

Mailing Date: NOV 06 2007

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 06-0979
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W06-320842
v.	:	
	:	LID - 31443
LORRAY, INC.	:	
T/A THE BOWERY	:	
400 W. MARKET ST.	:	
TREVORTON, PA 17881-1510	:	
	:	
	:	
NORTHUMBERLAND COUNTY	:	
LICENSE NO. R-AP-SS-15853	:	

BEFORE: JUDGE FLAHERTY

APPEARANCES:

For Bureau of Enforcement
Thomas M. Ballaron, Esquire

For Licensee
Lori Heintzelman Lenig,
PRO SE

ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation that was issued on May 4, 2006, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter "Bureau") against LORRAY, INC., License Number R-AP-SS-15853 (hereinafter "Licensee").

The citation contains two counts.

The first count charges Licensee with violation of Section 471 of the Liquor Code [47 P.S. §4-471] in that on January 13, 2006, the licensed premises sold cigarettes without the necessary permit required by law.

The second count charges Licensee with violation of Section 471 of the Liquor Code [47 P.S. §4-471] and Sections 5512 and/or 5513 of the Crimes Code [18 Pa. C.S. §5512 and/or 5513] in that on February 18, 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 October 21, 2005 and was completed on March 27, 2006; and notice of the violation was sent to Licensee by Certified Mail on March 30, 2006. The notice of violation was received by Licensee.

An evidentiary hearing was held on this matter on January 18, 2007 in the PA Dept. of Agriculture, 2130 County Farms Road, Montoursville, Pennsylvania.

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:

COUNT 1

1. On January 13, 2006 Licensee did not hold a cigarette tax permit from the PA Department of Revenue. On that date Licensee had in stock and offered for sale taxed cigarettes. The Licensee has now acquired that required cigarette tax permit and is in compliance with that provision (N.T. 9-16).

COUNT 2

2. On February 18, 2006, an officer of the Bureau entered the licensed premises at 1:06 p.m. Upon entry, he observed a male bartender heard to be called Clay tending bar and rendering service to six patrons (N.T. 20).

3. As the officer sat at the serving bar, he observed a gentleman seated to his left. This gentleman had in his possession a white envelope and a yellow legal pad (N.T. 20).

4. The officer noticed patrons entering the licensed premises and approaching this gentleman. They gave this gentleman what appeared to be U.S. currency of different denominations (N.T. 20).

5. The officer asked the bartender, Clay what the "buy-in" was for the Texas Hold'Em tournament. Clay said it was \$20.00 (N.T. 20-21).

6. Between 1:15 p.m. and 2:00 p.m. the officer observed approximately 20 patrons enter the licensed premises and pay the gentleman with the envelope and legal pad buy-in money to enter the tournament (N.T. 21).

7. At approximately five minutes after 2:00 p.m., Lori Heintzelman, the Board approved secretary, treasurer and stockholder of the licensed premises appeared (N.T. 21).

8. The gentleman that was collecting the buy-in money left his position at the bar and walked into the basic serving area just outside the bar area where the officer was seated. He had a plastic container that contained multicolored poker chips. On these chips were table numbers and seating positions. The gentleman began to read the names of the patrons that had paid the buy-in money for the tournament. As he read off the names of these patrons, each one came forward and picked a chip out of the container. They found out what table number it was and what seating position it was and they took their seats at their respective tables (N.T. 21-22).

9. At this point Lori Heintzelman explained to the patrons the general rules of the Texas Hold'Em tournament (N.T. 22).

10. After the discussion of the rules a second gentleman appeared. He had in his possession several sealed bags that contained poker chips. After all the players sat at their respective tables and positions he walked around and placed chips in front of each of the players at that location (N.T. 22). At that point the play started. The game being played was a derivative of seven card stud poker in which two cards are dealt to each player. There are five common cards that are placed in the center of the table. Rounds of betting would take place after two cards were dealt and after the one common card is flipped over there would be a round of betting also (N.T. 23). The prizes for the winners of the tournament were \$296.00 for first place and \$185.00 for second place (N.T. 23-24).

11. During the course of the Texas Hold'Em tournament Lori Heintzelman walked around with a roll of 50/50 tickets. She was selling these tickets for three tickets for \$2.00. The officer purchased a section of three tickets for \$2.00 at that point. The winnings of the drawing, held at 3:45 p.m. were \$59.00 which was awarded to a male patron. There was another sale of tickets in which the officer bought tickets. The officer was unaware of the outcome of that drawing (N.T. 24-25).

CONCLUSIONS OF LAW:

Counts 1 and 2 of the citation are **sustained**.

DISCUSSION:

Licensee does not contest the facts presented in this case nor is there any attempt on the part of Licensee to deny the violation contained herein. The presence of Licensee's officer and stockholder was merely to explain the circumstances under which these violations occurred.

PRIOR RECORD:

Licensee has been licensed since April 29, 1993, and has had one prior violation:

Citation No. 95-1729. Fine \$200.00 and Sunday Sales Permit privilege revoked for one year.

1. Furnished false information regarding sales of food and beverages when applying for a Sunday Sales Permit.

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 as follows:

Count 1 - \$250.00 fine

Count 2 - \$250.00 fine

ORDER

THEREFORE, it is hereby ordered that Licensee LORRAY, INC., pay a fine of \$500.00 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.

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

Dated this 26th day of October, 2007.

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Daniel T. Flaherty, Jr., J.

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.

Detach here and submit stub with payment

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

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