

Mailing Date: JUN 06 2007

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 06-2791
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W03-340900
v.	:	
	:	LID - 27042
DAVE & KEN GUSIC, INC.	:	
T/A MIDWAY HOTEL	:	
3441 COLUMBIA AVE.	:	
LANCASTER, PA 17603-4046	:	
	:	
	:	
LANCASTER COUNTY	:	
LICENSE NO. R-SS-18375	:	

BEFORE: JUDGE THAU

APPEARANCES:

For Bureau of Enforcement
Andrew J. Lovette, Esquire
Pennsylvania State Police
3655 Vartan Way
Harrisburg, PA 17110

For Licensee
Ex-Parte

ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation that was issued on December 7, 2006, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (Bureau) against Dave & Ken Gusic, Inc., t/a Midway Hotel (Licensee), License Number R-SS-18375.

The citation¹ charges Licensee with a violation of Section 5514 of the Crimes Code [18 Pa. C.S. §5514] which is incorporated by reference in Liquor Code Section 471 [47 P.S. §4-471] as “other sufficient cause.” The charge is that on October 28, 2006, Licensee, by servants, gents 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 was conducted on May 1, 2007 at Brandywine Plaza, 2221 Paxton Church Road, Harrisburg, Pennsylvania. Licensee did not appear at the hearing 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 March 14, 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 signed for on March 15, 2007 by Joseph Gusic.
2. On March 14, 2007, I issued a Pre-Hearing Order by first class mail to Licensee directing Licensee to submit its pre-hearing memorandum. That Order reiterated the date, time and place of hearing.
3. The Bureau began its investigation on October 3, 2006 and completed it on October 28, 2006. (N.T. 7)
4. The Bureau sent a notice of an alleged violation to Licensee at the licensed premises by certified mail-return receipt requested on November 20, 2006. The notice alleged a violation as charged in the citation. (Commonwealth Exhibit No. C-1, N.T. 6)
5. On October 28, 2006, a Bureau Enforcement Officer arrived in the area of the premises at about 2:45 a.m. The front entrance to the premises was unlocked and open. The Officer entered noting that the only person on the premises was Licensee. The Officer displayed his credentials. The Officer noticed a NASCAR pool behind the bar counter. Licensee explained to the Officer how the NASCAR pool operated. (N.T. 8-11)

1. Commonwealth Exhibit No. C-2, N.T. 7.

CONCLUSIONS OF LAW:

1. The notice requirements of Liquor Code Section 471 [47 P.S. §4-471] have been satisfied.
2. The citation is **sustained** as charged.

PRIOR RECORD:

Licensee has been licensed since March 23, 1991, and has had no prior violations.

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.

It was my original intent to impose a \$1,000.00 fine as Licensee failed to appear at the hearing. On May 9, 2007, Licensee's counsel submitted a lengthy letter in which counsel explains it was Licensee's intention to come to the hearing but that an unclear communication between counsel and Licensee caused the "no show". The Bureau recommends a \$450.00 fine. As this is Licensee's first violation, I see that recommendation to be somewhat severe. I impose a \$250.00 fine.

ORDER:

Imposition of Fine

THEREFORE, it is hereby ordered that Licensee pay a fine of \$250.00 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

Retaining Jurisdiction

Jurisdiction is retained to ensure compliance with this Adjudication.

Dated this 29th day of May, 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.