

Mailing Date: NOV 28 2007

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 07-0451
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W01-338309
v.	:	
	:	LID - 37932
THE UNITED INDEPENDENT ITALIAN	:	
AMERICAN CLUB OF THE CITY	:	
OF PHILADELPHIA	:	
7215 TORRESDALE AVE	:	
PHILADELPHIA PA 19135-1314	:	
	:	
PHILADELPHIA COUNTY	:	
LICENSE NO. C-1902	:	BEFORE: JUDGE SHENKLE

APPEARANCES:

For Bureau of Enforcement: Erik S. Shmukler, Esq.  
For Licensee: Edward B. McHugh, Esq.

**ADJUDICATION**

BACKGROUND:

The Bureau of Liquor Control Enforcement of the Pennsylvania State Police issued this citation on March 13, 2007. There are six counts in the citation.

The first count alleges that Licensee violated §406(a)(1) of the Liquor Code, 47 P.S. §4-406(a)(1), on October 8, 22, December 17, 2006, and January 14, 2007, by selling alcoholic beverages to nonmembers.

The second count alleges that Licensee violated §§406(a)(4) and 493(16) of the Liquor Code, 47 P.S. §§4-406(a)(4) and 4-493(16), on October 22, December 17, 2006, and January 14, 2007, by selling, furnishing and/or giving alcoholic beverages between 3:00 a.m. and 7:00 a.m.

The third count alleges that Licensee violated §499(a) of the Liquor Code, 47 P.S. §4-499(a), on December 17, 2006, and January 14, 2007, by permitting 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 fourth count alleges that Licensee violated §499(a) of the Liquor Code, 47 P.S. §4-499(a), on December 17, 2006, and January 14, 2007, by failing 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 fifth count alleges that Licensee violated §499(a) of the Liquor Code, 47 P.S. §4-499(a), on December 17, 2006, by permitting 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 it did not possess an Extended Hours Food Permit.

The sixth count alleges that Licensee violated §471 of the Liquor Code, 47 P.S. §4-471, and §5514 of the Crimes Code, 18 Pa. C.S. §5514, on January 14, 2007, by possessing or operating gambling devices or paraphernalia or permitting gambling or lotteries, poolselling and/or bookmaking on the licensed premises.

A hearing was held on Thursday, October 11, 2007, in Plymouth Meeting, Pennsylvania. The parties stipulated to the timely service of the notice letter and the citation.

#### FINDINGS OF FACT:

1. Liquor Enforcement Officers Suppia and Fetterolf arrived at this licensed club at about 2:10 a.m. on Sunday, October 8, 2006. They paid a \$5 cover charge to a doorman who was wearing a black shirt with "Yik-yak" written on it, and were then allowed inside. They were not asked if they were members of the club. They went to a bar on the first floor and purchased beer from a bartender, who also did not ask if they were members (N.T. 6-10, 45).

2. On Sunday, October 22, 2006, the same officers arrived at the licensed premises at about 2:15 a.m. They were again admitted after paying a cover charge, and were allowed to purchase beer without question as to membership in the club. At 2:45 a.m. the officers went upstairs, where there was another bar and about 75 patrons. At 3:05 a.m. the bartender told everyone to go downstairs. At 3:07 a.m. the officers purchased beer. They left the premises at 3:25 a.m., and everyone else was gone by 3:45 a.m. (N.T. 11-15).

3. On Sunday, December 17, 2006, Officers Suppia and Clarke arrived at the licensed premises at about 2:10 a.m. They were again admitted after paying a cover charge, and were allowed to purchase beer without question as to membership in the club. The officers purchased beer at 3:05 and again at 3:10 a.m., when the lights came on, but no one asked anyone to leave and sales of alcoholic beverages continued. At 3:25 an employee told all of the upstairs patrons to go downstairs, but not everyone did. When the officers left at 3:55 a.m. there were still ten patrons present (N.T. 16-21).

4. On Sunday, January 14, 2007, the same officers arrived at the licensed premises at about 2:10 a.m. They were again admitted after paying a cover charge, and were allowed to purchase beer without question as to membership in the club. The officers purchased beer at 3:17 a.m. At 3:20 an employee came upstairs and asked certain people to go downstairs, including the officers, at 3:30. After this, however, there were still about 60 patrons upstairs, drinking and purchasing alcoholic beverages. (N.T. 21-24).

5. At 3:40 a.m. a detail of liquor enforcement officers entered the premises. An employee of Licensee tried to remove the beer which the officers held in their hands; other patrons also had possession of alcoholic beverages at that time (N.T. 24-26).

6. None of the officers who visited this club under cover during this investigation had ever been members of this club (N.T. 6-26, 46).

7. On December 17, 2006, Liquor Enforcement Officer Ryan Burns maintained an outside surveillance of the licensed premises between 3:30 and 3:55 a.m., during which time he saw patrons enter the premises at various times (N.T. 48-50).

8. Officer Burns entered the premises with the detail at 3:40 a.m. on January 14, 2007, and saw a piece of paper on a wall near the end of the bar which was labeled "\$10.00 Block Pool." There are 100 blocks, with the axes on the left and bottom labeled with random numbers 1 through 9 plus zero. The title at the bottom is "Birds" and on the right, "Aint's." A name is written in each of the blocks, using many different hands (N.T. 51-52, Exhibit B-3).

#### CONCLUSIONS OF LAW:

Licensee violated §406(a)(1) of the Liquor Code, 47 P.S. §4-406(a)(1), on October 8, 22, December 17, 2006, and January 14, 2007, by selling alcoholic beverages to nonmembers.

Licensee violated §§406(a)(4) and 493(16) of the Liquor Code, 47 P.S. §§4-406(a)(4) and 4-493(16), on October 22, December 17, 2006, and January 14, 2007, by selling alcoholic beverages between 3:00 a.m. and 7:00 a.m.

Licensee violated §499(a) of the Liquor Code, 47 P.S. §4-499(a), on December 17, 2006, and January 14, 2007, by permitting patrons to possess alcoholic beverages after 3:30 a.m.

Licensee violated §499(a) of the Liquor Code, 47 P.S. §4-499(a), on December 17, 2006, and January 14, 2007, by failing 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.

Licensee violated §499(a) of the Liquor Code, 47 P.S. §4-499(a), on December 17, 2006, by permitting 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 it did not possess an Extended Hours Food Permit.

The evidence did not prove that Licensee violated §471 of the Liquor Code, 47 P.S. §4-471, and §5514 of the Crimes Code, 18 Pa. C.S. §5514, on January 14, 2007, by possessing or operating gambling devices or paraphernalia or permitting gambling or lotteries, poolselling and/or bookmaking on the licensed premises.

PRIOR RECORD:

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

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

1. Gambling (horse bets).

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

1. Loudspeakers could be heard outside. April 23, 2004.
2. Permitted patrons to possess and/or remove alcoholic beverages after 3:30 a.m. On 10 dates from March 4 to August 5, 2004.
3. Failed to require patrons to vacate the premises by the required time. On 17 dates from March 4 to August 15, 2004.
4. Permitted patrons to enter that portion of the premises habitually used for the service of alcoholic beverages between 3:00 a.m. and 7:00 a.m. without an extended hours food permit. August 15, 2004.
5. Sales to nonmembers. September 3, 2004.

DISCUSSION:

I am dismissing the sixth count because the circumstances do not support the proposition that Licensee was permitting gambling on the premises. The block pool was entirely filled in. No one in the premises was observed to have any connection with the pool; there was no evidence as to how or why the paper was attached to the wall.

I find that this evidence is insufficient to establish a violation based on the Crimes Code.

I find that the remainder of the counts in this citation are supported by substantial evidence, which shows a pattern of operations largely unchanged since 2004.

PENALTY:

Section 471 of the Liquor Code, 47 P.S. §4-471, prescribes a penalty of license suspension or revocation or a fine, or both, for violations of the type found in this case. For violations of the type found in Count Nos. 1, 3, 4, 5, any fine must be in the \$50.00 to \$1,000.00 range. For violations of the type found in Count No. 2, any fine must be in the \$1,000.00 to \$5,000.00 range. Penalties are allocated as follows:

- Count 1 – a fine of \$500.00.
- Count 2 – a fine of \$2,000.00.
- Counts 3 and 4 (penalties merged) – a fine of \$500.00.
- Count 5 – a fine of \$300.00.
- Count 6 – DISMISSED.

ORDER

THEREFORE, it is hereby ORDERED that Licensee, The United Independent Italian American Club of the City of Philadelphia, License No. C-1902, shall pay fines totaling three thousand three hundred dollars (\$3,300.00) within 20 days of the mailing date of this order. In the event the fines are not paid within 20 days, Licensee's license will be suspended or revoked. Jurisdiction is retained.

Dated this 16<sup>th</sup> day of November, 2007.

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David L. Shenkle, J.

jb

**NOTICE: MOTIONS FOR RECONSIDERATION CANNOT BE ACTED UPON UNLESS THEY ARE IN WRITING AND RECEIVED BY THE OFFICE OF ADMINISTRATIVE LAW JUDGE WITHIN 15 DAYS AFTER THE MAILING DATE OF THIS ORDER, ACCOMPANIED BY A \$25.00 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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