (1956), as well as broad authority to issue regulations. The Local Board has authority to enforce Commission regulations. New Palm Gardens, Inc. v. Alcoholic Beverages Control Comm'n, 11 Mass. App. Ct. 785, 788 (1981).

The Superior Court of Massachusetts has affirmed the authority of the Commission to impose reasonable conditions on a licensee, including, in particular, the condition at issue here that, "the licensee must not possess in or on the licensed premises any automatic amusement device or video poker machine." In Concordia Social Club, Inc. v. Alcoholic Beverages Control Comm'n, No. CIV.A. 2011-2014D (Mass. Superior Ct. December 31, 2012), the Superior Court articulated that, [u]nder G.L. c. 138, § 14, the Commission has broad authority over licensees and may attach a condition to a licensee following suspension so long as the condition is reasonably related to preventing the unlawful practice at the licensed premises. See, Number Three Lounge Inc. v. Alcoholic Beverages Control Comm'n 7 Mass. App. Ct. 301, 313 (1979). Prohibiting amusement machines is a less harsh and reasonable alternative than revoking the plaintiff's license, an action falling within the Commission's discretion for a violation of its regulations. Eliminating the means used to conduct illegal gambling as a condition of the return of the license to sell alcoholic beverages was within the Commission's statutory authority...

Concordia Social Club, Inc. v. Alcoholic Beverages Control Comm'n, No. CIV.A. 2011-2014D (Mass. Superior Ct. December 31, 2012).

Here, the President of the Licensee appeared at the June 28, 2016 hearing before the Commission and testified that the Licensee had complied with the Commission's May 20, 2014 order but now desires to generate additional revenue through the use of certain recreational video games. The Licensee's representative ensured the Commission that such machines would not be used for gaming purposes. The Commission is satisfied with the Licensee's President's testimony and representations.

## CONCLUSION

Based on the evidence, the Commission reconsiders and amends its May 20, 2014 decision by hereby lifting the condition that "the Licensee must not possess in or on the licensed premises any automatic amusement device or video poker machine." The Licensee's April 1, 2016 request is allowed.

**ALCOHOLIC BEVERAGES CONTROL COMMISSION**

Elizabeth A. Lashway, Commissioner

*Elizabeth A. Lashway*

Kathleen McNally, Commissioner

*Kathleen McNally*

Dated: July 13, 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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cc: Local Licensing Board  
Frederick G. Mahony, Chief Investigator  
Michael Teehan, Investigator  
Domenic Fermano, President  
Administration, File