



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

Deborah B. Goldberg
Treasurer and Receiver General

Kim L. Gainsboro, Esq.
Chairman

NOTICE OF SUSPENSION

June 23, 2016

**MALDEN POST #69 THE AMERICAN LEGION INC.
368 PLEASANT ST.
MALDEN, MA 02148
LICENSE#: 064600042
VIOLATION DATE: 07/08/2015
HEARD: 05/10/2016**

After a hearing on May 10, 2016, the Commission finds Malden Post #69 The American Legion Inc. violated:

- 1) 204 CMR 2.05 (1) Permitting Gambling;
- 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) 204 CMR 2.05 (2), 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 a 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.

The Commission suspends the license for a period of twenty (20) days with ten (10) days to be served, and ten (10) days to be held in abeyance for a period of two (2) years, provided no further violations of Chapter 138 or Commission Regulations occur, for each violation above. The suspensions to run concurrently.

By decision dated February 13, 2015, the Commission had previously ordered a five (5) day license suspension with three (3) days to be served and two (2) days 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 two (2) day suspension being held in abeyance. The Commission hereby orders that suspension to be served on and after the ten (10) day suspension. The Licensee will serve a total twelve (12) days.

In addition, the Licensee must not possess in or on the licensed premises any video poker machines, nor any automatic amusement devices used for gaming purposes.

The Commission suspends the Licensee's license for a total of twelve (12) days to be served. The suspension shall commence on Wednesday, August 17, 2016, and terminate on day, Sunday, August 28, 2016. The license will be delivered to the Local Licensing Board or its designee on Wednesday, August 17, 2016 at 9:00 A.M. It will be returned to the Licensee Monday, August 29, 2016.

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.

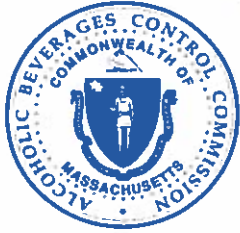
ALCOHOLIC BEVERAGES CONTROL COMMISSION



Kim S. Gainsboro
Chairman

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cc: Local Licensing Board
Frederick G. Mahony, Chief Investigator
Michael Teehan, Investigator
Christopher Temple, Investigator
Christopher G. Fallon, Esq. via facsimile 781-322-1663
Administration, File



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Department of the State Treasurer
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DECISION

MALDEN POST #69 THE AMERICAN LEGION INC.
368 PLEASANT ST.
MALDEN, MA 02148
LICENSE#: 064600042
VIOLATION DATE: 07/08/2015
HEARD: 05/10/2016

Malden Post #69 The American Legion 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 10, 2016, regarding alleged violations of:

- 1) 204 CMR 2.05 (1) Permitting Gambling;
- 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) 204 CMR 2.05 (2), 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 a 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.

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

The following documents are in evidence:

1. Investigator Kujawski's Investigative Report dated July 8, 2015;
2. Photo of Four Electronic Video Devices;
3. Photo of Machine #1;
4. Photo of Machine #2;
5. Photo of Machine #3;
6. Photo of Machine #4;

7. Photo of 50/50 Raffle Square;
8. 50/50 Raffle Square;
9. Points Receipt dated 7/8/15;
10. Photo of Cash in Safe;
11. Club's Profit & Loss Statement for May 2015;
12. Photo of Electronic Video Device Bill Acceptor;
13. Photo of Electronic Video Device Bill Acceptor;
14. Photo of Electronic Video Device #2 with Double-Up, Bet Big or Small buttons;
15. Photo of Surveillance Camera in Gaming Room;
16. Photo of Dial Meters Cluster with separate cash box, calculator and ledger;
17. Photo of Separate cash box with slips;
18. Points Receipts;
19. Front and Back of Points Receipt found in cash box;
20. Hand-marked Paper found wrapped around Exhibit 19; and
21. Licensee's Stipulation of Facts.

There is one (1) audio recording of this hearing.

The Commission took Administrative Notice of the Licensee's record.

FACTS

1. On Wednesday, July 8, 2015, at approximately 1:35 p.m., Investigators Di Cicco and Kujawski investigated the business operation of Malden Post #69 The American Legion Inc. to determine the manner in which their business was being conducted.
2. Investigators entered the bar and observed four electronic video devices, which were located across from the bar area in a separate room.
3. Investigators identified themselves to the bartender on duty, John Graham, and informed him that they would be conducting an inspection of the licensed premises. Investigators asked to speak with the manager of record.
4. While Investigators waited for the manager, they continued their inspection of the electronic devices and made the following observations which, based on their training and experience, indicated that these devices were being utilized as illegal gambling devices.
 - Each device accepted dollar bills ranging from \$1, \$5, \$10, \$20, \$50, and \$100.
 - Each device had the capability to double up the bet.
 - There were surveillance cameras in the room.
5. The four electronic video devices were labelled as:
 - Machine #1: NCGI
 - Machine #2
 - Machine #3: Players Prophecy
 - Machine #4: NCGI

6. Investigators observed three clusters of meters, a large calculator, and a cash box beneath the cash register behind the bar. The cash box contained \$376.00 in U.S. Currency and paper slips with typed markings indicating "70 point", "5037 point". There was also a typed paper with handwritten markings on the back indicating "Owe Bummy 200" and another piece of paper around the slip indicating "7-8 Bumm 200."
7. Stephen Kelleher approached Investigators to inform them that the manager was on his way in to speak with them.
8. Investigators continued their inspection and observed two sheets of paper titled "50/50" indicating \$2.00 per square. Win \$100 in cash or in scratch tickets, 1st 2 numbers Sunday night lottery. Each paper contained 100 square boxes with writing and/or numbers within the boxes. Based on their training and experience, Investigators identified the documents as ones commonly utilized for illegal gambling.
9. The manager, John Lucas met Investigators as they continued their inspection of the electronic video devices. One of the devices was connected to the dial meters located behind the bar. The other three devices has internal dial meters.
10. Investigator Kujawski placed \$1.00 in U.S. Currency into each of the electronic video devices. He observed each device register the money both electronically and on the device's dial meters. Investigator pressed the ticket button, and a paper slip came out which indicated 100 points. Based on his training and experience, Investigator recognized the ticket button as a "knock-off" mechanism which allowed the device to reset the machine to zero credits.
11. Investigators then entered the office area adjacent to the room with the electronic devices. Investigators observed a large amount of U.S. Currency in an open safe box, and asked Mr. Lucas to count it. Mr. Lucas counted \$1470.00 in U.S. Currency and he informed Investigators that the cash was from the club's 50/50 raffle.
12. Mr. Lucas informed Investigators that the club makes approximately \$1500.00 per week from the electronic video devices.
13. Investigators observed a profit and loss statement for May 2015. Mr. Lucas informed them that the category "Castles" was the income from electronic video devices. This statement indicated a profit of \$16, 216 for the year to date up to May 2015.
14. Investigators informed Mr. Lucas of the violation and that a report would be filed with the Chief Investigator for further action.

CONCLUSION

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

- 1) 204 CMR 2.05 (1) Permitting Gambling;
- 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) 204 CMR 2.05 (2), 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 a 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.

On the first violation, 204 CMR 2.05 (1) Permitting Gambling, the Commission **suspends the license for a period of twenty (20) days with ten (10) days to be served, and ten (10) days to be held in abeyance for a period of two (2) years, provided no further violations of Chapter 138 or Commission Regulations occur.**

On the second violation, 204 CMR 2.05 (2), to wit: M.G.L. C. 140, §177A (6), the Commission **suspends the license for a period of twenty (20) days with ten (10) days to be served, and ten (10) days to be held in abeyance for a period of two (2) years, provided no further violations of Chapter 138 or Commission Regulations occur. This suspension to run concurrently with the one above.**

On the third violation, 204 CMR 2.05 (2), to wit: M.G.L. c. 271 §17,), the Commission **suspends the license for a period of twenty (20) days with ten (10) days to be served, and ten (10) days to be held in abeyance for a period of two (2) years, provided no further violations of Chapter 138 or Commission Regulations occur. This suspension to run concurrently with the one above.**

By decision dated February 13, 2015, the Commission had previously ordered a five (5) day license suspension with three (3) days to be served and two (2) days 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 two (2) day suspension being held in abeyance. The Commission hereby orders that suspension to be served on and after the ten (10) day suspension. The Licensee will serve a total twelve (12) days.

In addition, the Licensee must not possess in or on the licensed premises any video poker machines, nor any automatic amusement devices used for gaming purposes.

The Commission's decision of February 13, 2015, also ordered that the Licensee must not possess in or on the licensed premises any video poker machines, nor any automatic amusement devices used for gaming purposes.

The Commission refers this matter that the Licensee must not possess in or on the licensed premises any video poker machines, nor any automatic amusement devices used for gaming purposes to the Investigative Unit for further action forthwith.

ALCOHOLIC BEVERAGES CONTROL COMMISSION

Kathleen McNally, Commissioner



Elizabeth A. Lashway, Commissioner



DATE: June 23, 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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