

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

*Deborah D. Goldberg*  
*Treasurer and Receiver General*

*Kim S. Gainsboro, Esq.*  
*Chairman*

NOTICE OF SUSPENSION

October 8, 2015

**YOUNG AMERICA CLUB, INC.**  
**4 OCEAN VIEW AVENUE**  
**PLYMOUTH, MASSACHUSETTS 02360**  
**LICENSE#: 098400023**  
**VIOLATION DATE: 06/11/2015**  
**HEARD: 09/22/2015**

After a hearing on September 22, 2015, the Commission finds Young America Club, Inc. violated 204 CMR 2.05 (1): Permitting Gambling.

The Commission suspends the Licensee's license for a total of five (5) days to be served with the balance of five (5) days suspended for 2 years. The suspension shall commence on Wednesday, November 18, 2015, and terminate on Sunday, November 22, 2015. The license will be delivered to the Local Licensing Board or its designee on Wednesday, November 18, 2015 at 9:00 A.M. It will be returned to the Licensee Monday, November 24, 2015.

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 a Massachusetts Licensed Accountant.

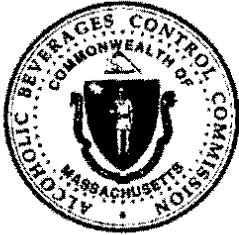
You are advised that you have the right to appeal this decision under M.G.L. c. 30A to Superior Court within thirty (30) days upon receipt of this notice.

**ALCOHOLIC BEVERAGES CONTROL COMMISSION**

Kim S. Gainsboro  
Chairman

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cc: Local Licensing Board  
Frederick G. Mahony, Chief Investigator  
Nicholas Velez, Investigator  
Mark Kenny, Investigator  
Michael Teehan, Investigator  
Administration  
File



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**DECISION**

**YOUNG AMERICA CLUB, INC.**  
**4 OCEAN VIEW AVENUE**  
**PLYMOUTH, MASSACHUSETTS 02360**  
**LICENSE#: 098400023**  
**VIOLATION DATE: 06/11/2015**  
**HEARD: 09/22/2015**

Young America Club, 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, September 22, 2015, regarding an alleged violation of 204 CMR 2.05 (1): Permitting Gambling, which occurred on June 11, 2015, according to Investigator Velez's Report.

The following documents are in evidence:

1. Investigator Velez's Investigative Report dated June 11, 2015;
  2. Box of Pull Tabs;
  3. Thirteen (13) Photographs of Gaming Devices;
  4. Pink Card Showing Bar Start/End and Poker Start/End; and
  5. Piece of Paper from Drawer Showing Nine Hundred Eighty- Eight Dollars (\$988).
- A. Photograph of Contents in "Poker Drawer" taken on or after September 9, 2015.

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

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

FACTS

1. On Thursday, June 11, 2015, at approximately 3:30 p.m., Chief Investigator Mahony along with Investigators Kenny, Teehan, and Velez (the "Investigators") arrived at the Young America Club, Inc. to determine the manner in which their business was being conducted. (Exhibit 1; Testimony)
2. The Investigators entered the bar and identified themselves to the bartender on duty, Tim, and informed him of the inspection. (Exhibit 1; Testimony)

3. Investigators observed five automatic amusement devices located near the bar area. The devices were labeled as: #1 Double Up; #2 Triple Sevens; #3 New Cherry; #4 Super Poker, and #5 Double Up. (Exhibit 1; Testimony)
4. Investigators made the following observations that, based on their training and experience, indicated these electronic devices were being used as gambling devices:
  - Each device accepted dollar bills ranging from \$1, \$5, \$10, and \$20;
  - Each device had markings that indicated "for amusement only";
  - Each device had the capability to select the number of points (the amount to bet);
  - Each device "registered" the bet by displaying the number of credits selected;
  - Each device had the capability to double up the bet by selecting a double-up button;
  - Machines #1 and #5 had a "knock off" mechanism in the form of buttons on the right side of the machine, which when pressed, reset the winning credits to zero; and
  - Machines #2, #3, and #4 each had a "knock off" button on the right rear of the machine, which when pressed, reset the winning credits to zero. (Exhibit 1; Testimony)
5. Investigator Velez inserted one U.S. dollar into machine #1, Double Up, and received four credits. He selected one credit and the machine registered the bet, displaying one credit to play and three credits remaining. Investigator Velez then pressed the knock-off button and observed the credits reset to zero. (Exhibit 1; Testimony)
6. Investigator Velez next inserted one U.S. dollar into machine #2, Triple Sevens, and received four credits. He selected one credit and the machine registered the bet, displaying one credit to play and three credits remaining. Investigator Velez then pressed the knock-off button and observed the credits reset to zero. Investigators conducted an internal audit of the machine. The meters inside the machine showed credits in: 253089 and credits out: 661143. (Exhibit 1; Testimony)
7. Investigator Velez inserted one U.S. dollar into machine #3, New Cherry, and received four credits. He selected one credit and the machine registered the bet, displaying one credit to play and three credits remaining. Investigator Velez then pressed the knock-off button and observed the credits reset to zero. Investigators conducted an internal audit of the machine. The game analysis showed the number of games played was 320048 and double games were 1487. The meters inside the machine showed credits in: 360323 and credits out: 244445. (Exhibit 1; Testimony)
8. Investigator Velez inserted one U.S. dollar into machine #4, Super Poker, and received four credits. He selected one credit and the machine registered the bet, displaying one credit to play and three credits remaining. Investigator Velez then pressed the knock-off button and observed the credits reset to zero. Investigators conducted an internal audit of the machine. The meters inside the machine showed credits in: 158610 and credits out: 107376. The game analysis showed the device was set at 88% with a win total of 79109 and a play total of 89655. (Exhibit 1; Testimony)

9. Investigator Velez inserted one U.S. dollar into machine #5, Double Up, and received four credits. He selected one credit and the machine registered the bet, displaying one credit to play and three credits remaining. Investigator Velez then pressed the knock-off button and observed the credits reset to zero. Investigators conducted an internal audit of the machine. The game analysis showed game numbers: 315543; awarded: 453861; and played: 482382. (Exhibit 1; Testimony)
10. Investigators proceeded to inspect behind the bar and found a large green bin and a cigar box filled with Pull-Tabs. These Pull-Tabs were not issued by the Massachusetts State Lottery. Investigators confiscated the boxes and secured them as evidence. (Exhibits 1, 2; Testimony)
11. A Pull-Tab is a gambling ticket. The object of the game is to open the perforated windows on the back of the ticket and match the symbols inside to the winning combinations on the front of the ticket. A winning Pull-Tab ticket is turned in for a monetary prize. (Exhibit 1; Testimony)
12. Investigators proceeded behind the bar and observed a wooden drawer (referred to by the Licensee as the "Poker Drawer") near the front of the bar with three small pink slips of paper next to the drawer. The pink card had markings which indicated the bartender's name, date, and the opening or starting poker bank. Specifically, the pink card indicates "poker start" and "poker end." (Exhibits 1, 4; Testimony)
13. Investigators interviewed the bartender, Tim, and inquired as to the purpose of the drawer. Tim stated that the drawer was used for the poker machines. Investigators asked Tim to open the drawer and count the money inside. Tim did so and informed Investigators the U.S. currency totaled \$988.00. (Exhibits 1, 5; Testimony)
14. Tim stated that \$1000.00 is always used as the opening bank for the drawer, and that someone was paid out \$12.00 at approximately 2:15 p.m. on machine #5. Tim stated that when a player wants to cash out, he checks the points on the device, pays the player twenty-five cents per point, and then resets the device. (Exhibit 1; Testimony)
15. Investigators informed Tim of the violation and that a report would be submitted to the Commission for review. (Exhibit 1; Testimony)
16. At the hearing before the Commission, the Licensee's representatives, Scott Floeck and License Manager Sean McKenna, admitted that the Licensee had been selling Pull-Tabs for \$1 each, and both of them referred to the cash drawer referenced above as the "Poker Drawer." (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 M.G.L. c. 138.

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. 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)).

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. 204 CMR 2.05(1).

There must be substantial evidence that a violation of 204 CMR 2.05(1) 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 evidence in this case passes the substantial evidence test. Not only is there more than a mere scintilla of evidence that these violations occurred, there is overwhelming evidence that the Licensee permitted gambling on the licensed premises. The Licensee admitted to selling the Pull-Tabs, which is a violation in and of itself of the regulation. Falmouth Post 70 Inc., AmVets, Falmouth (ABCC Decision December 16, 2014); Falmouth Lodge #2380, B.P.O.E. of USA, Inc., Falmouth (ABCC Decision November 20, 2012).

Additionally, it is clear that the five electronic devices were used for gambling. Each machine bared the characteristic traits of gambling machines, including accepting U.S. currency in exchange for points, being able to bet a certain number of points per game, and having reset functions. The Licensee's bartender informed Investigators at the time of the inspection that the electronic machines were used for gambling, and he explained how the machines worked and how he paid winners twenty-five cents per credit won from the "Poker Drawer." (Exhibit I; Testimony) At the hearing, the Licensee's representatives Scott Floeck and License Manager Sean McKenna both referred to that specific cash drawer as the "Poker Drawer." (Testimony) The Commission is persuaded that the "Poker Drawer" is used for paying out winnings from gambling. Likewise, the Commission is incredulous that the pink card stating "poker start" and "poker end" would be used by the Licensee's bartender for anything other than gambling purposes. Considering everything introduced before the Commission, it is indisputable that these machines were used for gambling in violation of 204 CMR 2.05(1). See, e.g., Columbians Inc. of Gardner, d/b/a Knights of Columbus, Gardner (ABCC Decision April 10, 2015); Portuguese American Center Inc., Lowell (ABCC Decision March 24, 2015).

While McKenna and Floeck both deny that the five machines, the pink card stating "poker start" and "poker end," and the "Poker Drawer" were used for gambling, the Commission does not find this testimony to be credible. The overwhelming evidence weighs against their sworn-to testimony. Consequently, the Commission believes that Floeck and McKenna participated in egregious conduct during the hearing by intentionally attempting to deceive this Commission.

### CONCLUSION

Based on the evidence, the Commission finds the Licensee violated 204 CMR 2.05 (1): Permitting Gambling. Therefore, and in consideration of the Commission's finding that the Licensee's testimony was not credible, the Commission **suspends the license for ten (10) days of which five (5) days will be served and 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. In addition, the Licensee must not possess in or on the licensed premises any automatic amusement devices or video poker machines.**

### ALCOHOLIC BEVERAGES CONTROL COMMISSION

Elizabeth A. Lashway, Commissioner 

Kathleen McNally, Commissioner 

Dated: October 8, 2015

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