

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

Steven Grossman
Treasurer and Receiver General

Kim S. Gainsboro, Esq.
Chairman

NOTICE OF SUSPENSION

June 22, 2012

JOHN J. GLASS JR. POST 2188, VFW
30 STATION ST.
MIDDLEBOROUGH, MA 02346
LICENSE#: 070000009
HEARD: 06/05/2012

After a hearing on June 5, 2012 the Commission finds John J. Glass Jr. Post 2188, VFW in violation of:

1. 204 CMR 2.05 (1): Permitting Gambling; and
2. 204 CMR 2.05 (2): Permitting an Illegality on the Licensed Premises, to wit: M.G.L. c. 140 §177A (1)-Failure to have automatic amusement devices licensed (2 Counts).

The Commission suspends the licensee's license for a total of two (2) days to be served. The suspension shall commence on Wednesday, August 8, 2012 and terminate on Thursday, August 9, 2012. The license will be delivered to the Local Licensing Board or its designee on Wednesday, August 8, 2012 at 9:00 A.M. It will be returned to the licensee Friday, August 10, 2012.

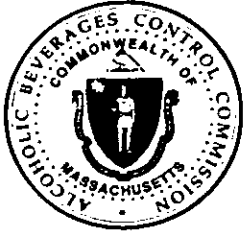
You are advised that pursuant to the provisions of M.G.L. c.138 §23, you may petition the Commission to accept an offer in compromise in lieu of suspension within twenty (20) calendar days following such notice of such suspension. If accepted, you may pay a fine using the enclosed form. All checks must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

cc: Local Licensing Board
Frederick G. Mahony, Chief Investigator
Jack Carey, Investigator
George C. McMahon, Esq. via Facsimile
Administration
✓File



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DECISION

JOHN J. GLASS JR. POST 2188, VFW
30 STATION ST.
MIDDLEBOROUGH, MA 02346
LICENSE#: 070000009
HEARD: 06/05/2012

John J. Glass Jr. Post 2188, VFW (the "Licensee") holds an all-alcohol license issued pursuant to M.G.L. c. 138, §12. The Alcoholic Beverages Control Commission (the "Commission") held a hearing on Tuesday, June 5, 2012, regarding an alleged violation of:

3. 204 CMR 2.05 (1): Permitting Gambling; and
4. 204 CMR 2.05 (2): Permitting an Illegality on the Licensed Premises, to wit: M.G.L. c. 140 §177A (1)-Failure to have automatic amusement devices licensed (2 Counts).

Prior to the commencement of the hearing, the licensee stipulated to the violations alleged in Investigator Carey's Investigative Report.

The following exhibits are in evidence:

1. Investigator Carey's Report dated March 9, 2012;
 2. Licensee's Stipulation of Facts; and
 3. Seventy-five (75) VFW Credits.
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- A. Compilation of Charitable Deeds performed by Licensee;
 - B. Licensee's Raffle Permit;
 - C. Licensee's Public Service Award from the Department of the Army;
 - D. Licensee's Permit for Automatic Amusement Devices (four (4) video games); and
 - E. Licensee's Amended Permit for Automatic Amusement Devices (seven (7) video games);

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

FACTS

1. On Saturday, November 12, 2011, Chief Investigator Mahony assigned Investigators Binienda and Carey to investigate a complaint reported to this agency that five (5) establishments had unlicensed poker machines. The five establishments were:
 - a. Middleboro Elks;
 - b. The Mitchell Memorial Club;
 - c. The Middleboro VFW;
 - d. Shooters Restaurant; and
 - e. The Royal Café.

2. The establishments were not paying out cash for the poker machine winnings but paid out script dollars to be redeemed at the licensed premises where the machines were played.
3. Investigators visited each licensed premises and informed each that this practice is prohibited, and they were to stop this practice immediately.
4. All licensees, except for John J. Glass Jr. Post 2188, VFW, told investigators they would comply with the Commission warning.
5. At the John J. Glass Jr. Post 2188, VFW, investigators spoke with the bartender on duty, who said she would pass on their message to the manager of the club.
6. The week following this initial visit, the manager of the club, Mr. Joseph Thayer, called Investigator Carey to request that he put the request to stop the prohibited practice in writing. Mr. Thayer stated the club's board of directors wanted to have written notice that they could not operate in this manner.
7. Investigator Carey again informed Mr. Thayer that the licensee must stop this practice as it was prohibited. If it came to the attention of the Commission that they continued in this manner, a violation report would be written.
8. On Friday, March 9, 2012, at approximately 11:20 a.m., Investigators Hooton and Carey conducted an investigation of the business operation of John J. Glass Jr. Post 2188, VFW in order to determine the manner in which its business is conducted, and to investigate an anonymous complaint reported to this agency that the prohibited practice had continued.
9. Investigators entered the licensed premises and observed six (6) poker machines. Poker machines numbered 1, 2, 4, and 5 were labeled as double-up machines. Machine number 3 had no name; it was a generic poker machine. Machine number 6 was labeled "Touch Master."
10. Investigators spoke to the assistant manager, Mr. Roger Card, about the poker machines.
11. Mr. Card stated that they do pay out on the machines but do not use cash. Instead, they give people VFW credits.
12. Investigators observed that the credits are labeled as VFW with the symbol, numbered, and have text, "Redeemed only at the Middleboro VFW Post."
13. Mr. Card stated a player received one (1) VFW credit for every four (4) points on the machine. VFW credits may be redeemed for alcohol and food at the licensed premises.
14. Mr. Thayer, the manager of the club, arrived on premises and confirmed to investigators the same information supplied by Mr. Card.
15. Mr. Thayer stated the VFW credits may be redeemed for alcohol, food, and Lottery. Mr. Thayer further stated that most credits are redeemed for Lottery.
16. Mr. Thayer stated the machines are leased from Commonwealth Vending, at a cost of six hundred and fifty dollars (\$650.00) per week for the six (6) machines.
17. Mr. Thayer stated that the licensee keeps all of the money that comes out of the machines.
18. Investigators reviewed all the license information posted on the wall of the licensed premises.
19. The licensee has automatic amusement devices licenses from the Town of Middleborough for four (4) video games. The machines numbered 5 and 6 are unlicensed.
20. The liquor license named Mr. Wayne Packard as the manager of record.
21. Mr. Thayer stated that Mr. Packard is a member of the board, but it was obvious that it is Mr. Thayer who has day-to-day control of the licensed premises.
22. Investigators informed Mr. Thayer of the violations and that a report would be submitted to the Chief Investigator for review.

CONCLUSION

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

1. 204 CMR 2.05 (1): Permitting Gambling; and
2. 204 CMR 2.05 (2): Permitting an Illegality on the Licensed Premises, to wit: M.G.L. c. 140 §177A (1)-Failure to have automatic amusement devices licensed (2 Counts).

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.

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.

Susan Corcoran, Commissioner *Susan Corcoran*

Dated: June 22, 2012

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.

cc: Local Licensing Board
Frederick G. Mahony, Chief Investigator
Jack Carey, Investigator
George C. McMahon, Esq. via Facsimile
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