

Mailing Date: AUG 02 2007

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 05-1192
LIQUOR CONTROL ENFORCEMENT	:	
	:	
v.	:	Incident No. W01-311482
	:	
THIRTY THIRD WARD	:	
REPUBLICAN CLUB	:	LID - 33881
227-29 S. BROAD ST. 2 <sup>ND</sup> FLOOR	:	
PHILADELPHIA PA 19107-5313	:	
	:	
	:	
PHILADELPHIA COUNTY	:	
LICENSE NO. C-1139	:	

APPEARANCES:

FOR THE BUREAU OF ENFORCEMENT:

**JAMES E. DAILEY, ESQ.**

FOR THE LICENSEE:

**JAMES A. SAYLOR, ESQ.**

**BEFORE: JUDGE WRIGHT**

ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation that was issued on June 17, 2005, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter "Bureau") against Thirty-Third Ward Republican Club, License Number C-1139 (hereinafter "Licensee").

An Administrative hearing was held on Tuesday, August 8, 2006, pursuant to requisite and appropriate hearing notice. The parties stipulated to the service and receipt of the notice letter and the citation.

The citation contains two counts.

The first count charges Licensee with violation of Section 406(a)(1) of the Liquor Code, 47 P.S. Section 4-4069(a)(1), in that on March 12, 26 and April 23, 2005, Licensee, by its servants, agents or employes, sold alcoholic beverages to nonmembers.

The second count charges Licensee with violation of Section 5.32(c) of the Liquor Control Board Regulations, 40 Pa. Code Section 5.32(c), in that on April 23, 2005, Licensee, by its servants, agents or employes, permitted entertainers to contact or associate with patrons for a lewd, immoral, improper or unlawful purpose.

COUNT NOS. 1 AND 2

FINDINGS OF FACT:

1. Officer Cook is employed by the Bureau of Enforcement and at the time of hearing had been so employed for approximately four years. On March 12, 2005, she visited the licensed premises at approximately 12:01 a.m. (N.T. 5-6).
2. Officer Cook walked up some steps where she was met by a female who was holding a box with money in it and two other males were at the top of the steps. The female indicated that there was a ten-dollar cover charge. Officer Cook gave her ten dollars and they allowed her to enter the premises. She was not a member of the club on March 12, 2005 nor has she ever been a member of the club (N.T. 7-8).
3. Officer Cook approached the bar that was in operation. There were approximately thirty patrons on the premises and two bartenders. While she was at the bar, she ordered a vodka and cranberry juice and it was served to her by a white male. He did not question her membership. She paid \$8.00 for the drink (N.T. 8-9).
4. Officer Cook remained on the premises for approximately one hour. She departed the premises at 1:00 a.m. while it was still in operation (N.T. 9-10).
5. On March 26, 2005, Officer Cook returned to the premises. She arrived at the premises at approximately 12:15 a.m., went inside the premises and was requested to pay a ten-dollar cover charge. She paid the cover charge and entered the premises. No one challenged her with regard to membership. Officer Cook went to the dance floor and to the bar. There were bartenders on duty. Officer Cook ordered a vodka and cranberry for which she paid eight dollars. The bartender did not challenge her with regard to membership (N.T. 12-13).

6. Officer Cook did not see any type of emcee on the premises nor did she note any special event on either of her first two visits to the premises (N.T. 13).

7. Officer Cook departed the premises at approximately 12:45 a.m. (N.T. 13).

8. On April 23, 2005, Officer Cook arrived at the premises at approximately 1:00 a.m. She paid the ten dollars cover charge in order to enter the premises. Officer Cook noted that there were two white males and a black female at the door. She paid a ten-dollar cover charge, but was not challenged as to membership (N.T. 13-14).

9. Officer Cook proceeded back to the dance floor. On this occasion, she did not buy an alcoholic beverage (N.T. 14).

10. Officer Cook noted that there was a crowd on the dance floor and she heard a disc jockey from Power 99 Radio known as "Golden Girl." She was on top of a small stage in front of the disc jockey booth (N.T. 15).

11. Golden Girl was announcing the dancers (N.T. 16-17).

12. The first dancer who was introduced by Golden Girl was heard to be called Lady Nasty. Lady Nasty came out from the bathroom and began dancing. She grabbed a female patron and threw her on the floor, opening her legs. She put her face between the female's legs in the vagina area and rubbed her tongue over the vagina area. She then placed her crotch in the female's face and put her face on the female's crotch (N.T. 18).

13. During this performance, Lady Nasty was dressed in a two-piece bikini. This activity continued for approximately ten minutes. Golden Girl then announced Lady Madonna. Golden Girl was yelling and throwing dollar bills stating, "P---- ain't for free" (N.T. 19).

14. Lady Madonna was dressed in a bikini. She removed her bikini top and bottom exposing her vagina and her breasts (N.T. 19-21).

15. Golden Girl also announced a dancer named Big Red. Golden Girl was yelling at the crowd, throwing dollar bills and again stated, "P---- ain't for free" (N.T. 21).

16. Big Red was dressed in a bikini outfit. She danced and fell to her knees and put her face in a female patron's crotch area simulating oral sex. She walked over to another patron and bent over and simulated sex (N.T. 21-22).

17. At this point, the crowd was excited and Officer Cook could not hear the final dancer's name. The dancer came out dressed in a khaki uniform. Golden Girl yelled for her to pull it out and pull it down and pulled out a long brown dildo (N.T. 22).

18. There were forty to fifty patrons on the premises (N.T. 22-23).

19. The officer observed that Power 99 Radio Station band was outside the premises on this occasion (N.T. 23-24).

20. According to an advertisement on the radio, the event with Power 99 is held every weekend. Dancers are scheduled for Friday night (N.T. 24-25).

21. The officer saw approximately four dancers perform for a half hour to forty minutes. She departed the premises at approximately 1:45 a.m. (N.T. 25).

22. Lady Nasty exposed her breasts during her performance (N.T. 46).

23. The fourth entertainer produced a brown dildo, however, the crowd surged forward and the officer could make no other observations (N.T. 48-49).

CONCLUSIONS OF LAW:

Count No. 1 - On March 12 and 26, 2005, Licensee, by its servants, agents or employes, sold alcoholic beverages to nonmembers, in violation of Section 406(a)(1) of the Liquor Code, 47 P.S. Section 4-4069(a)(1).

Count No. 2 - There is insufficient evidence to conclude that on April 23, 2005, Licensee, by its servants, agents or employes, permitted entertainers to contact or associate with patrons for a lewd, immoral, improper or unlawful purpose, in violation of Section 5.32(c) of the Liquor Control Board Regulations, 40 Pa. Code Section 5.32(c).

PRIOR RECORD:

Licensee has been licensed since December 29, 1934, and since July 1, 1987, the date of establishment of the Office of Administrative Law Judge, has a record of prior violations as follows:

Citation No. 92-0533. \$1,500.00 fine and 3 days suspension.

1. Used loudspeakers or devices whereby music could be heard outside.
2. Sales to nonmembers.
3. Improper admission of members.
4. Sales to minors.
5. Minors frequenting.

Citation No. 92-1389. \$2,500.00 fine and 10 days suspension.

1. Improper admission of members.
2. Falsified records covering the operation of the licensed business.
3. Failed to maintain records in conformity with Title 40 of the Pennsylvania Code.

Thirty-Third Ward Republican Club  
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4. Organization not operated for the mutual benefit of the entire membership.
5. Falsified change in officers form dated November 21, 1991.
6. Falsified application for Club Liquor License for the year expiring October 31, 1992.
7. Failed to adhere to by-laws.
8. Failed to notify the Board within 30 days of a change of officers which occurred on October 29, 1991.
9. Unexplained shortage in reported cash income.

Citation No. 92-2306. \$1,500.00 fine and 3 days suspension.

1. Sales between 3:00 A.M. and 7:00 A.M.
2. Failed to require patrons to vacate the premises not later than one-half hour after the required time.
3. Permitted patrons to possess and/or remove liquor or malt or brewed beverages after 3:30 A.M.

Citation No. 93-0012. \$250.00 fine.

1. Failed to notify the Board within 15 days of a change of officers.
2. Failed to conduct business through officers regularly elected.

Citation No. 95-1991. \$1,000.00 fine.

1. Failed to post on the licensed premises plainly visible from the outside a notice of suspension. June 27, July 1 and 5, 1995.
2. Posted notices on your licensed premises which stated or indicated that your licensed establishment was closed for a reason other than the suspension of the license. June 27, 28, 29, July 1 and 5, 1995.

Citation No. 95-2055. \$2,000.00 fine and 1 day suspension.

1. Sales between 3:00 A.M. and 7:00 A.M.
2. Failed to require patrons to vacate the premises not later than one-half hour after the required time.
3. Permitted patrons to possess and/or remove alcoholic beverages after 3:30 a.m.

Thirty-Third Ward Republican Club  
Citation No. 05-1192

Citation No. 95-2936. \$1,500.00 fine and 1 day suspension.

1. Sales between 3:00 A.M. and 7:00 A.M.  
October 7, 1995.
2. Sales to nonmembers.  
October 7 and 28, 1995.
3. Failed to require patrons to vacate the premises not later than one-half hour after the required time.  
October 7, 1995.
4. Improper admission of members.  
October 7, 1995.
5. Permitted patrons to possess and/or remove alcoholic beverages after 3:30 A.M.  
October 7, 1995.

Citation No. 97-2482. 6 days suspension.

1. Sales to nonmembers.  
November 8, 1997.
2. Sales between 3:00 A.M. and 7:00 A.M.  
November 8, 1997.
3. Failed to require patrons to vacate the premises not later than one-half hour after the required time.  
November 8, 1997.
4. Permitted patrons to possess and/or remove alcoholic beverages after 3:30 A.M.  
November 8, 1997.

Citation No. 99-0982. Fifteen days suspension.

1. Sales to nonmembers.  
October 31, 1998, January 23 and May 8, 1999.
2. Sales between 3:00 A.M. and 7:00 A.M.  
February 21, March 13 and May 8, 1999.
3. Permitted patrons to possess or remove alcoholic beverages after 3:30 A.M.  
February 21, March 16 and May 8, 1999.
4. Failed to require patrons to vacate the premises not later than one-half hour after the required time.  
February 21, March 13 and May 8, 1999.
5. Sales to minors.  
May 8, 1999.
6. Minors frequenting.  
May 8, 1999.

Thirty-Third Ward Republican Club  
Citation No. 05-1192

Citation No. 00-0417. Three days suspension.

1. Failed to post in a conspicuous place on the outside of the licensed premises, a notice of suspension.  
February 14, 15, 16 and 19, 2000.

DISCUSSION:

Count No. 1

The evidence clearly shows that Officer Cook visited the premises on March 12 and 26, 2005 and was admitted to the premises after paying a cover charge and without question relative membership. Officer Cook has never been a member of the club, but was able to purchase alcoholic beverages on the premises.

Count No. 2

The United States Third Circuit Court of Appeals and *Conchatta, Inc. v. Colonel Jeffrey B. Miller, Commissioner, Pennsylvania State Police*, decided August 15, 2006, held that Section 493(10) of the Liquor Code, 47 P.S. Section 4-493(10) and Section 5.32(c) of the Liquor Control Board Regulations, 40 Pa. Code Section 5.32(c), are facially invalid in that they are unconstitutionally overbroad punishing a significant amount of protected speech in relation to their legitimate scope. Clearly, the conduct herein described is not that which is sought to be protected. Therefore, Count No. 2 of the citation shall be dismissed.

Licensee has had no offense since 2000. Prior to that, they had a history which included numerous violations for sales to nonmembers. Under the circumstances, a \$750.00 penalty shall be imposed.

PENALTY:

Section 471 of the Liquor Code, 47 P.S. Section 4-471, prescribes a penalty of suspension or revocation of license or imposition of a fine of not less than \$50.00 or more than \$1,000.00, or both, for violations of the type found in this case.

Therefore, penalties shall be assessed as follows:

Count No. 1 - \$750.00  
Count No. 2 - DISMISSED.

Accordingly, we issue the following

ORDER:

THEREFORE, it is hereby Ordered that Licensee, Thirty Third Ward Republican Club, License Number C-1139, pay a fine of Seven Hundred Fifty Dollars (\$750.00) within twenty (20) days of the mailing date of this Order. In the event the aforementioned fine is not paid within twenty (20) days from the mailing date of this Order, licensee's license shall be suspended or revoked.

**In order to insure compliance with this Order, jurisdiction of this matter is retained.**

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, along with any required documentation, to:

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

Dated this 26<sup>th</sup> day of July, 2007.

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Tania E. Wright, J.

**NOTE:** MOTIONS FOR RECONSIDERATION MUST BE RECEIVED WITHIN 15 DAYS OF THE MAILING DATE OF THIS ORDER TO THE OFFICE OF ADMINISTRATIVE LAW JUDGE AND REQUIRE A \$25.00 FILING FEE. A WRITTEN REQUEST FOR RECONSIDERATION MUST BE SUBMITTED WITH THE FILING FEE.

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