

Mailing Date: JAN 02 2007

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 06-0300
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W03-321947
v.	:	
	:	LID - 1385
ST. GERTRUDES SICK	:	
BENEFIT SOCIETY	:	
302 E. LEHMAN ST.	:	
LEBANON, PA 17042-3933	:	
	:	
	:	
LEBANON COUNTY	:	
LICENSE NO. CC-2770	:	

BEFORE: JUDGE THAU

APPEARANCES:

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

For Licensee
James A. Snell, Esquire
327 S. 8th Street
Lebanon, PA 17042

ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation that was issued on February 23, 2006, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (Bureau) against St. Gertrudes Sick Benefit Society (Licensee), License Number CC-2770.

This citation¹ contains six counts.

The first count charges Licensee with violations of Section 102 of the Liquor Code [47 P.S. §1-102]. The charge is that on December 22, 2005, and divers occasions in the past year, Licensee, by servants, agents or employes, failed to fulfill charter purposes.

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 period October 16 through 22, 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 Sections 5.71, 5.73, 5.74 and 5.83(b) of the Pennsylvania Liquor Control Board Regulations [40 Pa. Code §5.71, §5.73, §5.74 and §5.83(b)]. The charge is that on December 22, 2005, and divers occasions in the past year, Licensee, by servants, agents or employes, failed to maintain records in conformity with Title 40 of the Pennsylvania Code.

The fourth count charges Licensee with violations of Section 5.81 of the Pennsylvania Liquor Control Board Regulations [40 Pa. Code §5.81]. The charge is that on December 20, 2005, and divers occasions in the past year, Licensee, by servants, agents or employes, failed to adhere to by-laws.

The fifth count charges Licensee with violations of Section 5.82(a) of the Pennsylvania Liquor Control Board Regulations [40 Pa. Code §5.82(a)]. The charge is that during the period November 5 through December 17, 2005, Licensee, by servants, agents or employes, permitted a club officer and/or employee to operate the food concession.

The sixth count charges Licensee with violations of Section 5.82(b) of the Pennsylvania Liquor Control Board Regulations [40 Pa. Code §5.82(b)]. The charge is that on December 22, 2005, and divers occasions in the past year, Licensee, by servants, agents or employes, failed to present a check for service of alcoholic beverages, separate from a check for food prepared by a concessionaire, to each member served.

An evidentiary hearing was conducted on November 15, 2006 at Brandywine Plaza, 2221 Paxton Church Road, Harrisburg, Pennsylvania.

After review of the transcript of that proceeding, the following Findings of Fact and Conclusions of Law are entered.

1. Commonwealth Exhibit No. C-2, N.T. 6.

FINDINGS OF FACT:

1. The Bureau began its investigation on November 9, 2005 and completed it on January 11, 2006. (N.T. 6)

2. The Bureau sent a notice of alleged violations to Licensee at the licensed premises by certified mail-return receipt requested on January 27, 2006. The notice alleged violations as charged in the citation. (Commonwealth Exhibit No. C-1, N.T. 6)

Count No. 1:

3. On December 22, 2005, pursuant to an open inspection conducted by Bureau Enforcement Officers at a time when the premises was open and in operation selling alcoholic beverages, Licensee's Charter was reviewed. One of the purposes was to pay sick and death benefits to members. Licensee had no longer been doing that. In February, 2006, Licensee amended its Charter. (N.T. 7-8)

Count No. 2:

4. During the seven days period beginning October 16 and October 22, 2005, Licensee awarded \$9,353.00 in prizes pursuant to its Small Games of Chance License. (N.T. 13)

Count No. 3:

5. Bureau Enforcement Officers examined Licensee's records finding the date of application for new members was not placed next to the names for the Minutes dated June 2, 20, July 18 and November 19, 2005. In addition, Licensee's Financial Reports were not appended to the minutes after the date of September 20, 2005. (N.T. 15-16)

Count No. 4:

6. During the course of the inspection, the Officers discovered the By-Laws require the formation and holding of meetings of the Entertainment Committee and an Audit Committee. Neither of these committees existed. The condition was rectified as of February, 2006 by virtue of By-Law Amendment to delete the inclusion of these committees. (N.T. 17)

Count No. 5:

7. Licensee permitted a concessionaire to do business at the subject premises. The corporate officers of the concessionaire consisted of a director in Licensee's organization. Licensee has since rectified that condition by removing the individual from having position with the Club. (N.T. 18)

Count No. 6:

8. When Licensee prepared guest checks, those checks included both the cost of alcoholic beverages as well as the cost of food. Licensee has since corrected the condition. (N.T. 19)

CONCLUSIONS OF LAW:

1. The notice requirements of Liquor Code Section 471 [47 P.S. §4-471] have been satisfied.
2. Count Nos. 1, 2, 3, 4, 5 and 6 are **sustained** as charged.

DISCUSSION:

Licensee argues that it has substantially complied with the Charter purposes even though it did not comply with the one condition mentioned in Finding of Fact No. 4.

While I agree with Licensee that the concept of substantial compliance has merit, the specific reference to payment of sick and death benefits to its members, in my mind, represents a substantial club duty. It is not a general, all purpose statement that may be subject to any number of definitions. Accordingly, I find the Bureau has met its burden of proof.

PRIOR RECORD:

Licensee has been licensed since April 9, 1936, and has had seven 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. 24):

Adjudication No. 89-2050. Fine \$275.00.
Sales to nonmembers.

Adjudication No. 92-1355. Fine \$800.00.

1. Failed to adhere to bylaws.
2. Failed to notify the Board within 15 days of a change of officers, directors and stockholders.
3. Failed to maintain records in conformity with Title 40 of the Pennsylvania Code.
4. Unexplained cash shortage.
5. Organization not operated for the mutual benefit of the entire membership.
6. Transported malt or brewed beverages in a vehicle not registered with the Pennsylvania Liquor Control Board.

Adjudication No. 93-1312. Fine \$800.00 and 2 days suspension.

1. Refused enforcement officers the right to inspect completely the entire licensed premises at a time during which the premises was open for the transaction of business.
2. Failed to require patrons to vacate the premises not later than one-half hour after the required time.

Adjudication No. 97-0470. Fine \$500.00.

Noisy and/or disorderly operation.

Adjudication No. 02-1067. Fine \$350.00.

Possessed or operated gambling devices or paraphernalia or permitted gambling or lotteries, poolselling and/or bookmaking on the licensed premises (sports pool).
May 3, 2002.

Adjudication No. 03-1466. Fine \$400.00.

1. Failed to maintain complete and truthful records covering the operation of the licensed business for a period of two years concerning the Local Option Small Games of Chance Act.
May 23, 2003.
2. Offered and/or awarded more than \$5,000.00 in cash or merchandise in any seven day period.
April 7, 14, 21, 28, May 12, 19 and 26, 2003.

Adjudication No. 05-0378. Fine \$1,700.00.

1. Failed to maintain complete and truthful records covering the operation of the licensed business for a period of 2 years concerning the Local Option Small Games of Chance Act.
January 20, 2005.
2. Offered and/or awarded more than \$5,000.00 in cash or merchandise in any seven day period.
November 1 through 7, 15 through 21,
December 6 through 12 and 13 through 19, 2004.
3. Failed to fulfill charter purposes.
January 26, 2005.

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, 3, 4, 5 and 6 in this case.

I impose:

- Count No. 1 – \$150.00 fine.
- Count No. 2 – \$1,000.00 fine and 3 days suspension.
- Count No. 3 – \$150.00 fine.
- Count No. 4 – \$150.00 fine.
- Count No. 5 – \$150.00 fine.
- Count No. 6 – \$150.00 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

Imposition of Suspension

IT IS FURTHER ORDERED that the Catering Club liquor license of St. Gertrudes Sick Benefit Society, License No. CC-2770, be suspended for a period of three days, **BEGINNING** at 7:00 a.m., on Monday, February 12, 2007, and **ENDING** at 7:00 a.m., on Thursday, February 15, 2007.

Licensee is directed, on Monday, February 12, 2007, at 7:00 a.m., to place a placard of notice of suspension (identified as Form No. PLCB-1925 and as printed with red and black ink) 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 said license from the wall and place it in a secure location.

Licensee is advised, if replacement placards are needed for any reason, they are available at all Pennsylvania Liquor Stores/Wine & Spirits Shoppes.

The Bureau is directed to visit and monitor the aforementioned licensed premises for compliance with this Order.

Licensee is authorized, on Thursday, February 15, 2007, at 7:00 a.m., to remove the placard of suspension and return its license to its original wall location.

Retaining Jurisdiction

Jurisdiction is retained to ensure compliance with this Adjudication.

Dated this 19th day of December, 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.