

Mailing Date: July 5, 2007

PENNSYLVANIA LIQUOR CONTROL BOARD
HARRISBURG, PA 17124-0001

PENNSYLVANIA STATE POLICE, : Citation No. 05-1692
BUREAU OF LIQUOR CONTROL :
ENFORCEMENT :

vs. :

POST 162 A.M.D.G. CATHOLIC : License No. CC-6179
WAR VETERANS OF :
PHILADELPHIA, PA :
9859 Bustleton Avenue :
Philadelphia, PA 19115-2611 :

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OPINION

The Pennsylvania State Police, Bureau of Liquor Control Enforcement (“Bureau”) appealed from the Adjudication and Order of Administrative Law Judge David L. Shenkle (“ALJ”), wherein the ALJ dismissed the citation issued to Post 162 A.M.D.G. Catholic War Veterans of Philadelphia, PA (“Licensee”).

The first count of the citation charged that, on January 6, 7, 8, 13, 14, 15, 20, 21, 22, 27, 28, 29, February 3, 4, 5, 10, 11, 12, 17, 18, 19, 24, 25, 26, March 3, 4, 5, 11, 12, 17, 18, 19, 24, 25, 26, 31, April 1, 2, 7, 9, 10, 14, 15, 16, 21, 22, 23, 28, May 5, 6, 7, 12, 13, 14, 19, 20, 21 and June 8, 2005, Licensee, by its servants, agents or employees, violated section 5.83(a) of the Pennsylvania Liquor Control Board's ("Board") Regulations [40 Pa. Code § 5.83(a)], by failing to conduct a catered event in conformity with Title 40 of the Pennsylvania Code.

The second count of the citation charged that, on June 8, 2005, Licensee, by its servants, agents or employees, violated sections 401(b) and 406(a)(1) of the Liquor Code [47 P.S. §§ 4-401(b), 4-406(a)(1)], by selling alcoholic beverages to nonmembers.

Pursuant to section 471 of the Liquor Code [47 P.S. § 4-471], the appeal in this case must be based solely on the record before the ALJ. The Board shall only reverse the decision of the ALJ if the ALJ committed an error of law or abused his discretion, or if his decision was not based upon substantial evidence. The Commonwealth Court defined "substantial evidence" to be such relevant evidence as a reasonable person might accept as adequate to support a conclusion. Joy Global, Inc. v. Workers' Compensation Appeal Bd. (Hogue), 876 A.2d

1098 (Pa. Cmwlth. 2005); Chapman v. Pennsylvania Bd. of Probation and Parole, 86 Pa. Cmwlth. 49, 484 A.2d 413 (1984).

The Bureau contends on appeal that the ALJ committed an error of law in finding that Licensee did not violate section 5.83(a) of the Board's Regulations [40 Pa. Code § 5.83(a)], and sections 401(b) and 406(a)(1) of the Liquor Code [47 P.S. §§ 4-401(b), 4-406(a)(1)].

An examination of the record reveals that Bureau Officer Kohler, accompanied by Bureau Officer Cooper, arrived at the licensed premises at 10:30 p.m. on June 8, 2005. (N.T. 4-5, 7, 9, 42). Upon entering, Officer Kohler observed a coat check area to be part of a larger room containing a dance floor, a stage, a pole and two (2) bars. (N.T. 6).

After Officer Kohler and Officer Cooper sat down at the bar, Gino Tripodi, Licensee's commander and vice commander, approached the two (2) officers and handed them a clipboard with a ledger and a pen attached to it. (N.T. 7, 11-12, 53, 69; Ex. L-1). The officers wrote their names on the ledger. (N.T. 7, 16, 58). After Mr. Tripodi left their presence, a bartender approached the officers and asked what they wanted. (N.T. 7-8). Officer Kohler purchased Miller Lite beer for both of them. (N.T. 8, 16). There was no sign or other indication that there was any type of event going on. (N.T. 8, 10). Officer Kohler did not

observe any other patrons during her visit, and no disc jockey (“DJ”) was present in the DJ booth. (N.T. 9-10). Officer Kohler acknowledged it was possible that an event had not yet begun, however, the event at the premises that night was scheduled to begin at 10:00 p.m., which is prior to the time she arrived. (N.T. 11, 13, 59-60; Ex. B-23).

On March 17, 2005, at approximately 11:30 p.m., Bureau Officer Hess visited the licensed premises and left a request for club records with Mr. Tripodi. (N.T. 18-19, 34, 36). Officer Hess returned to the premises on March 24, 2005 at 11:30 p.m. to pick up the requested documents. (N.T. 20). Officer Hess made a subsequent visit to the licensed premises on May 22, 2005, arriving at 12:40 a.m. (N.T. 20-21). On that visit, a DJ named Ian Manners was playing music for about twenty (20) patrons, who were also attended by bar personnel and in possession of alcohol. (N.T. 20-21).

Officer Hess interviewed Mr. Manners, who stated that he and his brother, C.J., had been disc jockeying at the premises under the name EMCE Entertainment for approximately one (1) year. (N.T. 21-22, 25-26, 40).

Officer Hess, during her investigation and interviews with Mr. Tripodi, obtained numerous packets of club records consisting of meeting minutes and contracts with entertainment companies. (N.T. 22-25, 43; Exs. B-3 – B-23).

The minutes consisted of standardized paragraphs with blank spaces for the dates and names of attendees. (Exs. B-3 – B-23).

Attached to each of these “minutes” pages were one (1) or more forms bearing the title “Catholic War Veterans,” followed by the address of the organization and containing spaces for the time, the number of persons, the host, the deposit, when it was due, and the total. (Exs. B-3 - B-23).

Most events were scheduled from 9:00 p.m. to 3:00 a.m. (Exs. B-3 – B-19). Events occurring after May of 2005 had a 10:00 p.m. start time. (Exs. B-20 – B-23). In every case, the line for “deposit” bears the same date as the date of the “minutes,” and the notation “\$50 nominal fee or greater.” (Exs. B-3 – B-23). In every case, the lines for “Due” and “Total” are blank. (Exs. B-3 – B-23). The variable information is as follows:

Exhibit	Minutes Date	Event	Event Date	# of persons	Catered by
B-3	1-3-05	D.C. Entertainment	Thursday 1-6-05	25-200	Cucco Pazzo
		EMCE	Friday 1-7-05	100-300	Cucco Pazzo
		EMCE	Saturday 1-8-05	100-300	Cucco Pazzo
B-4	1-10-05	D.C. Entertainment	Thursday 1-13-05	25-200	Cucco Pazzo
		EMCE	Friday 1-14-05	100-300	Cucco Pazzo
		EMCE	Saturday 1-15-05	100-300	Cucco Pazzo
B-5	1-17-05	D.C. Entertainment	Thursday 1-20-05	25-200	Cucco Pazzo
		EMCE	Friday 1-21-05	100-300	Cucco Pazzo
		EMCE	Saturday 1-15-	50-300	Cucco Pazzo

			05		
B-6	1-24-05	D.C. Entertainment	Thursday 1-27-05	50-200	Cucco Pazzo
		EMCE	Friday 1-28-05	100-300	Cucco Pazzo
		EMCE	Saturday 1-29-05	100-300	Cucco Pazzo
B-7	1-31-05	D.C. Entertainment	2-3-05	25-75	Corsetti Catering
		EMCE Entertainment	2-4-05	50-250	Corsetti Catering
		EMCE Entertainment	2-5-05	50-250	Corsetti Catering
B-8	2-7-05	D.C. Entertainment	2-10-05	50-100	Corsetti Catering
		EMCE Entertainment	2-11-05	50-250	Corsetti Catering
		EMCE Entertainment	2-12-05	100-300	Corsetti Catering
B-9	2-14-05	D.C. Entertainment	2-17-05	50-100	Corsetti Catering
		EMCE Entertainment	2-18-05	50-250	Corsetti Catering
		EMCE Entertainment	2-19-05	75-250	Corsetti Catering
B-10	2-21-05	D.C. Entertainment	2-24-05	50-100	Corsetti Catering
		EMCE Entertainment	2-25-05	100-250	Corsetti Catering
		EMCE Entertainment	2-26-05	100-300	Corsetti Catering
B-11	2-28-05	D.C. Entertainment	3-3-05	25-150	Diantonio's
		EMCE Entertainment	3-4-05	100-300	Diantonio's
		EMCE Entertainment	3-5-05	100-200	Diantonio's
B-12	3-7-05	illegible	illegible	illegible	Diantonio's
		illegible	illegible	illegible	Diantonio's
B-13	3-14-05	D.C. Entertainment	3-17-05	50-100	Diantonio's
		EMCE Entertainment	3-18-05	100-300	Diantonio's
		EMCE Entertainment	3-19-05	100-300	Diantonio's
B-14	3-21-05	D.C. Entertainment	3-24-05	50-150	Diantonio's
		EMCE Entertainment	3-25-05	100-300	Diantonio's
		EMCE Entertainment	3-26-05	100-300	Diantonio's
B-15	no "minutes" - deposit date is 3-28-05 each	D.C. Entertainment	3-31-05	50-100	Diantonio's
		EMCE Entertainment	4-1-05	100-300	Diantonio's
		EMCE Entertainment	4-2-05	100-300	Diantonio's
B-16	4-4-05	D.C. Entertainment	4-7-05	50-100	Diantonio's
		EMCE Entertainment	4-8-05	100-300	Diantonio's
		Baum Entertainment	4-10-05	25-100	Diantonio's
Exhibit	Minutes Date	Event	Event Date	# of persons	Catered by

B-17	4-11-05	D.C. Entertainment	4-14-05	50-100	Diantonio's
		EMCE Entertainment	4-15-05	100-300	Diantonio's
		EMCE Entertainment	4-16-05	100-300	Diantonio's
B-18	4-18-05	D.C. Entertainment	4-21-05	50-150	Diantonio's
		EMCE Entertainment	4-22-05	100-300	Diantonio's
		EMCE Entertainment	4-23-05	100-300	Diantonio's
B-19	4-25-05	D.C. Entertainment	4-28-05	25-100	Diantonio's
B-20	5-2-05	D.C. Entertainment	5-5-05	50-150	Diantonio's
		EMCE Entertainment	5-6-05	100-300	Diantonio's
		EMCE Entertainment	5-7-05	100-300	Diantonio's
B-21	5-9-05 These "minutes" are about members	D.C. Entertainment	5-12-05	50-150	Jin Jin
		EMCE Entertainment	5-13-05	100-300	Jin Jin
		EMCE Entertainment	5-14-05	100-300	Jin Jin
B-22	5-16-05	D.C. Entertainment	5-19-05	25-100	Jin Jin
		EMCE Entertainment	5-20-05	100-300	Jin Jin
		EMCE Entertainment	5-21-05	100-300	Jin Jin
B-23	6-6-05	Europe Entertainment	6-8-05	25-50	Jin Jin

(N.T. 33; Exs. B-3 - B-23).

Officer Hess discussed with Mr. Manners the contract for the event of March 25, 2005. (N.T. 22, 25; Ex. B-14). Mr. Manners stated that the entry "\$50 nominal fee or greater" meant that he paid the club fifty dollars (\$50.00) to come to the premises to perform as a DJ in order to promote his business. (N.T. 26, 28).

On July 1, 2005 and July 28, 2005, Officer Hess interviewed David Catrol and D.J. Larry T, two (2) other disc jockeys found to have contracts for entertainment events at the licensed premises in the period between January and June 2005. (N.T. 27-29, 42, 44). Officer Hess determined each of these disc

jockeys had the same arrangements as Mr. Manners, paying fifty dollars (\$50.00) per day to licensee for the right to perform and promote their businesses. (N.T. 29, 42, 44-45).

Every time Officer Hess visited the premises, she asked for and was shown food which consisted of one (1) or two (2) chafing dishes containing pasta or lo mein. (N.T. 31, 37-38, 57-58, 62-63; Ex. L-2). Sometimes pretzels, cookies and potato chips were set out. (N.T. 31).

Officer Hess initiated this citation case, and specified dates of violation for which she had contracts between Licensee and several DJs conducting events at the premises. (N.T. 34-49). She also based the case on the statements of the DJs, the vagueness of the number of patrons who would be attending each event, the minimal nature of the food provided, the fact that the DJs essentially ran the parties, the vagueness of the payment provisions (“\$50.00 or greater”), and the fact that the contracts were not signed. (N.T. 34-52; Exs. B-3 – B-23).

To enforce Licensee’s policies, Mr. Tripodi stated that all guests of events at Licensee’s premises must sign in, unless they are members of Licensee’s club. (N.T. 53; Ex. L-1). He replenishes the food as necessary. (N.T. 56). He assures that everyone who enters signs in as a guest of the entertainment being featured.

(N.T. 54). Mr. Tripodi believes that by signing in, each person becomes a guest of the catered event “that the DJ put on for that night.” (N.T. 55-56, 58-59). Mr. Tripodi opens the club an hour before guests arrive and sets out the food. (N.T. 55-57). Mr. Tripodi stated that his brother, John Tripodi, takes care of preparing the contracts for entertainment. (N.T. 61-62, 64).

John Tripodi was treasurer of Licensee’s club at all times relevant to this investigation. (N.T. 65, 69). The entertainment contracts he prepared were designed to comply with the “LCB blue booklet,” at page 18. (N.T. 65). The entertainment groups paid fifty dollars (\$50.00) to Licensee through him. (N.T. 66, 71-72). The minutes were always attached to the contracts for the week. (N.T. 66). The catered events would be characterized as dance parties. (N.T. 66). The DJs are not members of Licensee’s club; they are in the business of selling CD’s, and their interests are in promoting their music. (N.T. 67).

According to John Tripodi, Licensee’s business generally picks up after midnight. (N.T. 67-68). The Tripodis’ intention is to run the club in accordance with the mandates of the Liquor Code, which is what they attempted to do in creating the minutes and the contracts. (N.T. 68-69).

On occasion, Licensee makes up guest passes, which the DJs use to promote their events at the licensed premises. (N.T. 72-73). Licensee does not promote the events, although John Tripodi might help with the promotion. (N.T. 73-74).

Licensee has operated as a catering club for three (3) years. (N.T. 69-70). Licensee's board consists of Gino Tripodi as Licensee's commander and vice commander, John Tripodi as treasurer, and Anthony Corey as judge adjutant. (N.T. 69). Licensee has approximately fifty (50) voting members. (N.T. 70). Life members pay a one (1)-time fee of two hundred dollars (\$200.00), where other members pay an annual fee of twenty-five dollars (\$25.00). (N.T. 70).

Section 401(b) of the Liquor Code [47 P.S. § 4-401(b)] provides that:

The board may issue to any club which caters to groups of non-members, either privately or for functions, a catering license, and the board shall, by its rules and regulations, define what constitutes catering under this subsection except that any club which is issued a catering license shall not be prohibited from catering on Sundays during the hours which the club may lawfully serve liquor, malt or brewed beverages.

Section 5.83 of the Board's regulations provides that:

(a) Catering, for the purpose of this section, means the furnishing of liquor or malt or brewed beverages, or both, to be served with food prepared on the premises or brought onto the premises

already prepared, for the accommodation of groups of nonmembers who are using the facilities of the club by prior arrangement, made at least 24 hours in advance of the time for private meetings or functions, such as dances, card parties, banquets and the like; and which is paid for by the nonmembers.

(b) A record shall be maintained showing the date and time catering arrangements were made, the name of the person or organization making the arrangements and the approximate number of persons to be accommodated.

[40 Pa. Code § 5.83].

Based upon this record, it is the determination of the Board that it, like the ALJ, is constrained to find that Licensee presented sufficient evidence to meet the criteria for permissible sales of alcohol to nonmembers, as set forth in section 5.83 of the Board's Regulations. To the extent that Licensee has shown that the "events" in question were arranged at least twenty-four (24) hours in advance, were paid for by the individual DJs who were not members of the club, and that the club maintains basic records as standardized forms showing the event, event date, event time, number of persons, a named caterer and amount of the deposit, such documentation comports with the "letter" of the law as set forth in section 5.83(a) of the Board's Regulations [40 Pa. Code section 5.83(a)]. Accordingly, the Board finds that the ALJ did not commit an error of law in finding that

Licensee may rent its premises to DJs who may hold dance parties to which nonmembers may be admitted.

However, Licensee should be cautious to avoid the potential for other violations of the Liquor Code relevant to the conduct of other business on the licensed premises, or any unlawful pecuniary interest during the continuance of the license, as the Board is not certain the same outcome would have resulted had the Bureau seen fit to incorporate Officer Hess's findings into a violation of section 404 of the Liquor Code [47 P.S. § 4-404], or a violation of Board Regulation sections 3.52(a) and (b) [40 Pa. Code § 3.52(a)-(b)]. Licensee's actions, subjected to closer scrutiny, may not support the "spirit" in which section 5.83(a) of the Board's Regulations was intended.

ORDER

The decision of the ALJ is affirmed.

The appeal of the Bureau is dismissed.

Board Secretary