

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

Steven Grossman
Treasurer and Receiver General

NOTICE OF SUSPENSION

Kim S. Gainsboro, Esq.
Chairman

January 21, 2014

BEACHMONT V.F.W. POST # 6712 INC.
150 BENNINGTON ST.
REVERE, MA 02151
LICENSE#: 102200003
VIOLATION DATE: 03/27/2013
HEARD: 11/19/2013

After a hearing on November 19, 2013, the Commission finds Beachmont V.F.W. Post # 6712 Inc. in violation 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;
- 3) 204 CMR 2.05 (2), to wit: M.G.L. c. 271 §17 Keeping a building or room, or any part thereof, with apparatus, books or any device, for registering bets, upon the result of machine; knowingly permitting the same to be used or occupied for such purpose; knowingly permitting to be therein kept, exhibited, used or employed, any device or apparatus for registering such bets;
- 4) 204 CMR 2.05 (2), 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;
- 5) C. 138, §1 Failure to file with the Commission annually 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; and
- 6) M.G.L. c.138 § 15A Change of Officers and Directors in the non-profit corporation without authorization.

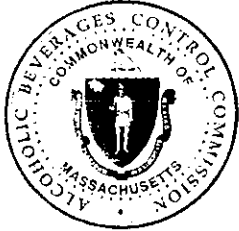
The above-captioned licensee's license is **SUSPENDED INDEFINITELY FORTHWITH** until further written order from this Commission.

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
Jan Kujawski, Investigator
Rose Bailey, Investigator
Jack Carey, Investigator
Robert Allen, Esq. via fax 617-383-6001
Administration
File



The Commonwealth of Massachusetts
Department of the State Treasurer
Alcoholic Beverages Control Commission
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DECISION

BEACHMONT V.F.W. POST # 6712 INC.
150 BENNINGTON ST.
REVERE, MA 02151
LICENSE#: 102200003
VIOLATION DATE: 03/27/2013
HEARD: 11/19/2013

Beachmont V.F.W. Post # 6712 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, November 19, 2013, regarding an alleged violation 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;
- 3) 204 CMR 2.05 (2), to wit: M.G.L. c. 271 §17 Keeping a building or room, or any part thereof, with apparatus, books or any device, for registering bets, upon the result of machine; knowingly permitting the same to be used or occupied for such purpose; knowingly permitting to be therein kept, exhibited, used or employed, any device or apparatus for registering such bets;
- 4) 204 CMR 2.05 (2), 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;
- 5) C. 138, §1 Failure to file with the Commission annually 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; and
- 6) M.G.L. c.138 § 15A Change of Officers and Directors in the non-profit corporation without authorization.

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

The following documents are in evidence as exhibits:

1. Investigator Kujawski's Investigative Report dated March 27, 2013;
2. Photograph Members Only Sign;
3. Photographs (7) of Devices on Licensed Premises;
4. Guest Checks dated 3/23/13 and 3/24/13;
5. Guest Checks dated 3/9/13;
6. Ledger;
7. Daily Pool Forms;

8. Weekly Pool Forms;
9. City of Revere Automatic Amusement Devices License Application dated 11/28/12;
10. Affidavit of Joseph Ruggiero dated 11/28/13;
11. Licensee's Monthly Expense and Deposit Records;
12. Licensee's Annual Report of 1982;
13. Licensee's Filing dated 11/1/12 for Secretary of the Commonwealth, Corporations Division; and
14. Licensee's Stipulation of Facts.

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

FACTS

1. On Wednesday, March 27, 2013, at approximately 5:30 p.m., Investigators Bailey, Carey, and Kujawski conducted an investigation of the business operation Beachmont V.F.W. Post # 6712 Inc. to determine the manner in which its business was being conducted.
2. Investigators entered the licensed premises and identified themselves to the bartender on duty, John Eldridge.
3. Investigators observed a room with a closed door which had signage indicating "Members Only." Investigators asked for access to this room which was provided through an electronic mechanism.
4. Investigators observed that the locked room contained five electronic video devices.
5. Investigators asked Mr. Eldridge to speak with the license manager or an officer of the club. Mr. Eldridge made a telephone call.
6. Approximately 20 minutes later Joseph Ruggiero arrived at the licensed premises. Mr. Ruggiero identified himself as the President and manager of the club. Investigators identified themselves and informed Mr. Ruggiero that they would conduct an inspection of the licensed premises.
7. Investigator Kujawski asked Mr. Ruggiero who owned the electronic video devices. Mr. Ruggiero stated that he did not want to say anything, but he later informed Investigator Carey that the devices were owned by Constitution Vending.
8. Investigators asked Mr. Ruggiero to open each electronic video device for inspection. The devices were identified as:
 - o River Boat Poker, machine #1;
 - o Cherry '96, machine #2;
 - o Cherry Master, machine #3;
 - o Double Up, machine #4; and
 - o Magical Odds, machine #5.
9. Investigator Bailey conducted an inspection of each electronic video device.
10. Investigator Bailey observed that the devices contained the following characteristics, which based on their training and experience, investigators know to be indications that the devices are utilized as gambling devices:
 - o Each device accepted dollar bills ranging from \$1, 5, 10, 20, 50, and 100;
 - o Each device had a "knock off" mechanism in the form of a push button on the back of the device which reset the credits to zero;
 - o Each device had a back-up battery in place;
 - o Each device had electronic dipswitches to set odds;
 - o Each device had two meters within the unit to record credits in and credits out.
11. Investigators observed U.S. currency contained in the money bin of each device. Investigators asked Mr. Ruggiero to count the U.S. currency. Below is a list of money contained within the bins of each electronic video device:

- Device #1 had no currency;
 - Device #2 had \$271.00;
 - Device #3 had \$204.00;
 - Device #4 had \$120.00;
 - Device #5 had \$40.00.
12. Investigators observed Mr. Ruggiero return the U.S. currency to the money bin of each device.
 13. Investigator Bailey conducted an audit of electronic video device #2, Cherry 96. She observed the meters within the device showed credits in: 620839, and credits out: 155312.
 14. Investigator Bailey placed a minimum bet of \$2.00 in U.S. currency in the device, and received 8 credits (.25 per credit). After selecting 8 credits, the machine registered the bet of 8 credits to be played and showing zero credits remaining. Investigator Bailey then pressed play and won 2 credits.
 15. After pressing the reset button located on the back of the device, Investigator Bailey observed that the credits reset to zero. The meters then showed credits in: 620847, and credits out: 155314.
 16. Investigator Bailey conducted an audit of electronic video device #3, Cherry Master. She observed the meters within the device showed credits in: 591197, and credits out: 604499.
 17. Investigator Bailey placed a minimum bet of \$2.00 in U.S. currency in the device, and received 8 credits (.25 per credit). After selecting 8 credits, the machine registered the bet of 8 credits to be played and showing zero credits remaining. Investigator Bailey then pressed play and did not win any credits. The meters then showed credits in: 591205, and credits out: 604499.
 18. The number of points resulting from the insertion of \$2.00 U.S. currency reflects that each point is worth twenty-five (25) cents per credit, which based on their training and experience, investigators know to be the standard value per credit for illegal gambling devices in Massachusetts.
 19. Investigators then asked Mr. Ruggiero to provide them with access to the office located in a room behind the bar area on the licensed premises.
 20. Investigators observed the following in the office:
 - A Cash box containing \$1805.00 which Mr. Ruggiero stated was the currency removed that morning from the electronic video devices;
 - Guest Checks with various notations in a trash barrel. The notations were machine number, points, dollar amounts, and individual names or initials;
 - Guest Checks with various notations in plain view on a desk. The notations were machine number, points, dollar amounts, and individual names or initials;
 - A Log Book containing various numerical information including meter readings relative to the numbered electronic video devices;
 - Daily Pool Forms, \$.50;
 - Weekly Pool Forms, \$1.00;
 - City of Revere Automatic Amusement Devices License Application dated 11/28/12;
 - Sworn Affidavit of Joseph Ruggiero dated 11/28/13 in which Mr. Ruggiero swears that the automatic amusement devices will be in open view at all times, they are not to be used for the purpose of gambling, and that any violation of M.G.L. c. 140, § 177A or M.G.L. c. 136 shall be cause for license suspension or revocation; and
 - Monthly Expense and Deposit Records.
 21. Investigator Kujawski conducted an administrative review of the Licensee's Commission files which showed:
 - Since the original application, the Commission has not received any applications for a Change of Officers or Directors;
 - The Annual Report of 1982 is the most recent report received by the Commission;

- 1982 Report lists: President John J. Mack, Jr.; Treasure: Robert J. Kane; Clerk: George M. Hickey; Vice-President George W. Barker; Directors: Leo F. Callahan, Joseph O'Keefe, John F. McGrath Jr., Ralph Harris, Vincent Reed, Francis E. Barker, George P. McGrath, Carl Knudson, Robert B. Reilly.
- The Secretary of the Commonwealth. Corporations Division indicates the Licensee has the following Officers: President: Joseph M. Ruggiero; Treasurer: Gregory Marciello; Clerk: Robert Gatchel; Director: Thomas Murphy.
- None of these individuals listed on the website of the Corporation Division of the Secretary of State's Office have been approved by the Commission.

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 to sell alcoholic beverages is set out in M.G.L. c. 138. Licenses must be approved by both local licensing authorities and the ABCC. M.G.L. c. 138, §§12, 67. See Beacon Hill Civic Assn. v. Ristorante Toscano, Inc., 422 Mass. 318, 321. Section 2 of c. 138 provides, in pertinent part: "No person shall ... sell ... alcoholic beverages or alcohol, except as authorized by this chapter [...] Violation of any provision of this section shall be punished except as provided in section twenty-two [for unlawful transportation of alcoholic beverages] by a fine of not less than one hundred nor more than one thousand dollars or by imprisonment for not more than one year, or both."

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. Particularly in view of the extent to which the policy of c. 138, and the basis for action under it, have been specified, as already indicated, there is no invalid delegation of authority to the Commission in leaving to it, as was done in section [12], the power to approve or disapprove applicants for licenses. See Butler v. East Bridgewater, 330 Mass. 33, 36-37, Connolly v. Alcoholic Beverages Control Commission, 334 Mass. 613, 619 (1956).

The SJC further held that "[t]he legislative history of [the Commission's enabling act], and of M.G.L. (Ter. Ed) Ch. 138, as amended, clearly shows that the powers of the Commission were not intended to be perfunctory or limited. In the very respect here in issue, the approval or disapproval of the action of local licensing authorities, that history indicates that the Commission was charged with important responsibilities and that it was not to be narrowly restricted in performing them." Connolly v. Alcoholic Beverages Control Commission, 334 Mass. 613, 617 (1956).

204 CMR 2.05 (1) Permitting Gambling: 204 CMR 2.05(1), states in pertinent part, "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." The Licensee stipulated to this violation. The Commission heard and observed evidence that the licensee permitted gambling on the premises. The Commission finds that the licensee committed a violation of 204 CMR 2.05 (1).

204 CMR 2.05 (2) - Permitting an illegality on the licensed premises: 204 CMR 2.05 (2). Permitting an Illegality on the licensed premises, to wit: M.G.L. c. 140 §177A (6) - 204 CMR 2.05 (2) states: No licensee for the sale of alcoholic beverages shall permit any disorder, disturbance or illegality of any kind to the place in or on the licensed premises. The licensee shall be responsible therefore, whether present or not. M.G.L. c. 140 §177A (6) states - 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.

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, as amended through St. 1977, c. 929, § 7. "[T]he purpose of discipline is not retribution but the protection of the public. Arthurs v. Board of Registration in Medicine, 383 Mass. 299, 317 (1981). The Commission is given "comprehensive powers of supervision over licensees," Connolly v. Alcoholic Beverages Control Commission, 334 Mass. 613, 617 (1956), as well as broad authority to issue regulations. The Local Board has authority to enforce Commission regulations. New Palm Gardens, Inc. v. Alcoholic Beverages Control Commission, 11 Mass. App. Ct. 785, 788 (1981).

The law is well-settled that under the regulation, [204 CMR 2.05 (2)] 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 conditions of his license." Commonwealth v. Gould, 158 Mass. 499, 507 (1893). Burlington Package Liquors, Inc. v. Alcoholic Beverages Control Commission, 7 Mass. App. Ct. 186, 190 (1979). It is, thus, quite possible for a licensee to offend the regulatory scheme without scienter. Rico's of the Berkshires, Inc. v. ABCC, 19 Mass. App. Ct. 1026, 1027 (1985) (rescript).

The licensee stipulated to this charge. The Commission received evidence that the Investigators observed five automatic amusement devices, identified as:

- Machine #1 - River Boat Poker;
- Machine #2 - Cherry '96;
- Machine #3 - Cherry Master;
- Machine #4 - and Double Up;
- Machine #5 - Magical Odds.

Investigator Bailey conducted an inspection of each electronic video device. Investigator Bailey observed that the devices contained characteristics which, based on her training and experience, she knew to be indications that the devices are utilized as gambling devices. Based on the evidence and by the licensee's own admissions, the Commission finds that the licensee committed a violation of 204 CMR 2.05 (2) 204 CMR 2.05 (2) Permitting an Illegality on the licensed premises, to wit: M.G.L. c. 140 §177A (6).

204 CMR 2.05 (2) - Permitting an illegality on the licensed premises: 204 CMR 2.05 (2), to wit: M.G.L. c. 271 §17 - 204 CMR 2.05 (2) states: No licensee for the sale of alcoholic beverages shall permit any disorder, disturbance or illegality of any kind to the place in or on the licensed premises. The licensee shall be responsible therefore, whether present or not. M.G.L. c. 271 §17 states: Keeping a building or room, or any part thereof, with apparatus, books or any device, for registering bets, upon the result of machine; knowingly permitting the same to be used or occupied for such purpose; knowingly permitting to be therein kept, exhibited, used or employed, any device or apparatus for registering such bets. The licensee admitted, and the Commission finds that the licensee committed a violation of 204 CMR 2.05 (2), to wit: M.G.L. c. 271 §17.

Permitting an illegality on the licensed premises, 204 CMR 2.05 (2), to wit: M.G.L. c. 140 §177A (5) - 204 CMR 2.05 (2) states: No licensee for the sale of alcoholic beverages shall permit any disorder, disturbance or illegality of any kind to the place in or on the licensed premises. The licensee shall be responsible therefore, whether present or not. M.G.L. c. 140 §177A (5) states: 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.

The Licensee stipulated and the Commission heard evidence that the Investigators, while inside the premises, observed a room with a closed door. The closed door displayed signage indicating "Members Only." Investigators asked for access to this room, which was provided through an electronic mechanism. Investigators observed that the locked room contained five electronic video devices that were utilized for gambling. Based on the evidence, and the licensee's admission, the Commission finds the licensee violated 204 CMR 2.05 (2), to wit: M.G.L. c. 140 §177A (5).

M.G.L. c. 138, § 15A- Failure to disclose all persons who have a direct or indirect beneficial or financial interest in said license, to wit: Failure to notify licensing authorities of a change of officers and directors:

M.G.L. c. 138, § 15A requires that a licensee or applicant for an alcoholic beverages license disclose all individuals who have a direct or indirect beneficial interest in the license. The Appeals Court held in Number Three Lounge, Inc. v. Alcoholic Beverages Control Commission, 7 Mass. App. Ct. 301 (1979), the concept of a "direct or indirect beneficial interest" in a license can range from an ownership interest to an absolute proprietary interest to a mere possessing right and includes the right of control. The officers and directors of a corporation are the control group of that corporation.

In this case, the licensee changed the officers and directors of the corporation that holds the license without the statutorily required prior approval from both the Local Board and the Commission. The individuals who were last disclosed and approved by the Local Board and the Commission to hold the positions of corporate directors and corporate officers no longer hold these roles in the corporation. The licensee neither sought nor received the statutorily required approvals of this change. This is a violation of M.G.L. c. 138, § 15A.

A licensee, who wishes to transfer its license, or an interest in its alcoholic beverages license, is required to obtain prior written approval from the licensing authorities. This allows the licensing authorities to determine if the transfer is in the public interest, and if the proposed transferee is someone who qualifies to hold a license.

Implicit in the transfer of a license is the surrender of control. A "transfer of a business takes place when the person introduced to it runs the business for his own account." Griffin's Brant Rock Package Store, Inc. v. Alcoholic Beverages Control Commission, 12 Mass. App.Ct.768, 771, 429 N.E.2d 62, 65 (1981). The Commission is instructed by the cases of Cleary v. Cardullo's, Inc., 347 Mass. 337, 346-350, 198 N.E.2d 281 (1964) and Number Three Lounge, Inc. v. Alcoholic Beverages Control Comm., 7 Mass. App. 301, 304-308, 387 N.E.2d 181 (1979). As characterized by the Appeals Court in the Griffin's Brant Rock case, "[i]n Cleary, the purported principal contributed no financial resources and was wholly dependent on his father and corporations controlled by his father." Griffin's Brant Rock Package Store, Inc. v. Alcoholic Beverages Control Commission, 12 Mass. App.Ct.768, 771, 429 N.E.2d at 65, and "[i]n Number Three Lounge, there was evidence that a son-in-law of a person who had been refused a license was substituted as an applicant, but the substitution lacked all economic substance. Griffin's Brant Rock Package Store, Inc. v. Alcoholic Beverages Control Commission, 12 Mass. App. Ct. at 773-774, 429 N.E. 2d at 66.

Investigator Kujawski conducted an administrative review of the Licensee's Commission files which showed that since the original application filed in 1959, the Commission has not received any applications for a Change of Officers or Directors. The Annual Report of 1982 is the most recent report received by the Commission. The 1982 Report lists: President John J. Mack, Jr.; Treasurer: Robert J. Kane; Clerk: George M. Hickey; Vice-President George W. Barker; Directors: Leo F. Callahan, Joseph O'Keefe, John F. McGrath Jr., Ralph Harris, Vincent Reed, Francis E. Barker, George P. McGrath, Carl Knudson, Robert B. Reilly.

The Secretary of the Commonwealth, Corporations Division indicates the Licensee has the following Officers: President Joseph M. Ruggiero; Treasurer: Gregory Marciello; Clerk: Robert Gatchel; Director: Thomas Murphy. None of these individuals listed on the Corporations Division website have been approved by the Commission.

The Commission records did not disclose that the licensee ever sought the statutorily required prior approval to change the officer and directors for individuals other than those approved by the Commission to have a direct or indirect beneficial interest in this license.

The licensee stipulated and the Commission is convinced by satisfactory proof and finds that there was a change of officers and directors resulting in a transfer of a direct or indirect beneficial interest in the license, without first obtaining written approval and permission from both the Local Board and the Commission, as required by statute, M.G.L. c. 138, sections 15A and 23.

M.G.L. Ch. 138, §1- Failure to file with the Commission annually a list of the names and residences of its Officers, together with the amount of the salary or compensation received by each employee engaged in the handling or selling of alcoholic beverages:

M.G.L. Ch. 138, section 1 states, in pertinent part, that the holder of a club-type § 12 license, like the Post, "Such club shall file with the local licensing authorities and the commission annually within three months after January first in each year 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." The Licensee has not filed any of these statutorily required annual reports since 1982.

The Commission finds that the Licensee committed a violation of M.G.L. Ch. 138, section 1. The Commission is requiring the Licensee to file the required annual reports for the last ten (10) years, from calendar year 2004 through calendar year 2013, as well as for the current license calendar year 2014.

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. 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;
- 3) 204 CMR 2.05 (2), to wit: M.G.L. c. 271 §17 Keeping a building or room, or any part thereof, with apparatus, books or any device, for registering bets, upon the result of machine; knowingly permitting the same to be used or occupied for such purpose; knowingly permitting to be therein kept, exhibited, used or employed, any device or apparatus for registering such bets;
- 4) 204 CMR 2.05 (2), 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;
- 5) C. 138, §1 Failure to file with the Commission annually 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; and
- 6) M.G.L. c.138 § 15A Change of Officers and Directors in the non-profit corporation without authorization.

Based on the evidence, the Commission finds the licensee violated 204 CMR 2.05(1) – Permitting Gambling. As the licensee has been in business for more than forty (40) years with no previous violations, 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.**

Based on the evidence, the Commission finds the licensee violated 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. Therefore, the Commission **suspends the license for five days (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. This penalty is to be served concurrently with the aforementioned penalty.**

Based on the evidence, the Commission finds the licensee violated 204 CMR 2.05 (2), to wit: M.G.L. c. 271 §17 Keeping a building or room, or any part thereof, with apparatus, books or any device, for registering bets, upon the result of machine; knowingly permitting the same to be used or occupied for such purpose; knowingly permitting to be therein kept, exhibited, used or employed, any device or apparatus for registering such bets. Therefore, 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. This penalty is to be served concurrently with the aforementioned penalties.**

Based on the evidence, the Commission finds the licensee violated 204 CMR 2.05 (2), 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. Therefore, 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. This penalty is to be served concurrently with the aforementioned penalties.

Based on the evidence, the Commission finds the licensee violated c. 138, §1 Failure to file with the Commission annually 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; and M.G.L. c.138 §15A Change of Officers and Directors in the non-profit corporation without authorization. Therefore, for violations of M.G.L. c. 138, §1 and §15A the Commission **INDEFINITELY SUSPENDS** the license of Beachmont V.F.W. Post # 6712 Inc., here **effective forthwith**, until further written order of the Commission.

The Commission will not issue any further order without a written request from the Licensee showing good cause to reconsider this indefinite suspension and a hearing before the Commission that the Licensee attends.

Good cause for the Commission to consider issuing a further written order revising the order of indefinite suspensions will include, but not be limited to, the Licensee filing with both the Commission and the local licensing authorities the appropriate annual reports pursuant to M.G.L. Ch. 138, section 1, for the years 2003 through 2014, and the Licensee filing the appropriate application for approval of the current officers and directors of the Post and that appropriate application if granted by the local licensing authorities and approved by the Commission.

IN ADDITION, THE LICENSEE MUST NOT POSSESS IN OR ON THE LICENSED PREMISES ANY AUTOMATIC AMUSEMENT DEVICE OR VIDEO POKER MACHINE.

ALCOHOLIC BEVERAGES CONTROL COMMISSION

Kathleen McNally, Commissioner



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

Susan Corcoran, Commissioner



Dated: January 21, 2014

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
Jan Kujawski, Investigator
Rose Bailey, Investigator
Jack Carey, Investigator
Robert Allen, Esq. via fax 617-383-6001
Administration
File