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Chairman

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

**THE SONS OF REVERE, LLC
8 REVERE ST.
REVERE, MA 02151
LICENSE#: 02200116
VIOLATION DATE: 8/13/2016
HEARD: 06/06/2017**

The Sons of Revere, LLC (the "Licensee") holds an alcohol license issued pursuant to M.G.L. c. 138, § 12. The Alcoholic Beverages Control Commission (the "Commission" or "ABCC") held a hearing on Tuesday, June 6, 2017, regarding alleged violation of 204 CMR 2.05 (1): Permitting Gambling. The above captioned occurred on August 13, 2016, according to Investigator Temple's Report.

The following documents are in evidence:

1. Investigator Temple's Investigative Report;
2. Yellow Notepad with written numbers;
3. Sons of Italy Shift Sheet with Receipt;
4. Piece of 8 ½ x 11 Paper Marked with Squares showing Names and Numbers;
5. Accordion Folder with Note, "Superbowl Squares";
6. Picture of Devices.

- A. Sons of Italy Shift Sheet with Receipt "Gerri";
- B. Sons of Italy Shift Sheet with Receipt "Cindy Paq".

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

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

FINDINGS OF FACT

1. On Saturday, August 13, 2016, at approximately 8:00 p.m., Investigator Temple and Chief Investigator Mahony ("Investigators") investigated The Sons of Revere, LLC to determine the manner in which their business was being conducted.

2. Investigators entered the licensed premises and observed five electronic video devices in a small room to the right of the bar. Investigators went behind the bar and observed a 5" x 8" pad of paper with handwritten notations indicating the numbers 200, 50, 2775, and 320.
3. Investigators asked the bartender on duty to explain the meaning of these numbers. The bartender pointed to the television and stated that he was in a fantasy football league and taking notes while watching the game. Investigators observed the televisions were playing either the Olympics or the Red Sox baseball game.
4. Investigators observed a Sons of Italy shift sheet for the day bartender (Sherry, on from 8:00 a.m. to 4:00 p.m.), which contained the numbers 2775 and 320 on its back. Investigators noted that these numbers were identical to those which the evening bartender identified as his fantasy football notes. Based on their training and experience, Investigators believed the numbers to be indications of credits accumulated and/or the amount paid out on the devices.
5. Also in the bar area, Investigators observed a plastic accordion folder, which was marked, "Superbowl Squares: \$100 per square; Open Bar for block owners only; \$1700 per quarter; \$100 every score change." The folder contained empty white envelopes and an 8.5" x 11" white paper with handwritten markings "AFC." Based on their training and experience, Investigators recognized these documents as indications of illegal gambling on sporting events.
6. Investigators conducted an audit of the electronic video devices. They observed the following characteristics which, based on their training and experience, they believed indicated these electronic devices were being used as gambling devices:
 - Two devices had markings which indicated, "for amusement only";
 - Each accepted U. S. Currency in bills ranging from \$1, \$5, \$10, \$20;
 - Each had the capability to select the number of points (the amount to bet);
 - Each registered the bet by displaying the number of points selected;
 - Each had the capability to double the bet using a double-up button; and
 - Each had a "knock off" mechanism, a button, named collect or ticket, on the front of the device which when pressed reset the credits to zero.
7. Chief Investigator Mahony placed \$1.00 in U.S. Currency into four of the devices, each of which displayed 4 credits which equaled twenty-five cents per credit. He then selected the credits or amount he wanted to bet. The device "registered" his bet and showed the credits remaining. He pressed the play button which indicated a loss. Chief Mahoney then pressed the button on the front of the device (the knock-off switch) and observed the credits reset to zero.
8. The fifth device on the far left was unlocked and out of service. Investigators examined the device and observed a switch on the left side, which when activated changed the screen to indicate the internal data of the device.
9. Investigators also observed a receipt printer, and two meters, one meter wired to record currency deposited and the other meter to record credits paid out.

10. The bartender on duty called the owner, David Lightbody, and handed the phone to Chief Mahony.
11. Mr. Lightbody informed Investigators that he was not paying off on the devices and he did not know anything about the [football] squares.
12. Chief Mahoney informed Mr. Lightbody of the violation and that a report would be submitted to the Commission for review.
13. At the hearing before the Commission, Mr. Lightbody testified that he had never seen the document marked as Exhibit 4 and denied that any illegal gaming was taking place on the premises. He further testified that the Licensee has never paid out on the electronic video machines, which are used for amusement only. He also testified that the shift sheets are used by the bartenders to document cash at the bar for deposits, change, and cashing checks. (Testimony)

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 138.

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.

Every violation the Commission finds must be based on substantial evidence. See Embers of Salisbury, Inc. v. Alcoholic Beverages Control Comm'n., 401 Mass. 526, 528 (1988). “Substantial evidence” is “such evidence as a reasonable mind might accept as adequate to support a conclusion.” Id. Evidence from which a rational mind might draw the desired inference is not enough. See Blue Cross and Blue Shield of Mass. Inc., v. Comm’r of Ins., 420 Mass 707, 710 (1995). Disbelief of any particular evidence does not constitute substantial evidence to the contrary. New Boston Garden Corp. v. Bd. of Assessor of Boston, 383 Mass. 456, 467 (1981).

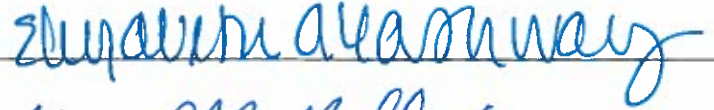
In the present case, there was no evidence to show that the Licensee had ever paid out on the electronic video machines or that the Licensee participated in betting on the Superbowl. Furthermore, the Superbowl is generally in or around February. (Testimony) The alleged violation date is August 13, 2016. The Commission concludes that there was not substantial evidence to support a violation of 204 CMR 2.05 (1): Permitting Gambling.

CONCLUSION

Based on the evidence, the Commission finds No Violation of 204 CMR 2.05 (1): Permitting Gambling.

ALCOHOLIC BEVERAGES CONTROL COMMISSION

Elizabeth A. Lashway, Commissioner



Kathleen McNally, Commissioner



Dated: June 20, 2017

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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cc: Local Licensing Board
Frederick G. Mahony, Chief Investigator
Christopher Temple, Investigator
Karen Simao, Esq. via email
Administration, File