

Mailing Date: DEC 14 2006

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 06-1534
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W03-324529
v.	:	
	:	LID - 3854
LAWNTON WAR VETERANS	:	
HOME ASSN., INC.	:	
4700 DERRY STREET	:	
LAWNTON	:	
HARRISBURG, PA 17111-2661	:	
	:	
DAUPHIN COUNTY	:	
LICENSE NO. CC-5227	:	

**BEFORE:** JUDGE THAU

APPEARANCES:

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

For Licensee  
Donald Painter  
Terry Barkley  
(Officers of the Club)

**ADJUDICATION**

BACKGROUND:

This proceeding arises out of a citation that was issued on June 29, 2006, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (Bureau) against Lawnton War Veterans Home Assn., Inc. (Licensee), License Number CC-5227.

This citation<sup>1</sup> contains two counts.

The first 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 May 14 through 20, 2006, 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 second count charges Licensee with a violation 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 May 24, 2006, 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.

An evidentiary hearing was conducted on October 27, 2006 at Brandywine Plaza, 2221 Paxton Church Road, Harrisburg, Pennsylvania. Licensee was represented by its Officers, Mr. Donald Painter and Mr. Terry Barkley. I advised them of Licensee's right to counsel, to cross-examine witnesses and to present testimony. The gentlemen acknowledged that they understood those rights and that they were prepared to go forward without an attorney. (N.T. 6-7)

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

FINDINGS OF FACT:

1. The Bureau began its investigation on December 29, 2005 and completed it on May 24, 2006. (N.T. 12)

2. The Bureau sent a notice of alleged violations to Licensee at the licensed premises by certified mail-return receipt requested on June 9, 2006. The notice alleged violations as charged in the citation. (Commonwealth Exhibit No. C-1, N.T. 9)

Count No. 1:

3. For the seven-day period beginning of May 14 through May 20, 2006, a Bureau Enforcement Officer calculated Licensee awarded \$5,175.00 in prizes. The Officer arrived at this value by conducting an audit which matched the actual figure Licensee listed in its books. The amount paid out in that seven day period was \$5,175.00. (N.T. 32-38)

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1. Commonwealth Exhibit No. C-2, N.T. 9.

Count No. 2:

4. A Bureau Enforcement Officer inspected Licensee's records on May 24, 2006, specifically regarding the Small Games of Chance records. Licensee was not maintaining documentation of winners that won between \$101.00 to \$500.00. (N.T. 23-25)

5. There was also no record keeping regarding Licensee's stamp machines which were used pursuant to the Small Games of Chance license. (N.T. 47-48)

CONCLUSIONS OF LAW:

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

Count No. 1:

2. The Bureau has **failed** to prove that during the period May 14 through 20, 2006, Licensee, by servants, agents or employees, offered and/or awarded more than \$5,000.00 in cash or merchandise in any seven-day period.

Count No. 2:

3. **Sustained** as charged.

DISCUSSION:

I dismiss Count No. 1, because I cannot assess significant weight to the results of the Bureau's audit. An abundance of case law tells us that audits represent "scientific" data based on the discipline of accounting. Both the auditor's qualifications and the method of auditing must be firmly established in the record.

Moreover, an audit is no more than a test, the results of which must be either confirmed or denied through further evaluation. Since the Officer's audit results are very close to the lawful limit of \$5,000.00 and the above qualifying elements were marginally addressed, I cannot accord any weight to the audit results.

It is true the Officer testified that Licensee's records confirm the accuracy of the audit but that statement constitutes double hearsay. It is hornbook law that in order for multiple levels of hearsay to be admissible, a declaration must satisfy some exception for each hearsay level. The initial level does fall within an exception to the hearsay rule regarding admissions, i.e., Licensee's business records. However, the Officer's repetition of the contents of those records does not fall within any exception.

PRIOR RECORD:

Licensee has been licensed since November 20, 1951, and has had five 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. 68):

Adjudication No. 88-0728. Fine \$350.00.

Possessed or operated gambling devices or paraphernalia or permitted gambling or lotteries on a licensed premises (machine).

Adjudication No. 89-2057. Fine \$425.00.

Sales to nonmembers without prior arrangement.

Adjudication No. 96-2258. Fine \$60.00.

Issued worthless checks in payment for malt or brewed beverages.

Adjudication No. 97-2300. Fine \$200.00.

Sales to nonmembers without prior arrangement.

Adjudication No. 04-1577. Fine \$1,000.00.

1. Possessed or operated gambling devices or paraphernalia or permitted gambling or lotteries, poolselling and/or bookmaking on your licensed premises (machines).  
April 19, 2004.
2. Held a contest, event or tournament on your licensed premises sponsored or co-sponsored by someone other than the licensee.  
April 19, 2004.
3. Permitted a non-licensee sponsor to award prizes.  
April 19, 2004.
4. Sales to nonmembers.  
November 22, 2003 and February 14, 2004.

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 No. 2 in this case.

I impose:

Count No. 1 – Dismissed.  
Count No. 2 - \$100.00 fine.

ORDER:

**Imposition of Fine**

THEREFORE, it is hereby ordered that Licensee pay a fine of \$100.00 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. 1:**

IT IS FURTHER ORDERED that Count No. 1 of Citation No. 06-1534, issued against Lawnton War Veterans Home Assn., Inc., License No. CC-5227 is DISMISSED.

**Retaining Jurisdiction**

Jurisdiction is retained to ensure compliance with this Adjudication.

Dated this 7<sup>th</sup> day of December, 2006.

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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.**