

Mailing Date: JUL 13 2007

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 06-2806
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W09-333373
v.	:	
	:	LID - 1982
JUNIOR FIRE COMPANY	:	
HOME ASSOCIATION	:	
216 REED ST.	:	
READING, PA 19601-3314	:	
	:	
	:	
BERKS COUNTY	:	
LICENSE NO. CC-4314	:	

BEFORE: JUDGE THAU

APPEARANCES:

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

For Licensee
Llewellyn Lott, Jr.
Former Director

ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation that was issued on December 15, 2006, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (Bureau) against Junior Fire Company Home Association (Licensee), License Number CC-4314.

This citation¹ contains ten counts.

The first count charges Licensee with a violation of Section 102 of the Liquor Code [47 P.S. §1-102]. The charge is that on October 13, 2006, Licensee's charter was not in possession of the original incorporators or their direct or legitimate successors.

The second count charges Licensee with violations of Section 102 of the Liquor Code [47 P.S. §1-102]. The charge is that during the period May 21, 2005 through October 2, 2006, Licensee, by servants, agents or employes, failed to charge and collect dues.

The third count charges Licensee with violations of Section 102 of the Liquor Code [47 P.S. §1-102]. The charge is that during the period May 21, 2005 through October 2, 2006, Licensee, by servants, agents or employes, failed to conduct business through officers regularly elected.

The fourth count charges Licensee with violations of Section 102 of the Liquor Code [47 P.S. §1-102]. The charge is that during the period May 21, 2005 through October 2, 2006, Licensee, by servants, agents or employes, failed to hold regular meetings.

The fifth count charges Licensee with violations of Sections 102 and 403(f) of the Liquor Code [47 P.S. §1-102 and §4-403(f)]. The charge is that during the period charged, Licensee's organization was not operated for the mutual benefit of the entire membership.

The sixth count charges Licensee with violations of Section 102 of the Liquor Code [47 P.S. §1-102]. The charge is that during the period charged, Licensee, by servants, agents or employes, operated the club not in conformity with the Liquor Code definition of "club."

The seventh count charges Licensee with violations of Section 493(12) of the Liquor Code [47 P.S. §4-493(12)]. The charge is that Licensee, by servants, agents or employes, failed to maintain complete and truthful records covering the operation of the licensed business for a period of two (2) years immediately preceding September 28, 2006.

The eighth 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 September 28, 2006, Licensee, by servants, agents or employes, failed to keep records on the licensed premises.

The ninth count charges Licensee with a violation of Sections 5.71, 5.72, 5.74 and 5.75 of the Pennsylvania Liquor Control Board Regulations [40 Pa. Code §5.71, §5.72, §5.74 and §5.75]. The charge is that on September 28, 2006, Licensee, by servants, or employes, failed to maintain records in conformity with Title 40 of the Pennsylvania Code.

1. Commonwealth Exhibit No. C-2, N.T. 42.

The tenth count charges Licensee with a violation of Section 7.31(a) of the Pennsylvania Liquor Control Board Regulations [40 Pa. Code §7.31(a)]. The charge is that Licensee, by servants, agents or employees, failed to return its Catering Club license after its licensed establishment had not been in operation for a period of fifteen (15) consecutive days prior to September 28, 2006.

An evidentiary hearing was conducted on June 6, 2007 at Brandywine Plaza, 2221 Paxton Church Road, Harrisburg, Pennsylvania. Licensee was represented by its Former Director, Mr. Llewellyn A. Lott, Jr. I advised Mr. Lott of Licensee's right to counsel, to cross-examine witnesses and to present testimony. Mr. Lott acknowledged that he understood those rights and that he was prepared to go forward without an attorney.²

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

FINDINGS OF FACT:

1. The Bureau began its investigation on May 26, 2006 and completed it on November 10, 2006. (Commonwealth Exhibit No. C-1, N.T. 42)

2. The Bureau sent a notice of alleged violations to Licensee at the licensed premises by certified mail-return receipt requested on November 17, 2006. The notice alleged violations as charged in the citation. (Commonwealth Exhibit No. C-1, N.T. 42)

Count Nos. 1, 2, 3, 4, 5, 6, 7, 8, 9 and 10:

3. This investigation was initiated pursuant to a complaint received from the Reading Police Department. The Department alleged a possible pecuniary interest because there was a sign located outside the building housing the licensed premises which read: "El Palmar, Event Space Hall." The sign also contained the street address and telephone number. (N.T. 45)

4. Effective May 25, 2005, Licensee disbanded as a club, ceasing all operations. (N.T. 47, Commonwealth Exhibit No. C-3)

5. A Bureau Enforcement Officer visited the premises on several occasions finding the sign previously mentioned posted. (N.T. 49-51)

2. There may be some question as to whether Mr. Lott had any right to represent Licensee at this proceeding because the club is no longer in existence.

6. After the club was dissolved, operations continued at the licensed premises which included the sale of alcoholic beverages on approximately twelve occasions. (N.T. 60-70)

7. During a visit to the licensed premises on September 28, 2006, a Bureau Enforcement Officer found no records. Licensee had not been in operation for a period of fifteen consecutive days prior to that date and had not submitted the license into safekeeping. The license was submitted for safekeeping on October 2, 2006. (N.T. 70-72)

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, 3, 4, 5, 6, 7, 8, 9 and 10 are **sustained** as charged.

DISCUSSION:

Licensee initially submitted a Waiver, Admission and Authorization. Because the charges and corresponding facts submitted to me indicated an organization that was no longer in existence, it seemed that license revocation was highly likely. Accordingly, I took what I believe to be the safer course and allowed Licensee to defend this matter.

In fact, the Waiver, Admission and Authorization executed by Mr. Lott, Jr., may very well be legally defective as Mr. Lott fixed his signature thereto at a time when Licensee was no longer in existence.

The facts supporting all of the charges in this case were not in dispute. All of the charges arrive out of Licensee having gone out of existence and subsequently continue to operate.

PRIOR RECORD:

Licensee has been licensed since December 19, 1945, and has had one prior violation since July 1, 1987, the date of establishment of the Office of Administrative Law Judge, (Commonwealth Exhibit No. C-4):

Adjudication No. 04-1773. Fine \$500.00.
Possessed or operated gambling devices or
paraphernalia or permitted gambling or
lotteries, poolselling and/or bookmaking
on your licensed premises (machines).
September 1, 2004.

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, 3, 4, 5, 6, 7, 8, 9 and 10 in this case.

During the course of the hearing, it became abundantly clear, there was an interested party/entity that wanted the license revived but not really for purposes of operating a legitimate club. Licensee's former Director was quite candid about this. However, the conclusion is quite clear that the failure of the club to exist for some period of time requires I revoke the license.

I impose:

- Count No. 1 – revocation of license.
- Count No. 2 – revocation of license.
- Count No. 3 – revocation of license.
- Count No. 4 – revocation of license.
- Count No. 5 – revocation of license.
- Count No. 6 – revocation of license.
- Count No. 7 – revocation of license.
- Count No. 8 – revocation of license.
- Count No. 9 – revocation of license.
- Count No. 10 – revocation of license.

ORDER:

Imposition of Revocation

THEREFORE, it is hereby ordered that Catering Club Liquor license No. CC-4314, issued to Junior Fire Company Home Association, be **REVOKED**, effective at 7:00 a.m., on Monday, September 10, 2007. Any Wholesale Liquor Purchase Permit Card or discount card issued in connection with the aforementioned license is hereby **CANCELLED**.

As Licensee's Catering Club liquor license is in safekeeping, there is no license to be returned. Therefore, the Bureau of Licensing of the Pennsylvania Liquor Control Board is hereby directed to mark their records accordingly, that this license shall be **REVOKED**, effective at 7:00 a.m., Monday, September 10, 2007.

Retaining Jurisdiction

Jurisdiction is retained to ensure compliance with this Adjudication.

Dated this 3rd day of July, 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.