



Jean M. Lorizio, Esq.  
Chairman

*Commonwealth of Massachusetts  
Department of the State Treasurer  
Alcoholic Beverages Control Commission  
239 Causeway Street  
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NOTICE OF REVOCATION

March 30, 2018

**DAWES AVE VARIETY INC. D/B/A DAWES AVENUE VARIETY  
19-21 DAWES AVENUE  
PITTSFIELD, MA 01201  
LICENSE#: 0974-00092  
VIOLATION DATE: 10/13/2017  
HEARD: 03/06/2018**

After a hearing on March 6, 2018, the Commission finds Dawes Ave Variety Inc. violated:

- 1) 204 CMR 2.05 (2) Permitting an illegality on the licensed premises, to wit: M.G.L. c. 140 § 177A (5) Automatic Amusement devices licensed under this section shall be so installed on the premises described in the license as to be in open view at all times while in operation, and shall at all times be available for inspection;
- 2) M.G.L. Ch.138, §23- Transfer of the privilege of a license without proper approval; Violation date: Various since 1995 to October 13, 2017;
- 3) M.G.L. Ch. 138, § 64 License issued under this chapter by the local licensing authorities in violation of § 16 A or any other provision of this chapter. Violation date: 2011.

The above-captioned Licensee's license is **REVOKED EFFECTIVE FORTHWITH**.

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.

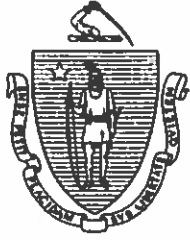
**ALCOHOLIC BEVERAGES CONTROL COMMISSION**

A handwritten signature in cursive script, reading "Jean M. Lorizio".

Jean M. Lorizio  
Chairman

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Este documento é importante e deve ser traduzido imediatamente.  
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Questo documento è importante e dovrebbe essere tradotto immediatamente.  
Το έγγραφο αυτό είναι σημαντικό και θα πρέπει να μεταφραστούν αμέσως.  
这份文件是重要的，应立即进行翻译。

cc: Local Licensing Board  
Frederick G. Mahony, Chief Investigator  
Christopher Temple, Investigator  
Jan Kujawski, Investigator  
Joseph Di Cicco, Investigator  
Lisa Lordan, Investigator  
Administration, File



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## DECISION

**DAWES AVE VARIETY INC. D/B/A DAWES AVENUE VARIETY  
19-21 DAWES AVENUE  
PITTSFIELD, MA 01201  
LICENSE#: 0974-00092  
VIOLATION DATE: 10/13/2017  
HEARD: 03/06/2018**

Dawes Ave Variety Inc. d/b/a Dawes Avenue Variety (the "Licensee" or "Dawes Ave Variety") holds an alcohol license issued pursuant to M.G.L. c. 138, § 15. The Alcoholic Beverages Control Commission (the "Commission" or "ABCC") held a hearing on Tuesday, March 6, 2018, regarding alleged violations of:

- 1) 204 CMR 2.05 (2) Permitting an illegality on the licensed premises, to wit: M.G.L. C. 140 § 177A (5) Automatic Amusement devices licensed under this section shall be so installed on the premises described in the license as to be in open view at all times while in operation, and shall at all times be available for inspection;
- 2) M.G.L. Ch.138, §23- Transfer of the privilege of a license without proper approval; Violation date: Various since 1995 to October 13, 2017;
- 3) M.G.L. Ch. 138, § 64 License issued under this chapter by the local licensing authorities in violation of § 16 A or any other provision of this chapter. Violation date: 2011.

The above-captioned occurred on October 13, 2017, and various dates since 1995, according to Investigator Temple's report.

The following documents are in evidence:

1. Investigator Temple's Investigative Report;
2. Licensee's Renewal Application for 2011; and
3. Licensee's Renewal Application for 2016.

A. Real Estate Sale Listing for 19 Dawes Avenue, Pittsfield.

There is one (1) audio recording of this hearing, and two (2) witnesses testified.

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

## FINDINGS OF FACT

1. Dawes Ave Variety Inc. ("Dawes Ave Variety") is a Massachusetts corporation organized and filed under M.G.L. c. 156B on March 19, 1987. (Commission records, Testimony, Exhibit 1)
2. On November 21, 1994, Dawes Ave Variety submitted a transfer application for a § 15 license, and the application included a change of manager. The corporation listed Timothy O'Donnell as President and 50% stockholder; and Pamela O'Donnell as Vice-President, Treasurer, Clerk, and 50% stockholder. Timothy O'Donnell was also the proposed license manager of record. The Commission approved the application on March 28, 1995. (Commission records, Testimony, Exhibit 1)
3. The Secretary of the Commonwealth, Corporations Division, has the 2016 Annual Report for Dawes Ave Variety Inc. That filing lists Timothy O'Donnell as the sole officer and director of the corporation. (Commission records, Testimony)
4. Administrative review of the Licensee's files indicates Dawes Ave Variety, Inc. has not filed any other applications, excluding the annual renewal applications, with the Commission. (Commission records, Testimony, Exhibits 1, 2, 3)
5. On Friday, October 13, 2017, at approximately 6:30 p.m., Investigators Kujawski, Di Cicco, Lordan, and Temple ("Investigators") conducted an investigation of the business operation of Dawes Ave Variety to determine the manner in which its business was being conducted. (Testimony, Exhibit 1)
6. While on the licensed premises, Investigators observed three electronic video devices located in an enclosed room behind a closed door marked, "Employees Only." (Testimony, Exhibit 1)
7. The devices contained characteristics which, based on Investigators' training and experience, indicated the devices were utilized for illegal gambling. (Testimony, Exhibit 1)
  - Each device accepted U. S. Currency in bills ranging from \$1, \$5, \$10, \$20, \$50, and/or \$100.
  - Each device was marked, "for amusement only";
  - Each had the capability to select the number of points (the amount to bet);
  - Each device registered the bet by displaying the number of credits selected;
  - Each had the capability to double the bet using a double-up button;
  - Each had a "knock off" mechanism, in the form of two bolts at the front console, which when pressed reset the credits to zero. (Testimony, Exhibit 1)
8. Electronic video device #1 was marked Poker Master "Super 2 in One"; device #2 was marked Cherry Master; device #3 was marked Cherry Master. (Testimony, Exhibit 1)
9. Investigator Di Cicco placed \$1.00 in U.S. Currency into electronic device #1 and four credits appeared on the screen. Di Cicco selected four credits (the amount he wanted to

bet) which the device registered. He then pressed the play button and the device indicated a loss. Di Cicco then inserted another \$1.00 in the device and placed a key on the two bolts. The credits/dollars were reset. (Testimony, Exhibit 1)

10. Investigator Di Cicco placed \$1.00 in U.S. Currency into electronic device #2 and two credits appeared on the screen. Investigator Temple placed a key on the two bolts. The credits/dollars were reset. (Testimony, Exhibit 1)
11. Investigators observed a 3" x 6" laminated green paper on electronic device #1 which stated: Join the "400" club. Just earn 400 credits and you will be automatically entered in the drawing. Drawings are twice a month. See Clerk for Details. Employees are not eligible. (Testimony, Exhibit 1)
12. Investigators observed another note that said, "Dave and Tom if you touch anything in here you are dead. Sil". (Testimony, Exhibit 1)
13. Investigators identified themselves to the clerk on duty, Silvano Mastrodicasa, and asked about the machines. Mastrodicasa stated the licensee never paid off on the machines ever. When Investigators asked him how long he had been working at the establishment, Mastrodicasa stated he had been there for 25 years. (Testimony, Exhibit 1)
14. Investigators then asked to speak with Tim O'Donnell, the manager of record. Mr. Mastrodicasa replied, "you can speak to me, I'm in charge. Tim has not been here in 10 years." When Investigators asked Mastrodicasa about his role in the establishment, Mastrodicasa stated he orders all the alcohol; he hired the employees: Ann, Rob, and Karen, and pays them by check using the Dawes Ave. Variety account. Mastrodicasa stated he is a signatory on the business' checking account. (Testimony, Exhibit 1)
15. Investigators asked Mastrodicasa if he was aware of a 2007 ABCC violation, where the Commission found Dawes Ave Variety had permitted gambling. Mastrodicasa said it was a mistake that they had stipulated to the violation, and that it did not happen. (Testimony, Exhibit 1)
16. Administrative review of the Licensee's file indicates that the ABCC held a hearing on May 17, 2007, on violations of: 204 CMR 2.05 (1) Permitting Gambling (1 Count) and 204 CMR 2.05 (2) Permitting an illegality on the licensed premises, to wit: M.G.L. Ch.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 (1 Count). The Licensee was represented by counsel and stipulated to the violations. Both Timothy O'Donnell and Silvano Mastrodicasa attended the hearing. By decision dated May 23, 2007, the ABCC suspended the Licensee's license for six (6) days to be served. (Commission records, Testimony, Exhibit 1)
17. Administrative review also shows that Dawes Ave Variety Inc.'s 2011 renewal application was signed by Silvano Mastrodicasa. Mr. Mastrodicasa is not an approved officer or director of the corporation, nor is he the approved manager of record. (Commission records, Testimony, Exhibits 1, 2)

18. Mr. Mastrodicasa testified before the Commission and admitted that he signed the 2011 renewal application, and that he is not an officer, director, nor the license manager of the Licensee, Dawes Ave. Variety, Inc. (Testimony, Commission records, Exhibit 2)

### DISCUSSION

Licenses to sell alcoholic beverages are a special privilege subject to public regulation and control, Connolly v. Alcoholic Beverages Control Comm'n., 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 M.G.L. c. 138.

M.G.L. c. 138 gives the Commission the authority to grant, revoke and suspend licenses. Chapter 138 was “enacted . . . to serve the public need and . . . to protect the common good.” M.G.L. c. 138, §23. “[T]he purpose of discipline is not retribution, but the protection of the public.” Arthurs v. Bd. of Registration in Medicine, 383 Mass. 299, 317 (1981) (emphasis supplied). The Commission is given “comprehensive powers of supervision over licensees.” Connolly, 334 Mass. at 617.

#### M.G.L. C. 138, §64, To Wit: M.G.L. C. 138, §16A – Annual Renewal Signed by a Person Other Than Those Authorized by the Commission

Under the pertinent provisions of M.G.L. c. 138, § 16A, a license “shall be automatically renewed for the next annual license period upon application by the holder thereof during the month of November and shall be automatically renewed...provided that said license is of the same type as the expiring license and covers the same licensed premises. If the application does not meet the conditions hereunder it shall be treated as an application for a new license and all the procedures set forth under section 15A shall be applicable thereto.” A corporate officer, a director, a shareholder, a license manager, or an individual owner must sign the renewal form. The Commission also has a longstanding administrative practice under M.G.L. c. 138, §15A to allow “all persons who have a direct or indirect beneficial interest in said license” to sign the application for renewal.

Administrative review of the Licensee’s file shows that renewals from 1996 – 1998 were signed by Pamela O’Donnell and that renewals from 2000 – 2010 and 2012 – 2016 were signed by Timothy O’Donnell.

The 2011 annual license renewal form filed by the Licensee with the Commission bears the signature of Silvano Mastrodicasa. Mr. Mastrodicasa was not an individual who possessed a direct or indirect interest in this license in 2011. Mr. Mastrodicasa testified before the Commission and admitted that he signed the 2011 annual renewal and that he was not an approved officer, director, shareholder, nor the license manager of the licensee. (Testimony, Exhibit 2)

The Local Board approved this Licensee’s 2011 renewal application although they did not comply with the renewal requirements expressly set forth in M.G.L. c. 138, § 16A. Consequently, Dawes Ave. Variety, Inc.’s license was renewed by the Local Board contrary to the requirements of, and in violation of, M.G.L. c. 138, § 16A.

The application should have been treated as an application for an original license. M.G.L. c. 138, §16A. It was not. Notwithstanding the fact that the Local Board approved the Licensee's 2011 annual renewal with an unauthorized person's signature, the Commission cannot let stand an action of the Local Board that it could not lawfully authorize in the first place. See Hastings Associates, Inc. v. Local 369 Building Fund, Inc., 42 Mass. App. Ct. 162, 178 (1997) (there is a "strong public policy favoring enforcement of our licensing laws regarding the selling of alcoholic beverages."); Beacon Hill Civic Assn. v. Ristorante Toscano, Inc., 422 Mass. 318, 320-324 (1996)(private contract purporting to transfer control of license held to be illegal and unenforceable under public policy expressed in the Liquor Control Act, Chapter 138); Zelman v. ABCC, 335 Mass 515 (1957).

The Commission finds that the 2011 annual renewal of the license of Dawes Ave Variety, Inc. violated M.G.L. c. 138 § 64 – License issued under this chapter by the Local Licensing Authority in violation of section 16A or any other provision of this chapter.

The specific language of this chapter mandates that the Commission revoke the license of Dawes Ave. Variety, Inc. Rigali v. Cahill, Hampden Superior Court C.A. No. 2008-00362, Memorandum and Order dated July 22, 2009 (Veils, J.)(where renewal of license was "in clear violation of the plain language of M.G.L. c. 138, §16A, the ABCC was obligated to revoke the license pursuant to M.G.L. c. 138, § 64."); See In Re: Margaret's Restaurant, Inc., d.b.a. Hokeys, Oxford MA (ABCC Decision dated July 12, 2005); In re: Pop's Cafe, Inc., Holyoke, MA (ABCC Decision dated March 12, 2008). As the Commission acknowledged in Margaret's, no other sanction is available for the Commission to consider given the express language of the statute. Id. The Commission has no discretion here and must revoke the license forthwith.

The Commission finds that the renewal of the license of Dawes Avenue Variety, Inc. for calendar year 2011 violated Ch.138 § 64 – License issued under this chapter by the LLA in violation of section 16A or any other provision of this chapter.

### CONCLUSION

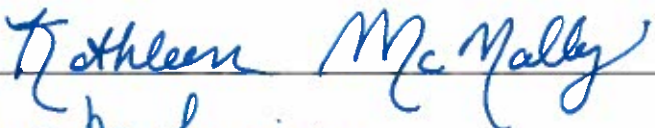
Based on the evidence, the Commission finds the Licensee violated:

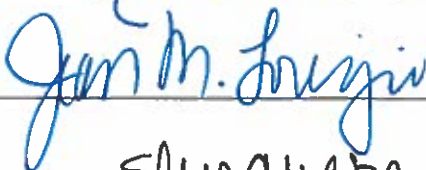
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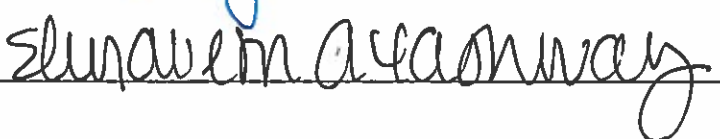
On the charge, M.G.L. Ch. 138, § 64, License issued under this chapter by the Local Licensing Authorities in violation of § 16A or any other provision of this chapter, the Commission **REVOKES** the license of Dawes Avenue Variety, Inc. d/b/a Dawes Avenue Variety **EFFECTIVE FORTHWITH.**

Since the Commission REVOKES the license based on the statutory requirements under M.G.L. c. 138, § 64, the Commission does not address, and leaves for another day, the question of a penalty for violations of: 204 CMR 2.05 (2) Permitting an illegality on the licensed premises, to wit: M.G.L. C. 140 § 177A (5) Automatic Amusement devices licensed under this section shall be so installed on the premises described in the license as to be in open view at all times while in operation, and shall at all times be available for inspection; and M.G.L. Ch.138, §23- Transfer of the privilege of a license without proper approval; violation date: various dates since 1995 to October 13, 2017.

**ALCOHOLIC BEVERAGES CONTROL COMMISSION**

Kathleen McNally, Commissioner 

Jean M. Lorizio, Chairman 

Elizabeth A. Lashway, Commissioner 

Dated: March 30, 2018

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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