

Mailing Date: FEB 15 2007

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 06-2036
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W03-328725
v.	:	
	:	LID - 2589
LOYAL ORDER OF MOOSE OF THE	:	
WORLD YORK LODGE NO. 148	:	
970 WINDSOR RD.	:	
YORK, PA 17402-9258	:	
	:	
YORK COUNTY	:	
LICENSE NO. C-5716	:	

BEFORE: JUDGE THAU

APPEARANCES:

For Bureau of Enforcement
Thomas M. Ballaron, Esquire
Pennsylvania State Police
3655 Vartan Way
Harrisburg, PA 17402-9258

For Licensee
Ex-Parte

ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation that was issued on September 7, 2006, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (Bureau) against Loyal Order of Moose of the World York Lodge No. 148 (Licensee), License Number C-5716.

This citation¹ contains three counts.

The first count charges Licensee with violations of Section 406(a)(1) of the Liquor Code [47 P.S. §4-406(a)(1)]. The charge is that on April 1, 19 and May 12, 2006, Licensee, by servants, agents or employees, sold alcoholic beverages to nonmembers.

The second count charges Licensee with a violation of Section 493(12) of the Liquor Code [47 P.S. §4-493(12)]. The charge is that on June 12, 2006, Licensee, by servants, agents or employees, 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 third count charges Licensee with violations 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 June 12, 2006, and divers occasions within the previous year, Licensee, by servants, agents or employees, 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 January 9, 2007 at Brandywine Plaza, 2221 Paxton Church Road, Harrisburg, Pennsylvania. Licensee did not appear personally or have any representation.

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

FINDINGS OF FACT:

1. A citation hearing notice was mailed by the Office of Administrative Law Judge on November 22, 2006 to Licensee by both certified receipt-return mail and first-class mail to the licensed premises. The notice notified Licensee of the date, time and place of the hearing. The Notice, sent by certified mail, was signed for by Joan Mickey on November 29, 2006. On November 22, 2006, I issued a Pre-Hearing Order by first class mail to the licensed premises directing Licensee to submit its pre-hearing memorandum. That Order reiterated the date, time and place of hearing. (N.T. 4)

1. Commonwealth Exhibit No. C-3, N.T. 15.

2. The Bureau began its investigation on March 8, 2006 and completed it on July 17, 2006. (N.T. 8-9)

3. The Bureau sent a notice of alleged violations to Licensee at the licensed premises by certified mail-return receipt requested on August 8, 2006. The notice alleged violations as charged in the citation. (Commonwealth Exhibit No. C-1, N.T. 15)

Count No. 1:

4. On April 1, 2006, an undercover Bureau Enforcement Officer entered the subject premises at about 7:55 p.m. The Officer took a seat at the bar. She ordered and was served a mixed drink. She purchased a second mixed drink at 9:00 p.m. (N.T. 9-10)

5. The Officer returned to the premises on April 19, 2006 at approximately 7:20 p.m., in an undercover capacity. She took a seat at the bar and attempted to order a drink. She was challenged as to membership. The Officer was signed in the guest book using a fictitious name. The Officer was then able to purchase a mixed drink. The Officer purchased a second drink at 7:45 p.m. (N.T. 11-12)

6. The Officer returned on May 12, 2006, at approximately 9:15 p.m., in an undercover capacity. The Officer purchased a mixed drink. (N.T. 12-13)

Count Nos. 2 and 3:

7. On June 12, 2006, after two prior attempts to schedule a meeting at the subject premises, a second Bureau Enforcement Officer was successful in doing so. He arrived at 9:30 a.m. (N.T. 17-21)

8. The Officer attempted to view Licensee's records. Apparently there were minutes for the men's side of Licensee's organization but the individuals present could not find them. They also could not contact anyone that could produce the records. Licensee did have other records except for those minutes and the Small Games of Chance Records. (N.T. 17-23)

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 and 3 are **sustained** as charged.

PRIOR RECORD:

Licensee has been licensed since August 30, 1971, and has had six prior violation(s) since July 1, 1987, the date of establishment of the Office of Administrative Law Judge:

Adjudication No. 87-3373. Fine \$250.00.

Possessed or operated gambling devices or paraphernalia or permitted gambling or lotteries on the licensed premises (punchboards, stamp machines and tickets).

Adjudication No. 97-2432. Fine \$500.00.

Possessed or operated gambling devices or paraphernalia or permitted gambling or lotteries on the licensed premises during a period when the small games of chance license was expired (tickets and punchboards).

Adjudication No. 04-0202. Fine \$150.00.

Issued worthless checks in payment for malt or brewed beverages.
October 21, 27, 29, November 4 and 11, 2003.

Adjudication No. 04-0905. Fine \$150.00.

Issued worthless checks in payment for malt or brewed beverages.
March 23, 2004.

Adjudication No. 04-1745. Fine \$200.00.

Issued worthless checks in payment for malt or brewed beverages.
August 10 and 24, 2004.

Adjudication No. 05-0227. Fine \$1,200.00.

1. Sales to nonmembers.
June 25, 2004.
2. Improper admission of members.
September 9, 2004.
3. Conducted drawings other than those authorized by law.
December 30, 2004.
4. Failed to maintain complete and truthful records for a period of 2 years concerning the Local Option Small Games of Chance Act.
January 21, 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 and 3 in this case.

I am presented with a Licensee who apparently does not believe this proceeding has any meaning. Further Count Nos. 1 and 3 are repeat violations. As I have said numerous times, I will not interpose any mitigating factors for licensees who fail to obey process. Accordingly, I impose:

Count No. 1 - \$1,000.00 fine.
Count No. 2 - \$1,000.00 fine.
Count No. 3 - \$1,000.00 fine and 10 days suspension.

ORDER:

Imposition of Fine

THEREFORE, it is hereby ordered that Licensee pay a fine of \$3,000.00 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

THEREFORE, it is hereby ordered that the Club liquor license (including all permits) of Loyal Order of Moose of the World York Lodge No. 148, License No. C-5716, be suspended for a period of ten days, **BEGINNING** at 7:00 a.m., on Monday, April 9, 2007, and **ENDING** at 7:00 a.m., on Thursday, April 19, 2007.

Licensee is directed on Monday, April 9, 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

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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, April 19, 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 7th day of February, 2007.

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.