



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

Steven Grossman
Treasurer and Receiver General

Kim J. Gainsboro, Esq.
Chairman

DECISION

KST CORPORATION DBA BILL ASH LOUNGE
78 BOULEVARD
REVERE, MA 02151
LICENSE#: 102200006
VIOLATION DATE: 04/27/2013
HEARD: 06/25/2013

KST Corporation dba Bill Ash Lounge (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, June 25, 2013, regarding alleged violations of 204 CMR 2.05(2) – Permitting an illegality on the licensed premises, to wit: M.G.L. c. 140 §177A 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 (4 Counts) which occurred on March 27, 2013, according to Investigator Velez's report.

The following documents are in evidence as exhibits:

1. Investigator Velez's Investigative Report dated March 27, 2013;
 2. Photo of Sign "Unauthorized Personnel – Keep Out"; and
 3. Photo of Licensed Premises Looking Into Amusement Room.
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- A. ATM Contract dated August 10, 1999;
 - B. ATM Contract dated June 2013;
 - C. Photo of ATM Machine;
 - D. Sign Advertising ATM Machine;
 - E. Photo of Bowling Banquet dated March 24, 2011;
 - F. Photo dated September 29, 2011;
 - G. Photo of Bar View dated July 2012;
 - H. Photo of Christmas in July dated July 24, 2012;
 - I. Photo of Bar dated September 20, 2012;
 - J. Photo of Luau dated August 26, 2012;
 - K. Photo of Halloween Party, October 2012;
 - L. Current Photo View Looking into Amusement Room;
 - M. Current Photo View Looking out of Amusement Room;
 - N. Photo of Ice Machine;
 - O. Photo of Wall that had to be pushed out for Ice Machine.

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

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FACTS

1. On Wednesday, March 27, 2013, at approximately 6:35 p.m., Investigators Guarino, Kenny, and Velez investigated the business operation of KST Corporation dba Bill Ash Lounge to determine the manner in which their business was being conducted.
2. Investigators entered the premises, identified themselves to the bartender on duty, Tracy Miggs, and informed her that they would be conducting an inspection of the licensed premises.
3. Investigators Guarino and Kenny inspected the bar area.
4. While inspecting the licensed premises, investigators observed an enclosed room to the left side of the premises. The door was labeled, "Unauthorized Personnel Keep Out."
5. Inside the room, investigators observed four automatic amusement devices, two of which were labeled as Draw 80 Poker, one labeled Super 2 in 1, and one labeled Cherry Angel.
6. Investigators observed the machines as having the following characteristics:
 - The video devices accepted dollar bills ranging from \$1, \$5, \$10, and \$20.
 - The devices had the capability to select the number of points (the amount to bet);
 - The devices registered the bet by displaying the number of points selected;
 - The devices had the capability to double the bet by selecting a double up button;
 - Each device had markings, "for amusement only";
 - Each device had a "knock off" mechanism to reset the credits to zero, by placing a metal key against two metal bolts located on the exterior of the devices.
7. Investigators recognized these machines and pay out rates, based on their training and experience, as a standard pay-off rate for illegal gambling devices in Massachusetts.
8. Investigators informed Ms. Miggs of the violation and that a report would be filed with the Chief Investigator for review.

DISCUSSION

The licensee testified before the Commission and offered 16 exhibits. He testified that he always kept the door open to the room where the machines were housed, allowing customers access to the machines at all times. He also stated that the sign which read, "Unauthorized Personnel – Keep Out" was not in plain view, was old, and when the door was open it was not visible to his patrons. The Licensee also stated that the reason the sign was posted on the door was due to prior use of the room which was used as ice storage. Subsequent to this, he converted the room to an "amusement room" and kept it permanently open.

To support his claim, the Licensee produced photographs depicting his establishment during different time periods, showing different functions and holiday events. The photographs clearly depicted the "amusement room" with the open door allowing access to all patrons in open view. One photograph (exhibit L) clearly depicted the inside of the amusement room with two patrons in the room on an event night.

CONCLUSION

From all the evidence presented at the hearing, both testimonial and documentary, it is clear that the automatic amusement devices were in open view at all times while in operation, therefore, 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.

ALCOHOLIC BEVERAGES CONTROL COMMISSION

Susan Corcoran, Commissioner *Susan Corcoran*

Kathleen McNally, Commissioner *Kathleen McNally*

DATE: July 31, 2013

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
- Nicholas Velez, Investigator
- Caroline Guarino, Investigator
- Mark Kenny, Investigator
- Administration
- File