

Mailing Date: JUN 20 2006

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 06-0201
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W03-315099
v.	:	
	:	LID - 3897
MT. ZION COMMUNITY FIRE CO.	:	
1520 MT. ZION RD.	:	
LEBANON, PA 17046	:	
	:	
	:	
	:	
	:	
	:	
LEBANON COUNTY	:	
LICENSE NO. CC-5332	:	

BEFORE: JUDGE THAU

APPEARANCES:

For Bureau of Enforcement
Thomas M. Ballaron, Esquire
3655 Vartan Way
Harrisburg, PA 17110

For Licensee
R. Scot Feeman, Esquire
315 South Eighth Street
Lebanon, PA 17042

ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation that was issued on February 9, 2006, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (Bureau) against Mt. Zion Community Fire Co. (Licensee), License Number CC-5332.

This citation¹ contains four counts.

The first count charges Licensee with violations of Sections 471 and 493(12) of the Liquor Code [47 P.S. §4-471 and §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]. The charge is that on September 9, 2005, and divers occasions from May through September, 2005, Licensee, by servants, agents or employes, 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.

The second count charges 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)]. The charge is that during the periods July 7 through 13, July 21 through 27, August 4 through 10 and August 18 through 24, 2005, Licensee, by servants, agents or employes, offered and/or awarded more than \$5,000.00 in cash or merchandise in any seven-day period.

The third count charges Licensee with violations of Section 471 of the Liquor Code [47 P.S. §4-471] and Section 315 of the Local Option Small Games of Chance Act [10 P.S. §315]. The charge is that during the period September 9 through November 11, 2005, Licensee's licensed catering club, by servants, agents or employes, violated the Local Option Small Games of Chance Act in that Licensee conducted drawings other than those authorized by law.

The fourth count charges Licensee with violations of Section 471 of the Liquor Code [47 P.S. §4-471] and Section 320(d)(3) of the Local Option Small Games of Chance Act [10 P.S. §320(d)(3)]. The charge is that on September 16 and October 7, 2005, Licensee's licensed catering club compensated persons to conduct Small Games of Chance.

An evidentiary hearing was conducted on May 16, 2006 at Brandywine Plaza, 2221 Paxton Church Road, Harrisburg, Pennsylvania. At this time, Licensee submitted an Admission, Waiver and Authorization², in which Licensee: admits to the violations charged in the citation and that the Bureau complied with the applicable investigatory and notice requirements of the Liquor Code, authorizes the Administrative Law Judge to enter an Adjudication without a hearing based on a summary of facts and prior citation history as provided by the Bureau, and waives the right to appeal this Adjudication.

The following Findings of Fact and Conclusions of Law are entered.

1. Commonwealth Exhibit No. C-2, N.T. 5.
2. Commonwealth Exhibit No. C-1, N.T. 5.

FINDINGS OF FACT:

Count No. 1:

1. A Bureau Enforcement Officer inspected Licensee's records finding, during the period charged, Licensee was maintaining the name and serial number of each game and the date the game was put into and taken out of play. There were no totals of payouts or the cash value of merchandise recorded in any of Licensee's record.

Count No. 2:

2. During the seven days periods charged, Licensee awarded more than \$5,000.00 in cash or prizes. For the interval July 7, 2005 through July 13, 2005, Licensee paid out in excess of \$51,000.00. The second seven days interval, Licensee paid out in excess of \$21,000.00. During the third seven days interval, Licensee paid out in excess of \$20,000.00. During the fourth seven days interval, Licensee paid out nearly \$10,000.00.

Count No. 3:

3. During the period charged, Licensee failed to have the proper notations on raffle tickets sold pursuant to its Small Games of Chance License.

Count No. 4:

4. During the period charged, Licensee compensated those who were selling raffle tickets pursuant to Licensee's Small Games of Chance Permit.

CONCLUSIONS OF LAW:

1. The notice requirements of Liquor Code Section 471 [47 P.S. §4-471] have been satisfied.

Count No. 1:

2. **Sustained** as charged.

Count No. 2:

3. **Sustained** as charged.

Count No. 3:

4. The Bureau has **failed** to prove that during the period September 9 through November 11, 2005, Licensee's licensed catering club, by servants, agents or employes, violated the Local Option Small Games of Chance Act in that Licensee conducted drawings other than those authorized by law.³

Count No. 4:

5. **Sustained** as charged.

PRIOR RECORD:

Licensee has been licensed since July 15, 1952, and has had three prior violation(s) since July 1, 1987, the date of establishment of the Office of Administrative Law Judge (Commonwealth Exhibit No. C-3, N.T. 15):

Adjudication No. 90-1644. Fine \$1,500.00.
Sales to a minor.

Adjudication No. 92-0327. Fine \$300.00.
Sales to nonmembers without prior arrangements.

Adjudication No. 03-1216. Fine \$350.00.

1. Failed to maintain complete and truthful records for a period of 2 years concerning the Local Option Small Games of Chance Act. June 21, 2003.
2. Offered and/or awarded more than \$5,000.00 in cash or merchandise in any 7 day period. May 1, 8, 15, 22 and 29, 2003.

3. The behavior the Bureau asserts that is consistent with the wording of Count No. 3 is actually consistent with the wording of Count No. 1.

PENALTY:

Section 471 of the Liquor Code [47 P.S. §4-471] prescribes a penalty of license suspension or revocation or a fine of not less than \$50.00 or more than \$1,000.00 or both for violations of the type found in Count Nos. 1, 2 and 4, in this case.

Licensee has voluntarily agreed to suspend operating pursuant to its Small Games of Chance Permit during the period August 1, 2006 through and including August 28, 2006. It was my initial intention to impose a suspension in addition to the recommended fines. Since Licensee has voluntarily taken that step, I will impose the following:

Count No. 1 - \$500.00 fine.
Count No. 2 - \$1,000.00 fine.
Count No. 4 - \$250.00 fine.

ORDER:

Imposition of Fine

THEREFORE, it is hereby ordered that Licensee pay a fine of \$1,750.00 within 20 days of the mailing date of this Order. In the event the aforementioned fine is not paid within 20 days from the mailing date of this Order, Licensee's license shall be suspended or revoked.

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, Pennsylvania 17110-9661

Dismissal of Count No. 3:

IT IS FURTHER ORDERED that Count No. 3 in Citation No. 06-0201, issued against Mt. Zion Community Fire Co., is DISMISSED.

Retaining Jurisdiction

Jurisdiction is retained to ensure compliance with this Adjudication.

Dated this 12th day of June, 2006.

Felix Thau, A.L.J.

pm

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.