

Mailing Date: DEC 13 2007

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 06-2487
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W01-334321
v.	:	
	:	LID - 1420
MILL CREEK SOCIETY	:	
303 N 52 <sup>ND</sup> STREET	:	
PHILADELPHIA, PA 19139-1519	:	
	:	
	:	
	:	
PHILADELPHIA COUNTY	:	
LICENSE NO. C-2859	:	

**BEFORE:** JUDGE THAU

APPEARANCES:

For Bureau of Enforcement  
Erik S. Shmukler, Esquire  
Pennsylvania State Police  
6901 Woodland Avenue  
Philadelphia, PA 19142

For Licensee  
Ex-Parte

**ADJUDICATION**

BACKGROUND:

This proceeding arises out of a citation that was issued on November 29, 2006, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (Bureau) against Mill Creek Society (Licensee), License Number C-2859.

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

The first count charges Licensee with a violation of Section 406(a)(1) of the Liquor Code [47 P.S. §4-406(a)(1)]. The charge is that on July 14, 2006, Licensee, by servants, agents or employes, sold alcoholic beverages to nonmembers.

The second count charges Licensee with a violation of Section 5513 of the Crimes Code [18 Pa. C.S. §5513] which is incorporated by reference in Liquor Code Section 471 [47 P.S. §4-471] as "other sufficient cause." The charge is that on August 14, 2006, Licensee, by servants, agents or employes, possessed or operated gambling devices or paraphernalia or permitted gambling or lotteries, poolselling and/or bookmaking on its licensed premises.

An evidentiary hearing scheduled for April 30, 2007 was continued, rescheduled and conducted on November 5, 2007 at the Philadelphia State Office Building, 1400 West Spring Garden Street, 13<sup>th</sup> Floor, Philadelphia, 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 September 19, 2007 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 returned as being marked: "Return To Sender Unable To Forward." (N.T. 4-5)
2. On September 20, 2007, I issued a Pre-Hearing Order by first class mail to the licensed premises and to Mr. Terrence Bell, 1422 North 52<sup>nd</sup> Street, Philadelphia, Pa 19131, directing Licensee to submit its pre-hearing memorandum. That Order reiterated the date, time and place of hearing. (N.T. 4-5)
3. The Bureau began its investigation on February 9, 2006 and completed it on September 20, 2006. (N.T. 11)
4. The Bureau sent a notice of alleged violations to Licensee at the licensed premises by certified mail-return receipt requested on October 4, 2006 as amended on October 19, 2006. The notices alleged violations as charged in the citation. (Commonwealth Exhibit No. B-1, N.T. 10)

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1. Commonwealth Exhibit No. B-2, N.T. 11.

Count No. 1:

5. On July 14, 2006, a Bureau Enforcement Officer entered the premises in an undercover capacity. He was first denied service of beer to go but subsequently ordered a shot of tequila. He was not questioned as to membership and is not a member of the subject organization.

Count No. 2:

6. A detail of Bureau Enforcement Officers entered the subject premises at approximately 2:15 p.m., on August 14, 2006. (N.T. 11-12)

7. The Officers discovered slips of paper which represented payouts for credits accumulated on several video gaming devices. (N.T. 15-18, 25-31)

8. Video gaming devices were confiscated and subsequently were determined to be gambling devices per se. (N.T. 34-48)

CONCLUSIONS OF LAW:

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

2. Count Nos. 1 and 2 are **sustained** as charged.

PRIOR RECORD:

Licensee has been licensed since November 9, 1988, and has had two prior violations:

Adjudication No. 04-1529. Fine \$200.00.

Sales to nonmembers.  
June 11, 2004.

Adjudication No. 05-1824. Fine \$300.00.

1. Failed to constantly and conspicuously expose your license under a transparent substance.  
May 7, 2005.
2. Failed to maintain complete and truthful records covering the operation of the licensed business for a period of 2 years immediately preceding May 7, 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 and 2 in this case.

As Licensee has failed to appear or obey process, I will interpose no mitigating factors. Accordingly, I impose:

Count No. 1 – \$750.00 fine.

Count No. 2 – \$1,000.00 fine.

ORDER:

**Imposition of Fine**

THEREFORE, it is hereby ordered that Licensee pay a fine of \$1,750.00 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.

**Retaining Jurisdiction**

Jurisdiction is retained to ensure compliance with this Adjudication.

Dated this 30<sup>th</sup> day of November, 2007.

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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.**

Detach Here and Return Stub with Payment

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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, PA 17110-9661

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