

Mailing Date: OCT 23 2008

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 06-2108
LIQUOR CONTROL ENFORCEMENT	:	
	:	
v.	:	Incident No. W01-323417
	:	
THE UNITED INDEPENDENT	:	
ITALIAN AMERICAN CLUB OF THE	:	LID - 37932
CITY OF PHILADELPHIA	:	
7215 TORRESDALE AVE.	:	
TACONY	:	
PHILADELPHIA PA 19135-1314	:	
	:	
PHILADELPHIA COUNTY	:	
LICENSE NO. C-1902	:	

APPEARANCES:

FOR THE BUREAU OF ENFORCEMENT:

JAMES E. DAILEY, ESQ.

FOR THE LICENSEE:

EDWARD B. McHUGH, ESQ.

BEFORE: JUDGE WRIGHT

ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation that was issued on October 11, 2006, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter "Bureau") against The United Independent Italian American Club of the City of Philadelphia, License Number C-1902 (hereinafter "Licensee").

An Administrative hearing was held on Tuesday, April 4, 2007, pursuant to requisite and appropriate hearing notice. The parties stipulated to the service and receipt of the notice letter and the citation.

The citation contains seven counts.

The first count charges Licensee with violation of Section 406(a)(1) of the Liquor Code, 47 P.S. Section 4-406(a)(1), in that on March 17, April 28 and May 14, 2006, Licensee, by its servants, agents or employes, sold alcoholic beverages to nonmembers.

The second count charges Licensee with violation of Section 499(a) of the Liquor Code, 47 P.S. Section 4-499(a), in that on March 17 and May 14, 2006, Licensee, by its servants, agents or employes, failed to require patrons to vacate that part of the premises habitually used for the service of alcoholic beverages not later than one-half hour after the required time for the cessation of the service of alcoholic beverages.

The third count charges Licensee with violation of Section 499(a) of the Liquor Code, 47 P.S. Section 4-499(a), in that on March 17, 2006, Licensee, by its servants, agents or employes, permitted patrons to enter that portion of the premises habitually used for the service of alcoholic beverages between 3:30 a.m. and 7:00 a.m., when they did not possess an Extended Hours Food Permit.

The fourth count charges Licensee with violation of Section 499(a) of the Liquor Code, 47 P.S. Section 4-499(a), in that on March 17 and May 14, 2006, Licensee, by its servants, agents or employes, permitted patrons to possess and/or remove alcoholic beverages from that part of the premises habitually used for the service of alcoholic beverages after 3:30 a.m.

The fifth count charges Licensee with violation of Sections 406(a)(4) and 493(16) of the Liquor Code, 47 P.S. Sections 4-406(a)(4) and 4-493(16), in that on March 17 and May 14, 2006, Licensee, by its servants, agents or employes, sold, furnished and/or gave alcoholic beverages between 3:00 a.m. and 7:00 a.m.

The sixth count charges Licensee with violation of Section 493(1) of the Liquor Code, 47 P.S. Section 4-493(1), in that on May 14, 2006, and divers other occasions within the past year, Licensee, by its servants, agents or employes, sold, furnished and/or gave or permitted such sale, furnishing or giving of alcoholic beverages to three (3) male minors, twenty (20) years of age.

The seventh charges Licensee with violation of Section 471 of the Liquor Code, 47 P.S. Section 4-471, and Sections 5513 and/or 5514 of the Crimes Code, 18 Pa. C.S. Sections 5513 and/or 5514, in that on January 26, 28, March 18, May 11, 12 and 14, 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.

COUNT NOS. 1, 2, 3, 4, 5, 6 AND 7

FINDINGS OF FACT:

1. Jamie Cooper is employed by the Bureau of Enforcement and was so employed in December of 2005, when she conducted an investigation of the licensed premises (N.T. 8).

2. Officer Cooper indicated that the club trades as "Yik-Yak." Prior to visiting Yik-Yak, the officer visited the premises, which trades as Paddy Whack's, and whose corporate name is CMJ Ventures. The officer was advised by her supervisor that other Enforcement officers were having difficulty getting into Yik-Yak, in that it was a private club for membership only. However, the Bureau officers found an ad in the newspaper inviting patrons to visit Yik-Yak following an evening at Paddy Whack's. Officer Cooper visited Paddy Whack's during the months of December 2005 and January and February of 2006 (N.T. 9).

3. Officer Cooper first visited Yik-Yak on March 17, 2006. She arrived at approximately 3:15 a.m. along with Lisa Mullen, an officer from another district. Prior to going to Yik-Yak, the officers visited Paddy Whack's earlier on that same evening (N.T. 10).

4. The officers were accompanied by an individual called Joey, who claimed to be a bartender. Joey was wearing a Paddy Whack's shirt. He invited the officers to come to Yik-Yak following their evening at Paddy Whack's (N.T. 11).

5. While at Paddy Whack's, the officers heard disc jockeys inviting patrons to come to Yik-Yak. When the announcement was made on March 16 or the early morning hours of March 17, Officer Cooper asked the bartender at Paddy Whack's about Yik-Yak. The bartender stated that it was "our club" and asked if the officers wanted to come with them to Yik-Yak. They agreed to go (N.T. 11).

6. When the officers arrived at Yik-Yak, a white male dressed in a Yik-Yak t-shirt was at the door. The officers did not pay a cover charge, and were not challenged as to membership. They did not observe any type of identification scanning device (N.T. 11-13).

7. Officer Cooper saw a staircase when she entered the premises and passed through a doorway. There was a bar to the right. On the left hand side of the premises, there was a small portable bar and an area to play pool. At the rear of the premises, there were other games, including a dart board, a Dodge City poker machine and another video game (N.T. 14).

8. Officer Cooper noted that there were approximately forty patrons inside the premises. She noted that there were two bars. She kept time by her cell phone. The officer indicated that before she goes into any establishment, she checks the time with Fox News or other radio station to be certain her cell phone time is correct (N.T. 17).

9. Officer Mullen brought Miller Lite beer to the table for her and Officer Cooper. Officer Cooper did not see her purchase the drinks (N.T. 19).

10. Other individuals claiming to be friends with Joey sat down with the officers. At some point, these individuals purchased Miller Lite beer for Officer Cooper and Coors Lite beer for Officer Mullen (N.T. 20).

11. An individual, known to the officer only as Tom purchased the alcoholic beverages at 4:00 a.m. claimed to work at another bar in the area (N.T. 20-21).

12. The officers saw individuals in possession of bottles of beer throughout the premises (N.T. 21).

13. The officers departed the premises at approximately 4:45 a.m. (N.T. 21-22).

14. The officers again visited Yik-Yak on April 28, 2006. Prior to going to Yik-Yak, the officers visited Paddy Whack's. They arrived at Paddy Whack's at approximately 1:00 a.m. and arrived at Yik-Yak at approximately 1:40 a.m. There was a doorman who inquired as to whether or not the officers were members. The officers indicated that they were not, but asked if Tom was there. The doorman asked, "Tom who" and they told him Tom from Kelly's, which was the other establishment where Tom indicated he was employed. The doorman stated that Tom would not be there until later. The doorman allowed them to go in and wait for Tom. The officers did not sign the guest list or an application for membership (N.T. 22-24).

15. When the officers entered Yik-Yak's, they noted that there were approximately twenty patrons inside. Again, Officer Cooper kept time by way of her cell phone (N.T. 24-25).

16. On this occasion, Officer Cooper approached the bar and ordered two Miller Lite beers from a male bartender. She handed him a twenty dollar bill and received \$12.50 in change. She was not challenged with regard to membership (N.T. 25).

17. The officers remained on the premises until 3:00 a.m. They made no purchases of alcoholic beverages after 3:00 a.m. On this occasion, the door persons required that the patrons leave the premises at 3:00 a.m. (N.T. 25-26).

18. When the officers inquired as to why they were being required to leave at that time, the doorman replied, "Because we are going to get our balls busted tonight" (N.T. 27).

19. The officer left the other patrons and contacted her supervisor. There was a pre-arranged detail due to come to the premises that night. The raid was cancelled for that night (N.T. 27-28).

20. The officers visited the Yik-Yak on May 14, 2006. Officer Cooper was accompanied by Officer Mullen and a gentleman they had met at another bar in the neighborhood entered the Yik-Yak with them. He appeared to be from the neighborhood (N.T. 28-29).

21. When the officers approached the door, they were questioned as to membership. The man at the door of Paddy Whack's had questioned Officer Cooper as to whether she was from the Liquor Control Enforcement on other occasions. The doorman refused to let them enter (N.T. 28-30).

22. After the officers were refused entry to the premises, the officers walked to the corner. An individual from the neighborhood, "Ricky," questioned Officer Cooper as to what the matter was. He told the officers that he would get them in. They reproached the doorman, now with two gentlemen and the doorman agreed to let them in, but charged them each a five dollar cover fee (N.T. 33-34).

23. Ricky paid the cover fee, however, the officers did not find the guest book or membership application. When the officers entered the premises, Officer Cooper went to the bar. The officer ordered three Miller Lite beers and a Michelob Ultra Lite beer from the bartender. She gave the bartender twenty dollars and received four beers and eight dollars in change. The purchase of alcohol was made at approximately 2:40 a.m. (N.T. 34-35).

24. Officer Mullen attempted to make another purchase of alcoholic beverages, however, she was questioned as to her membership. An individual on the premises then made the purchase for her at approximately 3:20 a.m. Officer Mullen handed Officer Cooper the beer after she received it (N.T. 36-37).

25. The officer observed other purchases of alcoholic beverages after 3:00 a.m.; a patron next to them purchased three Red Bulls and Jagermeister shots of liquor. The bartender gave one of the shots to Officer Mullen. No money was exchanged for this purchase (N.T. 37).

26. There were approximately ten to twelve patrons remaining on the premises at this time (N.T. 37-38).

27. The officers and other patrons were asked to leave the premises. The officers recognized people whom they had met at Paddy Whack's, approached them and engaged them in conversation. The officers were permitted to remain on the premises (N.T. 38).

28. After 3:30 a.m., there were approximately ten patrons in the downstairs bar. People were in possession of Miller Lite Beer and many drinks next to them had shots and bottles of beer (N.T. 38-39).

29. The cash register was operational past 3:30 a.m. Officer Cooper called the pre-arranged detail of officers at approximately 3:45 a.m. When they entered the premises shortly thereafter, they asked the officers to leave with the crowd. The detail of officers checked identification of those who were not employees and when they said that the patrons could go, Officers Mullen and Cooper left the premises (N.T. 39).

30. When the detail of officers came into the premises, some of them came in through the back door and others through the front door (N.T. 40).

31. Officer Donati called Officers Mullen and Cooper to the back of the premises to see if they could identify the bartenders, but they were unable to do so (N.T. 40).

32. After May 14, 2006, Officer Cooper continued her investigation. She attempted to contact a person who had been identified at the time of the raid as being under the age of twenty-one. The officer attempted to reach him on June 12, 2006. The officer also tried to reach Casey Jones, an officer of the club regarding record books that were seized by the Bureau (N.T. 40).

33. On June 27, 2006, June 28, 2006, July 5 and 7, 2006, the officer called Mr. Jones and left messages at his home (N.T. 42).

34. On July 12, 2006, the officer left another message requesting to meet with Mr. Jones. On Saturday, July 15, 2006, she again left a message. On Tuesday, July 18, 2006, she finally spoke with Mr. Jones and arranged a meeting. He asked if his attorney could be present and she indicated that that would be fine. Shawn Ward was identified as the attorney and arranged a meeting for the three of them on August 1, 2006. That meeting was cancelled by the Licensee (N.T. 43).

35. Officer Cooper received training in the police academy with regard to gambling, which includes the small games of chance training, inspecting gambling machines, pools and bookmaking. The training also included horse races, Nascar pools, football pools and they learned about coding, about the types of things that are written down and that are put in records. Prior to May 14, 2007, the officer had conducted ten to fifteen investigations relative to gambling (N.T. 52-53).

36. The officer had additional training after the academy, which included six to eight months training regarding pools, bookmaking and gambling devices. She was trained at the Harrisburg Center certified (N.T. 53).

37. Prior to this investigation, Officer Cooper had been on a detail with Officer Hendrzak for horse racing, books and betting slips received. Prior to that, she had inspected gambling machines and seized Dodge City poker machines in the past. She indicated that Dodge City machines are legal to possess, but can be confiscated if licensees are paying off on the machines, Officer Cooper has testified on prior occasions in Court relative to gambling (N.T. 60).

38. The officer reviewed sheets found in a record book, which she concluded were horseracing bets. She indicated that the odds were listed as one through eleven and that there were names listed, which she had seen listed under major horse races online. She indicated that next to a horse were always odds listed whether it was twelve to one, twenty to one or six to five. The odds are found next to the horse's name. She further indicated that she saw the term exacta with which she was familiar. The officer also indicated there was a "p" beside it, which indicates that it was paid. The officer recognized some of the names on the list (N.T. 69-70).

39. The officer reviewed another sheet found in the record book. She concluded that this was the paid list from a major horserace, i.e. Preakness (N.T. 71-72 and Exhibit B-6).

40. The officer examined another sheet confiscated from the premises and concluded that based upon the names, the people paid and the monetary values, that this was evidence for horse racing. The officer examined another sheet found in a record book, which indicated persons who had not paid. The officer examined another sheet with names of club officers and stated it was pool standings for week 9. The paper has columns for wins and losses (N.T. 74-75 and Exhibits B-7, B-8 and B-9).

41. Other documents were found in a red book. The officer had an opportunity to review the documents and concluded that they were about horse racing. Another document recorded payouts from a poker machine (N.T. 76-77 and Exhibits B-10, B-11, B-12 and B-13).

42. Other documents were part of the red and black book. Officer Cooper also reviewed that document which stated that all bets were paid. It listed other paraphernalia and record books. Various documents showed different business records, relative to horse races and payouts (N.T. 78-80 and Exhibits B-14, B-15, B-16 and B-17).

43. Based on the reviewing of the records and the dates contained therein, they were charged with gambling on January 26, 28, March 18, May 11, 12 and 14, 2006 (N.T. 80-81).

44. The officer never observed any type of payout or gambling taking place on the premises (N.T. 94-95).

45. No money was found with the documents (N.T. 102).

46. Officer Lisa Mullen is employed by the Pennsylvania Gaming Control Board. She was formally an employee of the Bureau. On March 17, 2006, she accompanied Officer Cooper to Yik Yak. She indicated that they arrived at approximately 3:15 a.m. and that they were not challenged as to membership. She indicated that she ordered a bottle of Miller Lite beer for Ms. Cooper and Coors Lite for herself and a vodka and tonic from one of the bartenders. She paid with cash and was given eleven dollars in change (N.T. 105-106).

47. She was never challenged as to membership on that evening (N.T. 107).

48. Officer Mullen was in the premises after 3:30 a.m. She was served alcoholic beverages at approximately 4:00 a.m. She did not pay for the purchase, but it was provided to her by a male patron on the premises. She departed the premises at approximately 4:45 a.m. with approximately thirty patrons remaining. Patrons were on premises talking and playing video gambling devices (N.T. 108).

49. The officer visited the premises on April 28, 2006 at approximately 2:30 a.m. She purchased alcoholic beverages in the nature of a Miller Lite Beer for Officer Cooper and a Coors Lite for herself. They were not questioned with regard to membership. They are not members of the licensed club (N.T. 109-110).

50. A Dodge City poker machine was on the premises on March 17, 2006 (N.T. 110).

51. On May 14, 2006, Officer Mullen again accompanied Officer Cooper to the premises and entered at approximately 2:35 a.m. There were approximately twenty-five patrons in the premises after 3:00 a.m. When she attempted to purchase a drink, she was questioned regarding membership and a patron took the five dollar bill and purchased a Miller Lite Beer for her (N.T. 110-111).

52. The Dodge City poker machine was observed on the premises (N.T. 111).

53. On March 17, 2006, there was a patron that yelled to a doorman that he had three hundred points on the machine. She concluded he was a doorman because he was dressed in a Yik Yak t-shirt as were other employees. The doorman indicated that he would get the money (N.T. 111-112).

CONCLUSIONS OF LAW:

Count No. 1 - On March 17, April 28 and May 14, 2006, Licensee, by its servants, agents or employes, sold alcoholic beverages to nonmembers, in violation of Section 406(a)(1) of the Liquor Code, 47 P.S. Section 4-406(a)(1).

Count No. 2 - On March 17 and May 14, 2006, Licensee, by its servants, agents or employes, failed to require patrons to vacate that part of the premises habitually used for the service of alcoholic beverages not later than one-half hour after the required time for the cessation of the service of alcoholic beverages, in violation of Section 499(a) of the Liquor Code, 47 P.S. Section 4-499(a).

Count No. 3 - On March 17, 2006, Licensee, by its servants, agents or employes, permitted patrons to enter that portion of the premises habitually used for the service of alcoholic beverages between 3:30 a.m. and 7:00 a.m., when they did not possess an Extended Hours Food Permit, in violation of Section 499(a) of the Liquor Code, 47 P.S. Section 4-499(a).

Count No. 4 - On March 17 and May 14, 2006, Licensee, by its servants, agents or employes, permitted patrons to possess and/or remove alcoholic beverages from that part of the premises habitually used for the service of alcoholic beverages after 3:30 a.m., in violation of Section 499(a) of the Liquor Code, 47 P.S. Section 4-499(a).

Count No. 5 - On March 17 and May 14, 2006, Licensee, by its servants, agents or employes, sold, furnished and/or gave alcoholic beverages between 3:00 a.m. and 7:00 a.m., in violation of Sections 406(a)(4) and 493(16) of the Liquor Code, 47 P.S. Sections 4-406(a)(4) and 4-493(16).

Count No. 6 - There is insufficient evidence to concluded that on May 14, 2006, and divers other occasions within the past year, Licensee, by its servants, agents or employes, sold, furnished and/or gave or permitted such sale, furnishing or giving of alcoholic beverages to three (3) male minors, twenty (20) years of age, in violation of Section 493(1) of the Liquor Code, 47 P.S. Section 4-493(1).

Count No. 7 - On May 14, 2006, Licensee, by its servants, agents or employes, possessed gambling paraphernalia and/or bookmaking on the licensed premises, in violation of Section 471 of the Liquor Code, 47 P.S. Section 4-471, and Sections 5513 and/or 5514 of the Crimes Code, 18 Pa. C.S. Sections 5513 and/or 5514.

PRIOR RECORD:

Licensee has been licensed since April 5, 1934, and since July 1, 1987, the date of establishment of the Office of Administrative Law Judge, has a record of prior violations as follows:

Citation No. 99-1825. \$400.00 fine.

1. Possessed or operated gambling devices or paraphernalia or permitted gambling or lotteries, poolselling and/or bookmaking on the licensed premises.
August 6, 1999.

Citation No. 04-1780. \$850.00 fine.

1. Used loudspeakers or devices whereby music could be heard outside.
On 114 dates from January 8 to August 5, 2004. (All dates except April 23, 2004 withdrawn by Bureau)
2. Noisy and/or disorderly operation. (Withdraw by Bureau)
On 43 dates from January 8 to August 4, 2004.
3. Permitted patrons to possess and/or remove alcoholic beverages after 3:30 a.m.
On 10 dates from March 12 to August 15, 2004.

4. Failed to require patrons to vacate the premises not later than one-half hour after the required time.
On 17 dates from March 4 to August 15, 2004.
5. Permitted patrons to enter that portion of the premises habitually used for the service of alcoholic beverages between 3:30 a.m. and 7:00 a.m. when they did not possess an Extended Hours Food Permit.
August 15, 2004.
6. Sales to nonmembers.
September 3, 2004.

DISCUSSION:

Non Members

The Licensee was not consistent in checking for membership. It appeared that the Licensee was much more concerned with whether the persons were known to them, so as to continue the surreptitious after hours operation, than with membership.

After Hours

The Licensee was running an after hours operation. When one business closed, the other opened. The patrons were allowed to remain on the premises and to consume alcoholic beverages long after the time for cessation of alcoholic beverage service.

Sales to Minors

Insufficient evidence was presented with regard to any minors who might have been on the premises on May 14, 2006.

Gambling

When a Licensee is charged with a criminal violation, some element of scienter must be present. The Licensee has to know or should have known of the illegal activities and may defend by demonstrating substantial affirmative steps were taken to guard against a known pattern of illegal activities. *Pa. Liquor Control Board v. TLK, Inc.*, 544 A.2d 931 (Pa. 1988). Here the officers and employees were part and particle of the gambling operation. First, the doorman openly acknowledged that he would pay the patron for the credits obtained on the machine. Secondly, the record detailing gambling activities was confiscated on the property and in the possession of the Licensees. The element of scienter is clearly present.

The Bureau of Enforcement presented a property record indicating that on the night of the raid a record book and attached sheets were confiscated. At some point, the investigating officer reviewed the contents of those records. The officer found various notations, dates, number figures and codes with which she was familiar. Based on the information contained in the records, her visit to the premises and her past experience, the Bureau officer concluded that the records showed evidence of gambling on the premises, which included horse racing, pool making and possible payoffs on the machine.

Within the context of the record books were very clear and plain language relative to horse racing, the Preakness, odds, win/loss and paid columns. Even a non expert could have concluded that this was indicia of gambling. On May 14, 2006, Officer Mullen heard a patron announce that he had 300 points on the machine and the doorman said that he would get the money. The record books were found in the property and confiscated later that night.

The Bureau charged the Licensee with gambling based upon the various dates contained in the record books. The Court does not find that to be sufficiently reliable or sufficient evidence that gambling was taking place on any specific dates on the premises. However, the record books found on the premises are gambling paraphernalia and unlawfully on the premises and in possession of Licensee. For that reason, the only date that the Court will sustain relative to gambling is May 14, 2006.

After reviewing the prior record of the licensed premises, which includes prior similar charges, monetary penalties shall be imposed.

PENALTY:

Section 471 of the Liquor Code, 47 P.S. Section 4-471, prescribes a penalty of suspension or revocation of license or imposition of 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, 3, 4 and 7 of this case.

Section 471 of the Liquor Code, 47 P.S. Section 4-471, prescribes a penalty of suspension or revocation of license or imposition of a fine of not less than \$1,000.00 or more than \$5,000.00, or both, for violations of the type found in Count No. 5 of this case.

Therefore, penalties shall be assessed as follows:

- Count No. 1 - \$500.00.
- Count No. 2 - \$300.00.
- Count Nos. 3 and 4 (as merged) - \$600.00.
- Count No. 5 - \$1,000.00.
- Count No. 6 - DISMISSED.
- Count No. 7 - \$500.00.

Accordingly, we issue the following

The United Independent Italian
American Club of the City of Philadelphia
Citation No. 06-2108

ORDER:

THEREFORE, it is hereby Ordered that Licensee, The United Independent Italian American Club of the City of Philadelphia, License Number C-1902, pay a fine of Two Thousand Nine Hundred Dollars (\$2,900.00) within twenty (20) days of the mailing date of this Order. In the event the aforementioned fine is not paid within twenty (20) days from the mailing date of this Order, licensee's license shall be suspended or revoked.

In order to insure compliance with this Order, jurisdiction of this matter is retained.

Dated this 16th day of October, 2008.

Tania E. Wright, J.

NOTE: 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.

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Detach Here and Return Stub with Payment

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, along with any required documentation, to:

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

Citation No. 06-2108
The United Independent Italian
American Club of the City of Phila.