

Mailing Date: MAR 11 2008

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 06-0005
LIQUOR CONTROL ENFORCEMENT	:	
	:	
v.	:	Incident No. W09-315245
	:	
HALLIGAN'S INC.	:	
1619 BETHLEHEM PIKE	:	LID - 36839
SPRINGFIELD TWP.	:	
FLOURTOWN PA 19031-1916	:	
	:	
	:	
MONTGOMERY COUNTY	:	
LICENSE NO. R-AP-SS-9150	:	

APPEARANCES:

FOR THE BUREAU OF ENFORCEMENT:

**ROY HARKAVY, ESQ.**

FOR THE LICENSEE:

**EDWARD B. McHUGH, ESQ**

**BEFORE: JUDGE WRIGHT**

ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation that was issued on January 17, 2006, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter "Bureau") against Halligan's, Inc., License Number R-AP-SS-9150 (hereinafter "Licensee").

An Administrative hearing was held on Tuesday, January 9, 2007, pursuant to requisite and appropriate hearing notice. The parties stipulated to the service and receipt of the notice letter and the citation.

The citation charges Licensee with violation of Section 471 of the Liquor Code, 47 P.S. Section 4-471, and Section 5514 of the Crimes Code, 18 Pa. C.S. Section 5514, in that on September 1, 7, 14, 21, 30, October 5, 15, 18, 25 and November 9, 2005, Licensee, by its servants, agents or employes, possessed or operated gambling devices or paraphernalia or permitted gambling or lotteries, poolselling and/or bookmaking on the licensed premises.

FINDINGS OF FACT:

1. At the time of investigation Lisa Mullen was employed by the Bureau of Enforcement. During the time of her investigation, she was working in an undercover capacity (N.T. 6-7).

2. On August 31, 2005, she visited the licensed premises at approximately 5:05 p.m. When she entered the premise, she saw an individual heard to be called Phil, who was described as being approximately 5'9" tall and approximately 55 years of age with a baseball cap on who appeared to be tending bar. He was speaking to patrons and referring to a football pool that was five dollars a week. He wanted to know if the patrons were interested (N.T. 7-8).

3. After Phil's shift ended, two bartenders came on duty, one was referred to as B. J. Gibson, who was approximately 27 years of age, was about 6'2" tall with light brown hair. A second one, Brian Halligan, was also approximately 6' tall with dark brown hair. The officer, in making small talk with the bartender, asked him if playing the football pool was just a male activity. He indicated that it was not and that if she wanted to play, he would give her a pool, so she asked him for a pool (N.T. 8-9 and Exhibits B-3(a) and B-3(b)).

4. Exhibit B-3(a) is a copy of a football pool that the bartender handed Officer Mullen. It consists of the NFL teams for seventeen weeks of play. The bartender described the pool to her and circled the winning team and to the right of the team that you pick, you put a scale between sixteen points and one point, whichever you feel the strongest about that the team is going to win and then give them the most points. If your team wins, then you accumulate a great deal of points and that's how the final winner is determined. One side of the pool was kept by the customer and the other side was cut off and given to the bartender. Officer Mullen circled the team that she thought would win and if she thought they had the best chance of winning, she would give them sixteen points. If they won, then she would accumulate sixteen points (N.T. 9-10 and Exhibit B-3).

5. Exhibit B-3(b) is the completed forms which were her picks and had a total at the end. They had to be brought in on Sunday before the actual football game began (N.T. 10 and Exhibit B-3(b)).

6. Officer Mullen went to the licensed premises on Sunday, September 1, 2005. When she arrived at 8:55 p.m., Brian Halligan and B.J. Gibson were tending bar. Officer Mullen gave them five dollars and a prepared football pool. B.J. Gibson took the money and placed it between the cooler and the cash register on a wooden shelf (N.T. 10-11).

7. On September 7, 2005, Officer Mullen went to the licensed premises at approximately 6:25 p.m. When she arrived, Brian Halligan was tending bar (N.T. 11-12).

8. Officer Mullen noted that Kevin Lawn, the secretary, shareholder, director and manager of the licensed premises was also on the premises (N.T. 12).

9. Brian Halligan was tending bar. Officer Mullen gave him a completed football slip along with five dollars which he placed in a soft blue plastic envelope and put between the cooler and the cash register on a wooden shelf, as the officer earlier described (N.T. 13).

10. Officer Mullen returned to the premises on September 14, 2005 at approximately 5:20 p.m. That night the individual, heard to be called Phil on the officer's previous visit, was tending bar. She gave him the completed football pool and five dollars which he placed in the same area between the cooler and the cash register on the wooden shelf (N.T. 14).

11. On September 21, 2005, Officer Mullen returned to the premises at approximately 4:45 p.m. On that date, B.J. Gibson was tending bar. She indicated to B.J. Gibson that she had her football pool money and the completed betting slip. He took the betting slip and five dollars and told her that he was going to put the slip and her money, along with his, on top of the cash register (N.T. 15).

12. On September 30, 2005 at approximately 4:00 p.m., Officer Mullen went to the licensed premises. B. J. Gibson was again the bartender. She indicated to him that she had completed her football betting slip and gave him the slip and five dollars. This time she asked for the results and he had a results slip for her (N.T. 15-16 and Exhibit B-4).

13. The officer was designated on the results slip as "Lisa." The results sheet consisted of approximately thirty-seven names and in each block was the total amount of points that each participant had accumulated. On these particular results sheets, the first weekly prize was \$50.00, the second and third place was \$20.00, fourth place was \$10.00 and fifth place was \$5.00. At this point in time, the annual awards would be first place \$500.00, second place \$300.00 and third place \$200.00 (N.T. 16 and Exhibit B-4).

14. On October 5, 2005, Officer Mullen arrived at the premises at approximately 8:10 p.m. When she entered the premises, there were two bartenders working, Brian Halligan and an unidentified bartender. She gave Brian Halligan her football betting slip and five dollars. She again asked about the results sheet that Brian Halligan had in his possession at that time (N.T. 17).

15. On October 15, 2005, Officer Mullen again visited the premises at 8:45 p.m. Phil was working the bar. She gave him her football betting slip along with five dollars and he placed it on the wooden shelf between the cooler and the cash register. The officer returned three days later on October 18, 2005 at approximately 3:40 p.m. At that time, the bartender was George. George was approximately 5'7" tall, 50 years of age with light brown and graying hair. She gave George a football betting slip along with the five dollars and he placed it on the wooden shelf (N.T. 18).

16. On October 25, 2005, Officer Mullen visited the licensed premises at approximately 5:30 p.m. George was tending bar. George asked her if she was in "Doug's pool." The officer learned later that he was referring to Doug Heyser, who was allegedly running the pool (N.T. 18-19).

17. At some point, Mr. Heyser came into the bar. Officer Mullen asked Brian Halligan to take her money and her football pools for that week (N.T. 20-21).

18. On November 9, 2005, Officer Mullen arrived at approximately 2:35 p.m. and Phil was working at that time. She gave Phil her betting slip and five dollars. Phil placed the money inside the cash register. Phil approached the officer and said that he thought she had done well on the football pool and Mr. Heyser would be in and probably would have a reward for her in the last couple of weeks (N.T. 21-22).

19. On November 9, 2005, after she placed her bet, Officer Bandy, also from the Bureau of Enforcement, entered the premises in order to conduct an inspection. Officer Mullen remained undercover. Officer Bandy spoke with patrons and proceeded behind the bar, where he found the betting slips and money inside the cash register (N.T. 22-23).

20. Once the money and the slip were taken out of the register, Officer Bandy asked Phil what it was and Phil told him that it was the football pool. He asked to speak to Phil in the kitchen and asked if the owner or the Licensee was present (N.T. 23).

21. Officer Mullen remained undercover while Phil, Officer Bandy, Joe Halligan and Kevin Lawn went into the kitchen to discuss the events that had transpired (N.T. 23).

22. Joe Halligan came out and stood in front of Officer Mullen pacing back and forth. He asked her if she wanted to join the group in the kitchen (N.T. 24).

23. Mr. Joe Halligan became irate and repeatedly asked her if she wanted to join them in the kitchen (N.T. 24).

24. The officer went upstairs because she knew Mr. Heyser was going to be showing up. When she came back downstairs, Mr. Heyser had come into the building. She told him that she had heard that she had done well in the football pool. Mr. Heyser gave her two envelopes, one containing five dollars and one containing thirty dollars which were eight and nine winnings in the football pool (N.T. 24-28 and Exhibits B-5 and B-6).

25. During the routine inspection of the premises, Officer Mullen was given signed result sheets. Mr. Heyser also went back in the kitchen with Joe Halligan and Kevin Lawn and Officer Bandy. There were some changes on the results sheets in that the final payout was changed from \$500.00 to \$450.00, the second place remained \$300.00 and third place \$200.00. For the 37 names, 37 players at five dollars per week. There was approximately \$185.00 in cash income per week (N.T. 28-29 and Exhibit B-7)

26. With the exception of the football pools, the officer did not see any other form of gambling taking place (N.T. 33-34).

27. Joe Halligan and Kevin Lawn were present on the August 31, 2005 visit by the Bureau to the licensed premises (N.T. 34).

28. Joseph Halligan, Brian Halligan, Michael Halligan, Kevin Lawn, B.J. Gibson, George, who the officer identified as the bartender, Doug Heyser and Phillip Wrench were all arrested for illegal gambling and were found guilty by the District Justice (N.T. 46-47).

29. Joseph Halligan is one of the principals of the licensed premises. His partner is Kevin Lawn. He has owned the premises since September of 1995. He described it as a family owned business (N.T. 52-54).

30. Mr. Halligan showed the court photographs of the premises, which indicate signage that states there can be no gambling on the premises (N.T. 54).

31. Mr. Halligan indicates that he does routine searches behind the bar on the register to insure that there is no recurrence of the gambling (N.T. 55).

32. Brian Halligan is Joseph Halligan's son and Michael Halligan is his brother. Neither Brian nor Michael work on the premises any longer (N.T. 56).

33. Doug Heyser is a patron at the premises; his wife is a waitress at the restaurant (N.T. 58).

34. Mr. Halligan denied that he knew that Doug Heyser was running a pool from the bar (N.T. 58).

#### CONCLUSIONS OF LAW:

On September 1, 7, 14, 21, 30, October 5, 15, 18, 25 and November 9, 2005, Licensee, by its servants, agents or employes, possessed or operated gambling devices or paraphernalia or permitted gambling or lotteries, poolselling and/or bookmaking on the licensed premises, in violation of Section 471 of the Liquor Code, 47 P.S. Section 4-471, and Section 5514 of the Crimes Code, 18 Pa. C.S. Section 5514.

PRIOR RECORD:

Licensee has been licensed since August 1, 1995, and has a record of prior violations as follows:

Citation No. 02-1411. \$300.00 fine.

1. Possessed or operated gambling devices or paraphernalia or permitted gambling or lotteries, poolselling and/or bookmaking on the licensed premises.  
July 17, 2002.

Citation No. 04-1594. \$500.00 fine.

1. Possessed or operated gambling devices or paraphernalia or permitted gambling or lotteries, poolselling and/or bookmaking on the licensed premises.  
August 2 and 18, 2004.

DISCUSSION:

Officer Mullen testified credibly as to each date that she went to the premises and identified the individuals who were present on each date. She identified where the monies were kept and retained evidence of the pool and of the results of the pool.

The Court does not believe that the Licensee was not aware of the operation of football pools. In fact, Licensee was there on at least one occasion when the officer played the football pool and put in her point total for the week. It was obvious at some point the individuals running and operating the pool did suspect that Officer Mullen was a police officer.

It is without question that there was gambling on the premises. Officer Mullen spoke freely to the bartenders about the gambling. There is no indication that she presented the monies in a surreptitious fashion. Gambling was open and notorious and the Licensee either knew or had very good reason to know that the gambling was occurring on the premises.

Licensee presented evidence that they are a family owned business and are family oriented and participate in charitable affairs. The Licensee indicated that corrective measures have been taken to prevent gambling in the future. Licensee has indicated that there is currently signage on the premises which indicates no gambling and that the owner does inspections to insure that the employees are adhering to no gambling policies.

Licensee's prior record indicates that in 2000 and 2004, the Licensee was cited and found in violation for gambling. Under the circumstance, a \$600.00 penalty shall be imposed.

Halligan's, Inc.  
Citation No. 06-0005

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.

Accordingly, we issue the following

ORDER:

THEREFORE, it is hereby Ordered that Licensee, Halligan's, Inc., License Number R-AP-SS-9150, pay a fine of Six Hundred Dollars (\$600.00) 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.**

Dated this 25<sup>th</sup> day of February, 2008.

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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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Halligan's, Inc.  
Citation No. 06-0005

Detach Here and Return Stub with Payment

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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

Citation No. 06-0005