



*Commonwealth of Massachusetts
Alcoholic Beverages Control Commission
95 Fourth Street, Suite 3
Chelsea, Massachusetts 02150-2358*

Jean M. Lorizio, Esq.
Chairman

NOTICE OF SUSPENSION

September 23, 2024

**SEASIDE CLUB OF PLYMOUTH INC.
77 FOREST AVENUE EXT.
PLYMOUTH, MA 02360
LICENSE#: 00013-CL-0984
VIOLATION DATE: 10/19/2022
HEARD: 4/04/2023**

After a hearing on April 4, 2023, the Commission finds Seaside Club of Plymouth Inc. violated 204 CMR 2.05 (1): Permitting Gambling.

The Commission **suspends the license for a period of 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 are found by this Commission.**

The suspension shall commence on Monday, November 18, 2024, and terminate on Wednesday November 20, 2024. The license will be delivered to the Local Licensing Board or its designee on Monday, November 18, 2024, at 9:00 A.M. It will be returned to the licensee on November 21, 2024.

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.

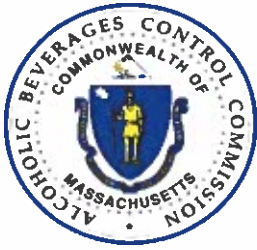
ALCOHOLIC BEVERAGES CONTROL COMMISSION

Jean M. Lorizio
Chairman

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2023-000015-ad-enf

cc: Local Licensing Board
Katherine McCormick, Esq., Associate General Counsel
Frederick G. Mahony, Chief Investigator
John David, Investigator
Alicia Cutter, Investigator
Dennis Keefe, Investigator
Administration, File



Commonwealth of Massachusetts
Alcoholic Beverages Control Commission
95 Fourth Street, Suite 3
Chelsea, Massachusetts 02150-2358

Jean M. Lorizio, Esq.
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DECISION

SEASIDE CLUB OF PLYMOUTH INC.
77 FOREST AVENUE EXT.
PLYMOUTH, MA 02360
LICENSE#: 00013-CL-0984
VIOLATION DATE: 10/19/2022
HEARD: 4/04/2023

Seaside Club of Plymouth 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 remote hearing via Microsoft Teams on Tuesday, April 4, 2023, 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.

The above captioned occurred on Wednesday, October 19, 2022, according to Investigator David's Report.

The following documents are in evidence:

1. Investigator David's Investigative Report;
2. ABCC Form 43, Approval of Renewal, 12/12/1963;
3. Photographs of Interior of Licensed Premises and Electronic Video Devices; and
4. ABCC Decision, 3/18/2021.

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

FINDINGS OF FACT

1. On Wednesday, October 19, 2022, at approximately 5:00 p.m., Investigators Cutter, Keefe, and David ("Investigators") inspected Seaside Club of Plymouth Inc. to determine the manner in which their business was being conducted. (Testimony, Exhibit 1)
2. Investigators observed five (5) electronic video devices, which were numbered 1 through 5, located along the wall in the main room of the licensed premises. (Testimony, Exhibits 1, 3)

3. Investigators identified themselves to Jim Latosek, who said he was the Treasurer of the club, and informed him of the inspection. (Testimony, Exhibit 1)
4. Investigators interviewed Mr. Latosek who confirmed that the electronic video devices were utilized for gambling. He stated to Investigators that the wooden cash drawer located behind the bar contained \$3,476 in US currency which was used to pay off individuals who won games on the video poker devices. Latosek stated that the club owns the video poker devices and \$1.00 is equivalent to four (4) points. Id.
5. Mr. Latosek informed Investigators that individuals who won points on the video poker devices would notify the bartender on duty. The bartender would then verify the points won, pay the individuals in U.S. currency from the wooden cash drawer, and then reset the machines to zero. Id.
6. The bartender has keys to the video poker devices and maintains a daily log recording the devices' payoffs. Investigators secured the US currency and documents from behind the bar to the left of the cash register as evidence. Id.
7. Investigators observed the electronic video devices had several characteristics which, based on their training and experience, indicate that the machines were being utilized as gambling devices:
 - Each accepted U. S. Currency in bills ranging from \$1, \$5, \$10, and \$20;
 - Each device had markings which indicated, "for amusement only";
 - Each device had a hardwire "knock off" mechanism, a button on the back of the device, to reset the credits earned to zero. (Testimony, Exhibits 1, 3)
8. Investigators asked Mr. Latosek to provide the key to open the devices. Mr. Latosek obtained the key from the bartender on duty. (Testimony, Exhibit 1)
9. Investigators then opened and inspected the devices. They observed each device had two meters to record the credits in and credits out with back-up batteries, which is another indication that the machines were being used as gambling devices. (Testimony, Exhibits 1, 3)
10. Investigators observed that each device had a plastic bucket containing various amounts of U.S. currency: device #1 had \$181.00; device #2 – \$120.00; device #3 – \$101.00; device #4 – \$340.00, and device #5 – \$40.00. (Testimony, Exhibit 1)
11. Mr. Latosek stated the proceeds from the devices were donated to charity and he had documentation of the taxes paid on the machines' profits. Id.
12. Investigators informed Mr. Latosek of the violations and advised him a report would be submitted to the Chief Investigator for further review. Id.

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 Chapter

Chapter 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.

The law is well-settled that “the responsibility of the licensee is to exercise sufficiently close supervision so that there is compliance with the law on the premises. A vendor who sells alcohol is “bound at his own peril to keep within the condition of his license.” Rico’s of the Berkshires, Inc. v. Alcoholic Beverages Control Comm’n, 19 Mass. App. Ct. 1026, 1027 (1985) (quoting Commonwealth v. Gould, 158 Mass. 499, 507 (1893), and citing Burlington Package Liquors, Inc. v. Alcoholic Beverages Control Comm’n, 7 Mass. App. Ct. 186, 190 (1979)).

In order for the Commission to make a finding, there must be substantial evidence that a violation has occurred. “Substantial evidence of a violation is more than a mere scintilla. It means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.” Consol. Edison Co. of New York v. N.L.R.B., 305 U.S. 197, 229 (1938); accord Charlesbank Rest. Inc. v. Alcoholic Beverages Control Comm’n, 12 Mass. App. Ct. 879 (1981).

The Licensee is charged with:

a violation of 204 CMR 2.05(1), which provides that: [s]lot machines or any other devices which furnish anything besides merchandise of a quantity and quality commensurate with the price deposited therein are prohibited on licensed premises. Gambling of any sort, except those games of chance authorized by the Legislature and/or local licensing authorities, shall not be permitted on any license premises; and

a violation of 204 CMR 2.05(2) Permitting an Illegality on the licensed premises, to wit: M.G.L. C. 140 § 177A (6) which provides that [n]o 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.

204 CMR 2.05(1), 204 CMR 2.05(2), M.G.L. c. 140, § 177A (6).

Direct evidence was presented through the testimony of Investigator David who conducted the inspection of the licensed premises. He made observations of video poker machines, which he concluded, given his experience and training, were being used for gambling. This was corroborated during his inspection by the Licensee’s Treasurer who confirmed the machines were utilized for gambling. The Treasurer went on to explain how the machines were utilized by patrons as well as the process for an employee to make payment to winners. The Treasurer cooperated with the Investigator in providing access to the cash drawer and written log, and to the machines themselves. (Exhibit 3)

The Commission is persuaded and finds there is substantial evidence that the Licensee committed a violation of 204 CMR 2.05(1).

The Commission finds no violation of 204 CMR 2.05(2) to wit: M.G.L. C. 140 § 177A (6) as no evidence was presented establishing the licensure of the video poker machines.

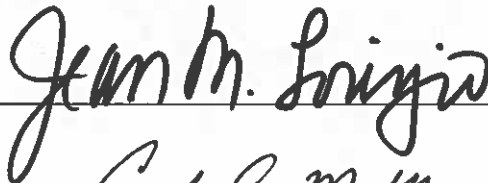
CONCLUSION

Based on the evidence, the Commission finds the Licensee violated 204 CMR 2.05 (1): Permitting Gambling. As a result, the Commission **suspends the license for a period of 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 are found by this Commission. In addition, the Licensee must not possess in or on the licensed premises any automatic amusement devices or video poker machines.**

The Commission finds No Violation of 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 occurred.

ALCOHOLIC BEVERAGES CONTROL COMMISSION

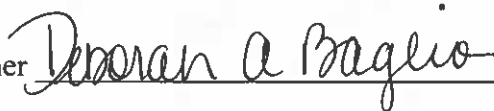
Jean M. Lorizio, Chairman



Crystal Matthews, Commissioner



Deborah A. Baglio, Commissioner



Dated: September 23, 2024

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