

Re: Miami Productions Inc.
dba.: Atlantic Night Club
Premises: 1389-1393 Liberty Street
City/Town: Springfield, MA 01104
License Number: 122600286
Heard: July 22, 2010

DECISION

This is an appeal of the action of the Licensing Board of the City of Springfield (“the Board”) for revoking the license of Miami Productions, Inc. dba Atlantic Night Club located at 1389-1393 Liberty Street, Springfield, MA.

The Licensee timely appealed the Board’s decision to the Alcoholic Beverages Control Commission (the “Commission”) and a hearing was held on July 22, 2010.

The following exhibits are in evidence:

1. Pre-Joint Hearing Memorandum; (not tagged as evidence)
2. Finding of the Board of License Commissioners;
3. Reports from Officer Martin E. Germain Sr. of the Vice Control Unit;
4. Springfield Police Department Extra Work Detail Work Order Assignments;
5. Receipt for Police Officer Detail on April 13, 2010; and
6. Receipt for Police Officer Detail on April 28. 2010.

There is one (1) tape of this hearing.

FACTS

The licensee has held this license for over seven (7) years. Due to a prior violation a restriction was placed on the license, specifically, that the club should have two (2) extra duty police officers and one (1) extra empty cruiser at the premise when the establishment is open to the public, from 11:00 p.m. to 3:00 a.m.

Operating without a manager of record. The Local Licensing Board held a hearing on April 29, 2010 whereby the licensee appeared, represented by counsel, and stipulated that the violations occurred. The licensee stated that in regards to his manager, the manager that he had on record had left the country and he expected him to return and he had not. He stated that once he realized that he was not returning, he filed an application for change of manager.

ISSUE: Did the Licensee violate 2.04 CMR 2.05 (2), M.G.L. Ch. 138 §26 and Springfield City Ordinance 12.12.130.

DISCUSSION

2.04 CMR 2.05 (2) holds that no licensee for the sale of alcoholic beverages shall permit any disorder disturbance, or illegality of any kind to take place on the licensed premise. The licensee shall be responsible therefore whether present or not.

I. Operating without a manager of record M.G.L. Ch.138 §26.

Regardless of whether the licensee applied for or did not apply for the change of manager for his license, he was still operating his establishment without a manager. He admitted to this at the town hearing and he admitted to it at the Alcoholic Beverages Control Commission hearing. Therefore, he violated this provision of statute.

II. Failing to hire extra duty police officers as required by the restriction on license.

The licensee freely admitted to both the town and the Alcoholic Beverages Control Commission that he did not have extra duty police officers for his establishment in compliance with the terms of the license. He acknowledged that when he came into his establishment the night in question, he noticed that there were not any detail police officers working. When questioned as to why this was, he stated that he did not attempt to do anything about it to correct the situation nor did he cease operation of his establishment by closing down the bar.

By doing so, he was in direct non-compliance with the Local Licensing Authority condition. The licensee testified several times that he knew he had to comply with the restrictions of the license but failed to do so. Non-compliance rendered him in direct violation of the restriction placed on the license.

III. Posting handrails and signs in public places in violation of Springfield City Ordinance 12.12.130. The licensee admitted to this violation.

CONCLUSION

Based on this evidence, the Commission **APPROVES** the action of the Springfield License Commission in finding that Miami Productions, Inc. dba Atlantic Night Club violated 2.04 CMR 2.05 (2) and M.G.L. Ch. 138 §26 and Springfield City Ordinance 12.12.130. However, the Springfield License Commission has a progressive discipline policy. The Licensee's previous violation for hindering a police investigation in 2008 resulted in a penalty of thirty (30) days suspended with three (3) days to serve and the balance held in abeyance for sixty (60) days. As such, a revocation is not in line with that progressive discipline policy.

Therefore, the Commission **DISAPPROVES** the action of the Springfield License Commission in revoking Miami Productions, Inc. dba Atlantic Night Club's license and remands the matter with the recommendation that the license be suspended for a period of no more than forty-five (45) days with seven (7) days to serve and the balance held in abeyance for two years.

ALCOHOLIC BEVERAGES CONTROL COMMISSION

Susan Corcoran, Commissioner _____

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

Kim S. Gainsboro, Chairman _____

Dated at Boston, Massachusetts this 6th day of October 2010.

You have the right to appeal this decision to the Superior Court under the provisions of Chapter 30A of the Massachusetts General Laws within thirty days of receipt of this decision.

cc: Springfield Licensing Authority
Robert T. Santaniello, Esq.
Chief Investigator Frederick Mahony
File