

Mailing Date: OCT 24 2006

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 06-0457
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W02-326053
v.	:	
	:	LID - 52603
TAL BROTHERS, INC.	:	
T/A CAFÉ FAMIGLIA	:	
1557 MAIN ST.	:	
BLAKELY	:	
PECKVILLE, PA 18452-2016	:	
	:	
LACKAWANNA COUNTY	:	
LICENSE NO. R-AP-SS-17517	:	

BEFORE: JUDGE FLAHERTY

APPEARANCES:

For Bureau of Enforcement
Craig Strong, Esquire

For Licensee
NO APPEARANCE

ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation that was issued on March 8, 2006, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter "Bureau") against TAL BROTHERS, INC., License Number R-AP-SS-17517 (hereinafter "Licensee").

The citation charges Licensee with violation of Section 471 of the Liquor Code [47 P.S. §4-471] and Section 5513 of the Crimes Code [18 Pa. C.S. §5513] in that on January 25, 2006, 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.

The investigation which gave rise to the citation began on January 25, 2006 and was completed on January 25, 2006; and notice of the violation was sent to Licensee by Certified Mail on February 6, 2006. The notice of violation was received by Licensee.

An evidentiary hearing was held on this matter on August 9, 2006 in the Scranton State Office Building, 100 Lackawanna Avenue, Scranton, Pennsylvania. Licensee(s) did not appear at the hearing, nor did anyone appear on its behalf. A citation hearing notice was sent to Licensee(s) at its address of record, 1557 Main St., Blakely, Peckville, PA 18452-2016 by certified mail, return receipt requested and by first class mail on June 27, 2006. The notice set forth the date and time of the hearing as August 9, 2006 at 10:30 a.m., and the place of hearing as Scranton State Office Building, PUC Hearing Room 318, 100 Lackawanna Ave, Scranton, PA 18503.

Upon review of the transcript of this hearing, we make the following Findings of Fact and reach the following Conclusions of Law:

FINDINGS OF FACT:

1. On January 25, 2006, two officers of the Bureau entered the licensed premises and conducted a routine inspection (N.T. 7-8).
2. During the inspection the officers found, plugged in and ready to be played, one Americana video poker machine (N.T. 8).
3. The officers examined the machine preliminarily and determined that it took \$.25 per credit on the machine and there was a knock off device (N.T. 8).
4. After seizure, a more thorough examination of the machine was conducted. It was determined that the machine played draw poker. The player would deposit \$.25 per credit. The machine had a bill converter so that the player could put in \$1.00 bills, \$5.00 bills, \$10.00 bills or \$20.00 bills. The player would receive one credit for each \$.25 deposited (N.T. 11). The machine would allow you to play up to 20 credits or \$5.00 per play (N.T. 12).
5. Once a player has decided how many credits he wishes to play he would hit a draw button and five cards would be displayed. The player would then have the option of discarding up to five of the cards hitting another button for redraw and receiving five new cards. Depending on what cards he ultimately had he would either win or lose the hand. If the player won the hand he would be awarded credits (N.T. 12).
6. The officer found that it took approximately five seconds to play a hand and required no skill (N.T. 12).
7. The officer also re-determined that the machine had a knock off device whereby all credits registered on the machine could be removed (N.T. 10).

8. In addition to the knock off device, the officer determined that there was an accounting device which recorded the credits that were knocked off the machine (N.T. 10).

CONCLUSION OF LAW:

The charge in the citation is **sustained**.

DISCUSSION

The record establishes that the machine had all of the characteristics of a gambling device per se, namely the elements of consideration, chance predominating over skill and circumstantial evidence of reward for winning.

PRIOR RECORD:

Licensee has been licensed since April 2, 2004, and has had two prior violations:

Citation No. 05-0162. Fine \$100.00.

1. Operated the licensed establishment without a valid health permit or license. January 4, 2005.

Citation No. 05-2244. 3 days suspension.

1. Sales after the restaurant liquor license expired on September 30, 2005 and had not been renewed and/or validated. October 2, 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 this case.

Under the circumstances of this case, the penalty imposed shall be a fine of \$550.00.

ORDER

THEREFORE, it is hereby ordered that Licensee TAL BROTHERS, INC., pay a fine of \$550.00 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 or Certified Check. **Personal checks, which includes business-use personal checks, are not acceptable.** Make check payable to the Commonwealth of Pennsylvania and mail to:

PLCB-Office of Administrative Law Judge
Brandywine Plaza
2221 Paxton Church Road
Harrisburg PA 17110-9661

Jurisdiction is retained pending final resolution of the penalty in this matter.

Dated this 11th day of October, 2006.

Daniel T. Flaherty, Jr., J.

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MOTIONS FOR RECONSIDERATION MUST BE RECEIVED WITHIN 15 DAYS OF THE MAILING DATE OF THIS ORDER IN 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.