



**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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Jean M. Lorizio, Esq.
Chairman

NOTICE OF SUSPENSION

June 21, 2017

**GERRY #5 VETERAN FIREMAN ASSOCIATION INC.
210 BEACON ST.
MARBLEHEAD, MA 01945
LICENSE#: 065600005
VIOLATION DATE: 12/01/2016
HEARD: 06/06/2017**

After a hearing on June 6, 2017, the Commission finds Gerry #5 Veteran Fireman Association 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. 23K §37 (a) Operating or permitting to be operated a game or gaming device;
- 3) 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.
- 4) M.G.L. c. 138 § 15A- Change of Officers and Directors in the non-profit corporation without authorization (Since 2002).

On the first three charges, the Commission **suspends the license for five (5) days of which five (5) 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 fourth charge, M.G.L. C. 138 § 15A, the Commission **suspends the license for ten (10) days of which five (5) days will be served and five (5) days will be held in abeyance for a period of two (2) years provided no further violations of Chapter 138 or Commission Regulations occur. All suspensions shall run concurrently.**

The suspension shall commence on Wednesday, August 9, 2017 and terminate on Sunday, August 13, 2017. The license will be delivered to the Local Licensing Board or its designee on Wednesday, August 9, 2017 at 9:00 A.M. It will be returned to the Licensee Monday, August 14, 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



Jean M. Lorizio
Chairman

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cc: Local Licensing Board
Frederick G. Mahony, Chief Investigator
Brad Doyle, Investigator
Rose Bailey, Investigator
Neil Rossman, Esq. via facsimile (978) 854-6978
Administration, File



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DECISION

**GERRY #5 VETERAN FIREMAN ASSOCIATION INC.
210 BEACON ST.
MARBLEHEAD, MA 01945
LICENSE#: 065600005
VIOLATION DATE: 12/01/2016
HEARD: 06/06/2017**

Gerry #5 Veteran Fireman Association 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, June 6, 2017, 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. 23K §37 (a) Operating or permitting to be operated a game or gaming device;
- 3) 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.
- 4) M.G.L. c. 138 § 15A- Change of Officers and Directors in the non-profit corporation without authorization (Since 2002).

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. Photos of Automatic Amusement Devices;
4. Ticket Printout from Devices;
5. Photo of U.S. Currency;
6. Payout Formula Sheet;
7. Printout of Machine Payouts for 2015 and 2016; and
8. Secretary of State Listing of Licensee's Officers and Directors Since 2002.

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 1, 2016, at approximately 12:30 p.m., Investigators Bailey and Doyle ("Investigators") investigated Gerry #5 Veteran Fireman Association Inc. to determine the manner in which its business was being conducted and to investigate a complaint filed with this Commission.
2. Investigators were admitted to the licensed premises by Arthur Dodge, the manager of record. Investigators observed four automatic amusement devices within the lounge area.
3. Investigators identified themselves and informed Mr. Dodge and Joan Champlin, a director of the corporation, of the complaint. Investigators viewed the 2016 permits for the devices.
4. Investigators asked who owned the machines. Dodge stated the club owns them and club treasurer, Dennis Nelson, maintains the devices. Investigators asked Mr. Dodge to contact Mr. Nelson.
5. Investigator Doyle spoke with Dennis Nelson and asked him how people collect on credits earned on the devices.
6. Nelson stated when a person finished playing, he would press the "ticket" button. A white ticket with the credits earned is printed, and the credits reset to zero. The person would deliver the printed ticket to the bartender on duty. The bartender would then pay the person according to the number of credits earned.
7. Investigator Doyle asked Nelson to approximate how much income the club made from the machines. Nelson stated the club earned approximately \$500.00 per week.
8. Investigators then asked Mr. Dodge and Ms. Champlin to explain the process by which a person collected winning credits from the devices. They each described the same process as explained by Dennis Nelson. Ms. Champlin stated that the devices have been on the premises for approximately 5 to 6 years.
9. Investigators inspected the liquor storage room near the bar area, where they observed a floor safe. Investigators asked Ms. Champlin to open the safe which she did. Investigators observed an orange bin containing approximately \$1,400.00 in U.S. Currency. Champlin stated that the bartender on duty would take cash from this bin to pay out on the winning tickets. A sign in this area indicated, "Machine Payout" and showed a formula for payouts for each machine.
10. Investigators observed that the electronic video devices (named Jackpot-7, Classic edition, All Fruit, and New Cherry '96) had the following characteristics which, based on their training and experience, indicated these electronic video machines were being used as gambling devices:
 - Each device was marked "for amusement only";
 - Each device accepted U. S. Currency in bills ranging from \$1, \$5, \$10, \$20;
 - Each device had a "knock off" mechanism to reset the credits earned to zero;
 - Each device contained meters inside which recorded credits in and credits out.
11. Investigator Doyle inserted \$2.00 in U.S. currency into electronic video device "B" and received 20 credits, which indicated that the value of one credit or point was ten cents. He

selected 10 credits to play and the device registered the bet, showing 10 credits remaining. Investigator Doyle then pressed the "Ticket" button on the front of the machine. The machine discharged a printed ticket for "100" which the "machine payout" sign indicated would equal \$1.00.

12. Investigator Doyle inserted \$2.00 in U.S. currency into electronic video device "C" and received 20 credits, which indicated that the value of one credit or point was ten cents. He selected 10 credits to play and the device registered the bet, showing 10 credits remaining. Investigator Doyle pressed the play button and won 40 credits. Doyle then pressed the "Ticket" button on the front of the machine. The machine discharged a printed ticket for "5" which the "machine payout" sign indicated would equal \$5.00. The "Ticket" button reset the credits remaining from 50 to zero.
13. Investigators asked Mr. Dodge how often the Officers and Directors of the club changed. Dodge stated that club holds elections on a regular basis and that the next election would take place on December 7, 2016.
14. Investigators informed Mr. Dodge of the violation and that a report would be submitted to the Chief Investigator for review.
15. Investigators asked Dodge to submit any records reflecting the income from the devices. Investigators later received an email from Dennis Nelson showing the gross and net dollar amounts for 2015 and 2016.
16. Investigators conducted an administrative review of the Licensee's file. The ABCC last approved Officers / Directors in 2002 and no new applications for Officers and Directors had been submitted since then. A review of the Licensee's annual reports on the Secretary of the Commonwealth's website reveals that the Officers and Directors have been changed on numerous occasions.
17. On April 27, 2017, the Licensee applied for Change of Beneficial Interest (new officers/directors) to the local licensing authority and the ABCC. The Licensee proposed the following changes to officers/directors of the corporation:
 - Ray Gauthier, President;
 - Mike Butler, Vice President;
 - Dennis E. Nelson, Treasurer;
 - Kathy Tankersley Berner, Secretary; with
 - Joan Champlin, Director;
 - Mark Lausier, Director;
 - Charles Dalferro, Director;
 - Jay Smidt, Director;
 - Paul O'Shaughnessy, Director.
18. That Change of Beneficial Interest application was approved by the ABCC on June 2, 2017. (Commission records)

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. 23K §37 (a) Operating or permitting to be operated a game or gaming device;
- 3) 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.
- 4) M.G.L. c. 138 § 15A- Change of Officers and Directors in the non-profit corporation without authorization (Since 2002).

On each of the first three charges, 204 CMR 2.05 (1), 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 five (5) 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 fourth charge, M.G.L. C. 138 § 15A, the Commission **suspends the license for ten (10) days of which five (5) days will be served and five (5) days will be held in abeyance for a period of two (2) years provided no further violations of Chapter 138 or Commission Regulations occur. All four suspensions shall run concurrently.**

The Commission also reminds the Licensee to remain current in filing the appropriate annual reports pursuant to M.G.L. c. 138, § 1 (to file annually with the Commission a list of the names and residences of its officers, together with the amount of salary or compensation received by each employee engaged in the handling or selling of alcoholic beverages).

ALCOHOLIC BEVERAGES CONTROL COMMISSION

Elizabeth A. Lashway, Commissioner



Kathleen McNally, Commissioner



Dated: June 21, 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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