

Mailing Date: DEC 22 2000

**PUBLICATION**

COMMONWEALTH OF PENNSYLVANIA  
OFFICE OF ADMINISTRATIVE LAW JUDGE  
FOR THE PENNSYLVANIA LIQUOR CONTROL BOARD

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 00-0832
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W1-215108
v.	:	
	:	LID - 1094
THE KOSCIUSZKO POLISH CLUB	:	
756-758 S 2ND ST	:	
PHILADELPHIA PA 19147-3427	:	
	:	
	:	
PHILADELPHIA COUNTY	:	
LICENSE NO. C-1835	:	BEFORE: JUDGE SHENKLE

APPEARANCES:

For Bureau of Enforcement: Edward B. McHugh, Esq.  
For Licensee: Edward A. Taraskus, Esq.

**ADJUDICATION**

BACKGROUND:

On June 30, 2000, the Bureau of Liquor Control Enforcement of the Pennsylvania State Police issued this citation to The Kosciuszko Polish Club, License Number C-1835.

The citation alleges that Licensee violated §15.62(a) of the Liquor Control Board Regulations, 40 Pa. Code §15.62(a), on April 5, 8, 12, 15, 20 and 22, 2000, by failing to post in a conspicuous place on the outside of the licensed premises or in a window plainly visible from the outside of the premises, a Notice of Suspension.

An evidentiary hearing was held on Tuesday, November 14, 2000, in Plymouth Meeting, Pennsylvania. The parties stipulated to the timely service and receipt of the notice letter and the citation.

FINDINGS OF FACT:

1. In an adjudication of Citation No. 99-0943 mailed on February 3, 2000, I ordered that the Club Liquor License of The Kosciuszko Polish Club, License No. C-1835, be suspended for a period of twenty-one (21) days BEGINNING at 7:00 a.m. on Monday, April 3, 2000, and ENDING at 7:00 a.m. on Monday, April 24, 2000.

2. Liquor Enforcement Officer Tim Rogers visited the licensed premises at 10:30 p.m. on April 20, 2000. The establishment was closed. No suspension placard was visible from the outside of the premises (N.T. 7-8).

3. Liquor Enforcement Officer James Brown visited the licensed premises at 2:25 a.m. on April 22, 2000. The establishment was closed. No suspension placard was visible from the outside of the premises (N.T. 10).

CONCLUSIONS OF LAW:

Licensee violated §15.62(a) of the Liquor Control Board Regulations, 40 Pa. Code §15.62(a), on April 20 and 22, 2000, by failing to post in a conspicuous place on the outside of the licensed premises or in a window plainly visible from the outside of the premises, a Notice of Suspension.

DISCUSSION:

Licensee presented evidence that its officers posted the notice of suspension on April 1, 2000, by taping it to the inside of the glass window of the side door of the establishment. In support of this evidence, Licensee introduced photographs said to have been taken on that date, clearly showing the notice posted in the manner described.

Since Licensee's evidence would also support the proposition that the notice remained posted continuously throughout the month of April, there is a conflict between that evidence and the evidence of the Bureau.

I have resolved the credibility question in favor of the Bureau for several reasons.

First, the photographs said to have been taken in April show a tree in full leaf, a condition which deciduous trees in this climate do not attain until well after April 1.

Second, the four photographs submitted by Licensee are marked on the reverse with numbers that I construe as a date in November, 2000. This appears to me to be the date the prints were made. Although some people take photographs and then leave the film in the camera for a long time, I do not think that happened in this case. There are fallen leaves on the street. These pictures were taken in autumn.

Third, I do not believe that Licensee would or did post the notice earlier than required.

Fourth, I do not believe that Licensee would or did leave the notice posted after the date when it was authorized to resume operations.

Fifth, my evaluation of the demeanor and testimony of the witnesses causes me to credit the witnesses presented by the Bureau and to discredit those presented by Licensee.

PRIOR RECORD:

Licensee has been licensed since March 16, 1934, and has had prior violations since July 1, 1987, the date of establishment of the Office of Administrative Law Judge, as follows:

Citation No. 88-0297. \$500.00 fine and 10 days suspension.

1. Sales to nonmembers.

Citation No. 89-0509. \$1,000.00 fine and 20 days suspension.

1. Sales to nonmembers.

2. Minors frequenting.
3. Sales to minors.

Citation No. 90-0454. \$1,500.00 fine and 30 days suspension.

Fine not paid and License suspended for an additional 15 days and thereafter until fine paid.

1. Minors frequenting.
2. Sales to minors.
3. Sales to nonmembers.

Citation No. 91-0744. \$3,000.00 fine and 30 days suspension.

1. Sales to minors.  
January 26 and 27, 1991.
2. Minors frequenting.  
January 26 and 27, 1991.
3. Sales to nonmembers.  
December 16, 1990, January 26 and 27, 1991.

Citation No. 91-2618. \$500.00 fine.

1. Failed to maintain records in conformity with Title 40 of the PA Code.  
September 1, 1990, to June 26, 1991.

Citation No. 96-0267. \$1,800.00 fine.

1. Sales to nonmembers.  
December 16, 1995, and January 27, 1996.
2. Sales between 3:00 a.m. and 7:00 a.m.  
December 16, 1995, and January 27, 1996.
3. Failed to require patrons to vacate the premises not later than one-half hour after the required time.  
December 16, 1995, and January 27, 1996.

Citation No. 96-2361. \$1,000.00 fine.

1. Failed to require patrons to vacate the premises not later than one-half hour after the required time.  
September 28, 1996.
2. Permitted patrons to possess and/or remove alcoholic beverages after 3:30 a.m.  
September 28, 1996.

Citation No. 97-0881. \$400.00 fine and 3 days suspension.

1. Sales to minors.  
March 29, 1997
2. Minors frequenting.  
March 29, 1997.
3. Sales between 3:00 a.m. and 7:00 a.m.  
Mach 29, 1997.
4. Failed to require patrons to vacate the premises not later than one-half hour after the required time.  
March 29, 1997.

5. Permitted patrons to possess and/or remove alcoholic beverages after 3:30 a.m.  
March 29, 1997.

Citation No. 98-1854. \$1,550.00 fine and 2 days suspension.

1. Sales to nonmembers.  
February 21 and June 14, 1998.
2. Improper admission of members.  
February 21, 1998.
3. Possessed or operated gambling devices or paraphernalia or permitted gambling or lotteries, poolselling and/or bookmaking on your licensed premises (machine).  
June 14, 1998.
4. Sales between 3:00 a.m. and 7:00 a.m.  
June 14, 1998.
5. Failed to require patrons to vacate the premises not later than one-half hour after the required time.  
June 14, 1998.
6. Permitted patrons to possess and/or remove alcoholic beverages after 3:30 a.m.  
June 14, 1998.

Citation No. 99-0943. \$1,500.00 fine and 21 days suspension.

1. Sales to nonmembers.  
March 21, 27, April 10 and May 9, 1999.
2. Sales between 3:00 a.m. and 7:00 a.m.  
March 21, 27, April 10 and May 9, 1999.
3. Failed to require patrons to vacate the premises not later than one-half hour after the required time.  
March 21, 27, April 10 and May 9, 1999.
4. Permitted patrons to possess and/or remove alcoholic beverages after 3:30 a.m.  
March 21, 27, April 10 and May 9, 1999.

PENALTY:

Section 471 of the Liquor Code, 47 P.S. §4-471, prescribes a penalty of license suspension or revocation or a fine in the \$50.00 to \$1,000.00 range, or both, for violations of the type found in this case.

Since this is Licensee's fifth Liquor Code violation in a four-year period, 47 P.S. §4-471(c) requires that the penalty include license suspension or revocation.

ORDER

THEREFORE, it is hereby ORDERED that Licensee, The Kosciuszko Polish Club, License No. C-1835, pay a fine of five hundred dollars (\$500.00) within 20 days of the mailing date of this order. In the event the fine is not paid within 20 days, Licensee's license will be suspended or revoked.

IT IS FURTHER ORDERED that the Restaurant Liquor License of Licensee, The Kosciuszko Polish Club, License No. C-1835, be suspended for a period of two (2) days BEGINNING at 7:00 a.m. on Monday, March 12, 2001, and ENDING at 7:00 a.m. on Wednesday, March 14, 2001.

Licensee is directed on Monday, March 12, 2001, at 7:00 a.m. to place the enclosed placard of notice of suspension (identified as Form No. PLCB-1925 and as printed with red and black ink) in a conspicuous place on the outside of the licensed premises or in a window plainly visible from outside the licensed premises and to remove said license from the wall and place it in a secure location.

Licensee is advised if replacement placards are needed for any reason they are available at all Pennsylvania Liquor Stores/Wine & Spirits Shoppes.

The Bureau is directed to visit and monitor the premises for compliance with this order.

Licensee is authorized on Wednesday, March 14, 2001, at 7:00 a.m. to remove the placard of suspension and return the license to its original wall location.

The fine must be paid by treasurer's check, cashier's check, certified check or money order. **Personal checks, which include business-use personal checks, are not acceptable.** Please make your guaranteed check payable to the Commonwealth of Pennsylvania and mail to:

PLCB-Office of Administrative Law Judge  
Brandywine Plaza  
2221 Paxton Church Road  
Harrisburg PA 17110-9661

Dated this 18th day of December, 2000.

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David L. Shenkle, J.

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**NOTICE: MOTIONS FOR RECONSIDERATION MUST BE IN WRITING AND RECEIVED BY THE OFFICE OF ADMINISTRATIVE LAW JUDGE WITHIN 15 DAYS OF THE MAILING DATE OF THIS ORDER, TOGETHER WITH A \$25.00 FILING FEE.**