

Mailing Date: October 4, 2006

PENNSYLVANIA LIQUOR CONTROL BOARD
HARRISBURG, PA 17124-0001

PENNSYLVANIA STATE POLICE, : Citation No. 05-1806
BUREAU OF LIQUOR CONTROL :
ENFORCEMENT :

vs. :

VETS CANTEEN ASSOCIATION : License No. CC-5110
130 West King Street :
Shippensburg, PA 17257-1128 :

Counsel for Licensee: Karl E. Rominger, Esquire
Rominger & Whare
155 South Hanover Street
Carlisle, PA 17013

Counsel for Bureau: Thomas M. Ballaron, Esquire
PENNSYLVANIA STATE POLICE,
Bureau of Liquor Control Enforcement
3655 Vartan Way
Harrisburg, PA 17110

OPINION

Vets Canteen Association (“Licensee”) appealed from the Opinion and Order Upon Remand Order From The Pennsylvania Liquor Control Board (“Board”) of Administrative Law Judge Felix Thau (“ALJ”), wherein the ALJ, upon remand from the Board, re-imposed a penalty consisting of a fine

in the amount of one thousand dollars (\$1,000.00) and added a license suspension of ten (10) days.

The citation contained two counts.

The first count charged Licensee with violations of section 471 of the Liquor Code [47 P.S. § 4-471] and section 315(b) of the Local Option Small Games of Chance Act [10 P.S. § 315(b)], in that during the periods April 3 through 9, April 10 through 16, April 17 through 23, April 24 through 30, May 1 through 7, May 29 through June 4, June 5 through 11, June 12 through 18, June 19 through 25, June 26 through July 2, July 3 through 9, July 10 through 16, July 17 through 23 and July 24 through 30, 2005, Licensee, by its servants, agents or employees, offered and/or awarded more than five thousand dollars (\$5,000.00) in cash or merchandise in any seven (7)-day period.

The second count charged Licensee with violations of sections 471 and 493(12) of the Liquor Code [47 P.S. §§ 4-471, 4-493(12)], section 311 of the Local Option Small Games of Chance Act [10 P.S. § 311] and section 901 of the Department of Revenue Regulations [61 Pa. Code § 901], in that on May 13 and August 5, 2005, Licensee, by its servants, agents or employees, failed to maintain complete and truthful records

covering the operation of the licensed business for a period of two (2) years concerning the Local Option Small Games of Chance Act.

In his original Adjudication and Order dated June 22, 2006, the ALJ sustained both counts of the citation and imposed a penalty of a fine of one thousand dollars (\$1,000.00). He stated that no suspension was being imposed because Licensee had "...voluntarily agreed to cease operating pursuant to its Small Games of Chance License for a period of 28 days, beginning August 1, 2006 and terminating close of business August 28, 2006...." [Page 4]. In Licensee's appeal to the ALJ's June 22, 2006 decision, Licensee disputed that it had made such an agreement, and requested that it be permitted to only pay the fine. Neither the Notes of Testimony of the hearing before the ALJ on May 16, 2006, nor the record reflects any agreement by Licensee to forego operations pursuant to its small games of chance license.

By Opinion and Order of the Board mailed on August 2, 2006, remand of this matter was remanded to the ALJ for imposition of penalties consistent with the record and the Board's Opinion. The ALJ's Opinion and Order Upon Remand From The Pennsylvania Liquor Control Board, mailed

on August 15, 2006, re-imposed the penalty of a fine of one thousand dollars (\$1,000.00) and added a license suspension of ten (10) days.

In its current appeal, filed timely on September 11, 2006, Licensee alleged that the violations were not willful, and the proceeds of the games were used for charity. Licensee also opined that a fine is sufficient to punish licensee and prevent recidivism.

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 has 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 record in this matter reflects that counsel for the Pennsylvania State Police, Bureau of Liquor Control Enforcement (“Bureau”) recommended a

penalty consisting of a fine of one thousand five hundred dollars (\$1,500.00), and a five (5)-day suspension of the license. (N.T. 23-24).¹

The merits of the Bureau's charges against Licensee will not be addressed in this appeal as the appeal is only from the new penalty imposed by the ALJ in his August 15, 2006 decision. The imposition of penalties is the exclusive prerogative of the ALJ. The Board may not disturb penalties imposed by the ALJ if they are within the parameters set forth in the Liquor Code. Section 471(b) of the Liquor Code [47 P.S. § 4-471(b)] provides that the ALJ shall "immediately suspend or revoke the license, or impose a fine of not less than fifty dollars (\$50) nor more than one thousand dollars (\$1,000), or both" for offenses of the type set forth in this citation. Because the penalty set forth by the ALJ is clearly permissible and within the scope of section 471, the Board has no authority to alter it.

Therefore, the decision of the ALJ is affirmed.

¹ Licensee previously had been adjudicated responsible for gambling violations similar to those in the instant citation. In Citation No. 04-2066, Licensee was assessed a penalty of nine hundred dollars (\$900.00) for (1) failure to maintain complete and truthful records for a period of two (2) years concerning the Local Option Small Games of Chance Act on November 10, 2004; (2) offering and/or awarding more than five thousand dollars (\$5,000.00) in cash or merchandise in any seven (7)-day period from October 31 through November 6, 2004, and (3) offering and/or giving alcoholic beverages as a prize on October 6, 2004.

ORDER

The decision of the ALJ is affirmed.

The appeal of Licensee is dismissed.

Licensee has paid the fine in the amount of one thousand dollars (\$1,000.00).

It is hereby ordered that Licensee's Catering Club Liquor License No. CC-5110 be suspended for a period of ten (10) days beginning at 7:00 a.m. on Friday, November 17, 2006 and ending at 7:00 a.m. on Monday, November 27, 2006.

Licensee is directed on Friday, November 17, 2006 at 7:00 a.m. to place a Notice of Suspension placard (Form No. PLCB-1925) 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 its license from the wall and place it in a secure location.

Licensee is authorized on Monday, November 27, 2006 at 7:00 a.m. to remove the suspension placard and return its license to its original wall location.

Licensee must comply with all other terms and conditions of the ALJ's
August 14, 2006 Order.

Board Secretary