

Mailing Date: MAY 19 2008

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 06-1952
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W03-328833
v.	:	
	:	LID - 45550
SOCIAL LABOR ORGANIZATION OF	:	
HUBLEY MANUFACTURING CO.	:	
410 ICE AVE.	:	
LANCASTER, PA 17602-1932	:	
	:	
	:	
LANCASTER COUNTY	:	
LICENSE NO. C-6362	:	

BEFORE: JUDGE FLAHERTY

APPEARANCES:

For Bureau of Enforcement
Andrew J. Lovette, Esquire

For Licensee
Angela M. Ward, Esquire

ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation that was issued on August 24, 2006, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter "Bureau") against SOCIAL LABOR ORGANIZATION OF HUBLEY MANUFACTURING CO., License Number C-6362 (hereinafter "Licensee").

The citation contains three counts.

The first count charges Licensee with violation of Section 493(12) of the Liquor Code [47 P.S. §4-493(12)] in that on May 16 and 22, 2006, Licensee, by its servants, agents or employes, failed to keep on the licensed premises and/or provide an authorized employe of the Enforcement Bureau access to, or the opportunity to copy, complete and truthful records covering the operation of the licensed business.

The second count charges Licensee with violation of Section 471 of the Liquor Code [47 P.S. §4-471] and Section 5512 of the Crimes Code [18 Pa. C.S. §5512] in that on May 22, 2006, and divers other occasions in the past year, 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 third count charges Licensee with 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] in that on May 22, 2006, and divers other occasions in the past year, Licensee, by its servants, agents or employes, 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.

The investigation which gave rise to the citation began on March 9, 2006 and was completed on July 18, 2006; and notice of the violation was sent to Licensee by Certified Mail on July 31, 2006. The notice of violation was received by Licensee.

An evidentiary hearing was held on this matter on January 30, 2007 in the Office of Administrative Law Judge, Brandywine Plaza, 2221 Paxton Church Road, Harrisburg, 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:

COUNTS 1, 2 AND 3

1. On May 16, 2006 an officer of the Bureau entered the licensed premises, presented her badge and identification card and explained the purpose of her visit. She was directed to Mr. Sullenberger, manager of Licensee club. She identified herself to Mr. Sullenberger and explained that she would be conducting a routine inspection (N.T. 7-9).

2. During the visit on May 16, 2006 the officer asked to see the financial records for Licensee club. Mr. Sullenberger informed her that the financial records were not on the licensed premises, but were at his residence (N.T. 10).

3. The officer made arrangements to meet with Mr. Sullenberger at a later date (N.T. 10).

4. On May 22, 2006 the officer returned to the licensed premises and met with Mr. Sullenberger. At that time Mr. Sullenberger produced the financial records for the years 2004 and 2005. The officer asked Mr. Sullenberger where the financial records for the year 2006 were. He said that they were "at the accountants." (N.T. 11-13).

5. The officer asked Mr. Sullenberger about the Small Games of Chance records, and he produced a clip board. The information on the clip board was maintained in columnar form and included the name of the game, the date it was put into play, the date it was taken out of play and the profit from the game. It did not include the serial numbers of the games or the amounts of the payouts (N.T. 13).

6. The officer asked Mr. Sullenberger how much he had paid out on each of the small games of chance. He became agitated and told the officer she could check the tickets and flare cards, and that would tell her what she needed to know (N.T. 13).

7. During the course of the inspection the officer determined that Licensee maintained two "sign-in" books. One was a daily book which ran from Monday through Sunday. The other was a weekend book which ran Friday, Saturday and Sunday. Consequently, the two books coincided on three days (N.T. 13-14).

8. As of the time of this investigation, Licensee had a valid Local Option Small Games of Chance License (N.T. 9).

CONCLUSIONS OF LAW:

Counts 1, 2 and 3 of the citation are **sustained**.

DISCUSSION:

COUNT 1

Because Licensee did not have any financial records available on the licensed premises for inspection by the officer on May 16, 2006, and did not have any financial records available on the licensed premises for the partial year 2006 on May 22, 2006, Section 493(12) of the Liquor Code [47 P.S. §4-493(12)] was violated.

Section 493(12) of the Liquor Code [47 P.S. §4-493(12)], as pertinent reads as follows:

It shall be unlawful...

(12) For any liquor licensee...to fail to keep on the licensed premises for a period of at least two years complete and truthful records covering the operation of the licensed business...

In this case, when on May 16, 2006, the officer asked to see the financial records for Licensee, he was told that these records were at the residence of the manager of Licensee, Mr. Sullenberger (See Finding No. 2). Similarly, when the officer returned to the licensed premises on May 22, 2006, the records for the years 2004 and 2005 were present, but the officer was told that the records for the partial year 2006 (January 1 through May 22) were at the office of the accountant of Licensee.

It is clear that on both of the dates charged, May 16 and 22, 2006, Licensee failed to keep on the licensed premises, complete and truthful records covering the operation of the licensed premises for at least two years. Therefore the charge in Count 1 of the Citation is sustained.

COUNT 2

Since the daily books maintained on Friday, Saturday and Sunday coincided with the weekly books maintained on the same days, one of the two books was not entitled to exemption under the Local Option Small Games of Chance Act [10 P.S. §311 et seq] and was, therefore, an illegal lottery maintained by the Licensee which constitutes “other sufficient cause” as that term is used in Section 471 of the Liquor Code [47 P.S. §4-471].

Violation of a gambling statute by a liquor licensee is considered “other sufficient cause” as that term is used in Section 471 of the Liquor Code (supra), thus subjecting the licensee to the penalties provided by that section. *Mar-Kodis Diner, Inc. v. Commonwealth of Pennsylvania, Pennsylvania Liquor Control Board*, 532 A.2d 940 (Pa. Cmwlth 1987).

Section 5512 of the Crimes Code [18 Pa. C.S. §5512] makes it illegal to set up or maintain any unlawful lottery or numbers game. The term “unlawful” as used in this section is defined to mean: “...not specifically authorized by law.”

The Local Option Small Games of Chance Act [10 P.S. §313 et seq.] permits organizations holding Local Option Small Games of Chance licenses to conduct “daily drawings” and “weekly drawings,” both of which are forms of lotteries. However Section 315 of this act (supra) prohibits a licensee from holding a daily drawing and a weekly drawing on the same date [See §315(e) and §315(h)].

The record establishes that Licensee was conducting both a daily drawing and a weekly drawing on Friday, Saturday and Sunday of each week (See Finding No. 7). One of these drawings was clearly not authorized under Section 313 of the Local Option Small Games of Chance Act and was therefore an unlawful lottery under Section 5512 of the Crimes Code (supra). Such violation constitutes “other sufficient cause” as that term is used in Section 471 of the Liquor Code (supra) thus subjecting Licensee to the penalty provisions of that Section.

The Supreme Court of Pennsylvania has mandated that where a licensee has been found to have committed a violation which is classified as “other sufficient cause,” some element of scienter must be present before the penalties set forth in Section 471 of the Liquor Code (supra) may be applied. The test set forth by the Court is as follows:

1. Whether the licensee knew or should have known of the illegal activities by an employe or patron. If so, the licensee is liable.
2. A licensee may defend his license by demonstrating he took substantial, affirmative steps to guard against a known pattern of illegal activities.

Pa Liquor Control Board v. TLK, Inc., 544 A.2d 931 (Pa. 1988).

In this case, it is clear that the officers and directors were aware of the fact that the two sign in books were being run at the same time and that nothing was being done to prevent this behavior. The element of scienter, as required, is therefore present.

Based on the foregoing, I conclude that Count No. 2 of the citation has been sustained.

COUNT 3

Licensee did not maintain records with respect to small games of chance as to the serial numbers of specific games put into play or the amount of payouts on specific games.

As noted in Count No. 1, Section 493(12) of the Liquor Code (supra) requires licensees to maintain complete and accurate records covering the operation of the licensed business for a period of two years.

Section 327 of the Local Option Small Games of Chance Act (LOSGCA) [10 P.S. §327] makes any violation of the act subject to criminal penalties. Consequently any violation of the LOSGCA by a liquor licensee constitutes “other sufficient cause” as that term is used in Section 471 of the Liquor Code (supra), thus subjecting the liquor licensee to the penalty provisions of that section. *TLK* (supra).

Section 317(f) of the LOSGCA [10 P.S. §317(f)] requires a licensee to make and keep such records as the Department of Revenue shall prescribe and make such records available as required by the Department pursuant to regulation.

Section 901.461 of the Regulations of the Department of Revenue [61 Pa. Code §901.461] requires that licensees maintain records regarding small games of chance for a period of two years.

Section 901.464 of the Regulations of the Department of Revenue [61 Pa. Code §901.464] requires the licensee to record the manufacturer's serial number on each punchboard or pull-tab deal, a list of winners' names and addresses for prizes in excess of \$100.00, and the cash value of all prizes.

The record reveals that on May 22, 2006, the records provided to the officer did not include the serial numbers of the games or the amounts paid out on the games (See Finding No. 5). Licensee was, therefore, in violation of Sections 901.461 and 901.464 of the Department of Revenue Regulations (supra) and Section 317(f) of the LOSGCA (supra) and Sections 471 and 493(12) of the Liquor Code (supra).

Since the violation in this case falls partially within the "other sufficient cause" language of Section 471 of the Liquor Code (supra), my comments concerning that language as found in Count No. 2 above are incorporated herein by reference. Further, as Licensee's manager was aware of how the small games of chance records were kept, the necessary element of scienter is present.

Consequently, I conclude that Count No. 3 of the citation is sustained.

PRIOR RECORD:

Licensee has been licensed since April 3, 2000, and has had one prior violation:

Citation No. 06-0629. Fine \$450.00.

1. Possessed or operated gambling devices or paraphernalia or permitted gambling or lotteries, poolselling and/or bookmaking on the licensed premises (sports pools). On 17 dates between September 12, 2005 and February 2, 2006.

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 - \$300.00 fine
Count 3 - \$250.00 fine

ORDER

THEREFORE, it is hereby ordered that Licensee SOCIAL LABOR ORGANIZATION OF HUBLEY MANUFACTURING CO., pay a fine of \$800.00 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 14th day of May, 2008.

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.

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

Citation No. 06-1952