

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

December 5, 2012

ST. MICHAEL SOCIAL CLUB, INC.
101 MADEIRA AVE.
NEW BEDFORD, MA 02746
LICENSE#: 077800094
VIOLATION DATE: 08/29/2012
HEARD: 12/04/2012

After a hearing on December 4, 2012, the Commission finds St. Michael Social Club, Inc. in violation of 204 CMR 2.05 (1) - Devices which furnish anything besides merchandise of a quantity and quality commensurate with the price deposited therein are prohibited on licensed premises.

The Commission suspends the licensee's license for a total of three (3) days to be served. The suspension shall commence on Wednesday, January 16, 2013 and terminate on Friday, January 18, 2013. The license will be delivered to the Local Licensing Board or its designee on Wednesday, January 16, 2013 at 9:00 A.M. It will be returned to the licensee Saturday, January 19, 2013.

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.

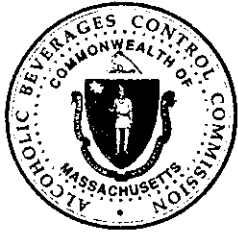
You are advised that you have the right to appeal this decision under M.G.L. c. 30A to Superior Court within thirty (30) days upon receipt of this notice.

ALCOHOLIC BEVERAGES CONTROL COMMISSION

Kim S. Gainsboro
Chairman

cc: Local Licensing Board
Frederick G. Mahony, Chief Investigator
Michael Teehan, Investigator
John Mitchell, Esq. via Facsimile 508-676-6600
✓ Administration
File

2772 1908



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

Steven Grossman
Treasurer and Receiver General

DECISION

Kim J. Gainsboro, Esq.
Chairman

ST. MICHAEL SOCIAL CLUB, INC.
101 MADEIRA AVE.
NEW BEDFORD, MA 02746
LICENSE#: 077800094
VIOLATION DATE: 08/29/2012
HEARD: 12/04/2012

St. Michael Social Club, 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, December 4, 2012, regarding an alleged violation of 204 CMR 2.05 (1) Devices which furnish anything besides merchandise of a quantity and quality commensurate with the price deposited therein are prohibited on licensed premises. Prior to the commencement of the hearing, the licensee stipulated to the violation alleged in Investigator Teehan's Report.

The following documents are in evidence:

1. Licensee's Stipulation of Facts;
2. Investigator Teehan's Investigative Report dated August 29, 2012; and
3. Photocopy of Receipts.

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

FACTS

1. On Wednesday, August 29, 2012, at approximately 2:40 p. m., Investigators Kenny, Velez, and Teehan conducted an investigation of the business operation of St. Michael Social Club, Inc. in response to a complaint filed with the Investigation and Enforcement Division.
2. Upon entering the licensed premises, investigators identified themselves to the bartender on duty, Mr. Paulo Amaral, and informed him of the complaint.
3. Investigators observed two (2) phone card machines in the bar area.
4. Investigator Teehan placed a one (1) dollar bill in United States currency into the device at which point a register-type paper with printing on it was released from the device.
5. The paper indicated, "Good for 15 minutes of phone time" along with a PIN number.
6. Investigators further observed that, in addition to the register-type paper printed with calling card service minutes, the screen of the device indicated that there were one hundred (100) "credits" awarded for placing the dollar into the device.
7. Mr. Amaral stated that once an individual had completed playing, it would print out a ticket from the machine and had the ticket to the bartender on duty. The bartender on duty would then pay off the winnings from the ticket.

8. Investigators informed Mr. Amaral of the violation and that a report would be submitted to the Chief Investigator for further action.

DISCUSSION

Licenses to sell alcoholic beverages are a special privilege subject to public regulation and control, Connolly v. Alcoholic Beverages Control Commn., 334 Mass. 613, 619 (1956), for which States have especially wide latitude pursuant to the Twenty-First Amendment to the United States Constitution. Opinion of the Justices, 368 Mass. 857, 861 (1975). The procedure for the issuance of licenses and required conduct of licensees who sell alcoholic beverages is set out in G.L. c. 138. The Commission has comprehensive powers of supervision over licensees and has statutory authority (G. L. c. 138, § 64) to revoke or suspend a license for violation of a regulation. Aristocratic Restaurant of Massachusetts, Inc. v. Alcoholic Beverages Control Commission, 374 Mass. 547 (1978).

In reviewing the authority of the Commission, the Supreme Judicial Court has held that [t]he powers of the States in dealing with the regulation of the sale of intoxicating liquors are very broad. What they may wholly prohibit, they may permit only on terms and conditions prescribed by the Legislature. Supreme Malt Products Co., Inc., v. Alcoholic Beverages Control Commission, 334 Mass. ---; Ziffrin, Inc. v. Reeves, 308 U.S. 132, 138-139; Carter v. Virginia, 321 U.S. 131, 137-143. In dealing with a trade, which, because of its great potential evils, can be wholly prohibited, a wide power is given to the Legislature with respect to the delegation of discretionary powers.

The SJC held that “[t]he legislative history of [the Commission’s enabling act], and of G.L. (Ter.Ed.) Ch. 138, as amended, clearly shows that the powers of the commission were not intended to be perfunctory or limited.” Connolly v. Alcoholic Beverages Control Commission, 334 Mass. 613, 617 (1956).

The commission has comprehensive powers of supervision over licensees. Connolly v. Alcoholic Beverages Control Commn. 334 Mass. 613, 617 (1956). The Commission may make regulations for “clarifying, carrying out, enforcing and preventing violation of” statutory provisions for the “method of carrying on the business of any licensee,” and “for the proper and orderly conduct of the licensed business.” G. L. c. 138, § 24, as appearing in St. 1971, c. 478. The Commission has exercised this authority through the promulgation of regulations that are codified at chapter 204 of the Code of Massachusetts Regulations. Licenses are also revocable for violation of “any regulation adopted by the commission or *local licensing authority*” (emphasis supplied), and local licensing authorities may make “reasonable requirements” with respect to “the conduct of business by any licensee.: G. L. c. 138, § 23, quoted in part in fn. 1, *supra*. 367 Mass. 788, 1975 Mass. LEXIS 900, Boston Licensing Board v. Alcoholic Beverages Control Commission, 367 Mass. 788 (1975)

Furnishing Anything besides Merchandise of a Quantity and Quality Commensurate with the Price Deposited Therein

A Commission regulation promulgated at 204 CMR 2.05(1) provides in pertinent part, that “any ... devices which furnish anything besides merchandise of a quantity and quality commensurate with the price deposited therein are prohibited on licensed premises.” Investigator Teehan put one (1) dollar in U.S. Currency into the device and received a piece of paper in return that furnished fifteen (15) minutes of telephone time. The Commission is not persuaded that this piece of paper constitutes “merchandise” within the meaning of the Commission’s regulation, given the usual and ordinary meaning of the word “merchandise.” In addition, how this piece of paper could be converted into fifteen minutes of telephone

time is not clear to the Commission.¹ Thus the Commission is not persuaded that this piece of paper is merchandise of a "quantity and quality commensurate" with the dollar that was deposited.

The Commission finds that this action of providing points to be redeemed for phone time at an indeterminate time, are something besides "merchandise of a quantity and quality commensurate with the price deposited therein." This machine was banned by this regulation from being possessed inside a licensed premises. The Licensee violated 204 CMR 2.05(1).

CONCLUSION

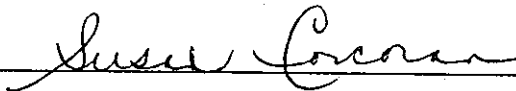
Based on the evidence, the Commission finds the licensee violated 204 CMR 2.05 (1) Devices which furnish anything besides merchandise of a quantity and quality commensurate with the price deposited therein are prohibited on licensed premises.

Therefore, the Commission **suspends the license for five (5) days of which three (3) days will be served and two (2) 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 Commission imposes a condition on this license that, the licensee must not possess in or on the licensed premises any telephone card machines.

ALCOHOLIC BEVERAGES CONTROL COMMISSION

Susan Corcoran, Commissioner



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

Kathleen McNally, Commissioner



DATE: December 5, 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
Michael Teehan, Investigator
John Mitchell, Esq. via Facsimile 508-676-6600
Administration
File

¹ Moreover, the cost of this telephone time is not consistent with the Commission's common knowledge and life experience.