

Mailing Date: JUL 01 2008

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 07-0529
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W03-343359
v.	:	
	:	LID - 29970
MANOR SOCIAL CLUB	:	
34 BROADWAY ST.	:	
HANOVER PA 17331-3104	:	
	:	
	:	
YORK COUNTY	:	
LICENSE NO. CC-2390	:	

BEFORE: JUDGE FLAHERTY

APPEARANCES:

For Bureau of Enforcement
Thomas M. Ballaron, Esquire

For Licensee
NO APPEARANCE

ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation that was issued on March 22, 2007, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter "Bureau") against MANOR SOCIAL CLUB, License Number CC-2390 (hereinafter "Licensee").

The citation contains seven counts.

The first count charges Licensee with violation of Section 471 of the Liquor Code [47 P.S. §4-471] and Section 315(b) of the Local Option Small Games of Chance Act [10 P.S. §315(b)] in that during the periods August 13-19, August 20-26, August 27-September 2, September 3-9, September 10-16, September 17-23, October 8-14, October 22-28, October 29-November 4, November 19-25, November 26-December 2, December 3-9 and December 17-23, 2006, Licensee, by its servants, agents or employes, offered and/or awarded more than \$5,000.00 in cash or merchandise in any seven day period.

The second count charges Licensee with violation of Section 471 of the Liquor Code [47 P.S. §4-471] and Section 901 of the Department of Revenue Regulations [61 Pa. Code §901] in that during the period July 1, 2006 through January 12, 2007, Licensee violated the Local Option Small Games of Chance Act, in that funds derived from the operations of games of chance were used for purposes other than those authorized by law.

The third count charges Licensee with violation of Section 5.81 of the Liquor Control Board Regulations [40 Pa. Code §5.81] in that during the period February 23 through December 31, 2006, Licensee, by its servants, agents or employes, failed to adhere to bylaws.

The fourth count charges Licensee with violation of Section 102 of the Liquor Code [47 P.S. §1-102] in that during the period February 23 through December 31, 2006, Licensee, by its servants, agents or employes, improperly admitted members.

The fifth count charges Licensee with violation of Section 102 of the Liquor Code [47 P.S. §1-102] in that during the period February 23, 2006 through February 7, 2007, Licensee, by its servants, agents or employes, failed to conduct business through officers regularly elected.

The sixth count charges Licensee with violation of Section 102 of the Liquor Code [47 P.S. §1-102] in that during the period February 23 through November 30, 2006, Licensee, by its servants, agents or employes, failed to hold regular meetings.

The seventh count charges Licensee with violation of Section 102 of the Liquor Code [47 P.S. §1-102] in that during the period February 23, 2006 through February 7, 2007, Licensee, by its servants, agents or employes, operated the club not in conformity with the Liquor Code definition of "club."

The investigation which gave rise to the citation began on November 15, 2006 and was completed on February 23, 2007; and notice of the violation was sent to Licensee by Certified Mail on February 28, 2007. The notice of violation was received by Licensee.

An evidentiary hearing was held on this matter on October 17, 2007 in the Office of Administrative Law Judge, Brandywine Plaza, 2221 Paxton Church Road, Harrisburg, Pennsylvania. No one appeared at the hearing on behalf of Licensee club. A citation hearing notice was sent to Licensee(s) at its address of record, 34 Broadway Street, Hanover, PA 17331-3104 by certified mail, return receipt requested and by first class mail on August 30, 2007. The notice set forth the date and time of the hearing as October 17, 2007 at 11:00 a.m., and the place of hearing as Brandywine Plaza, 2221 Paxton Church Road, Harrisburg, PA 17110-9661. The hearing commenced at 11:15 a.m.

Upon review of the transcript of this hearing, we make the following Findings of Fact and reach the following Conclusions of Law:

FINDINGS OF FACT:

COUNTS 1, 2, 3, 4, 5, 6 AND 7

1. On December 27, 2006 two officers of the Bureau entered the licensed premises and spoke to Joseph W. Benner, the club manager and president of Licensee club. They expressed their interest in conducting a routine inspection and completed a records request and made arrangements to return to the licensed premises on December 29, 2006 to complete the routine inspection (N.T. 8).

2. On December 29, 2006 one of the officers returned to the licensed premises and met with Mr. Benner, club manager and president and also James C. Meckley, the previous club manager and president.

3. While reviewing the minutes for Licensee club the officer observed there was only one set of minutes available. That set of minutes was for December 27, 2006. Neither Meckley nor Benner were able to provide any other minutes (N.T. 9).

4. The officer reviewed the small games of chance records for Licensee club and observed that the following amounts were awarded as prizes to winners of small games of chance during the following periods:

August 13-19, 2006 - \$10,388.00
August 20-26, 2006 - \$8,189.00
August 27-September 2, 2006 - \$7,920.50
September 3-9, 2006 - \$5,705.00
September 10-16, 2006 - \$8,223.00
September 17-23, 2006 - \$7,185.70
October 8-14, 2006 - \$10,383.00
October 22-28, 2006 - \$9,074.50
October 29-November 4, 2006 - \$5,863.00
November 19-25, 2006 - \$10,005.50
November 26-December 2, 2006 - \$5,415.00
December 3-9, 2006 - \$7,061.00
December 17-23, 2006 - \$11,605.00

(N.T. 10-11).

5. After reviewing the small games of chance records, the officer confiscated a letter written by Mr. Benner which was attached to the club minutes for December 27, 2006 together with the minutes for that meeting and the bylaws of Licensee club in order to review them (N.T. 12-13).

6. The officer returned to the licensed premises on January 3, 2007. At that time he spoke with the president and club manager of Licensee club. At that meeting the officer discussed with Mr. Benner the nomination and election of club officers. Benner explained that no nominations of club officers were held nor were there any elections held in 2006. He further explained that David Liverator, was the club president until June of 2006. Liverator resigned and appointed James Meckley to be president of Licensee club after June of 2006. Meckley then resigned in December of 2006 and appointed Mr. Benner as president. Benner explained that any time club officers changed, the change was made under the direction of the club president. Benner also explained that there were no trustees, only a president, secretary and treasurer. The bylaws of Licensee club required that nomination of officers and trustees be held in October and that elections be held in November (N.T. 13).

7. The officer discussed with Mr. Benner how new members were approved. Benner explained that there was a membership committee that simply reviewed applications and then approved them. The general membership never voted on new memberships. There was never any vote for new members (N.T. 13-14).

8. The officer questioned Mr. Benner concerning the fact that there were minutes for only one meeting which occurred on December 27, 2006. Benner explained that that was the only meeting held. The bylaws of Licensee club require a minimum of at least five meetings per calendar year.

9. The officer returned to the Licensee club on January 12, 2007 and met with Mr. Meckley and Mr. Benner. On that date the officer reviewed the clubs use of small games of chance proceeds. Meckley and Benner provided the records and explained that between July 1, 2006 and January 12, 2007 their net profit from small games of chance was \$40,572.19 (N.T. 14-15).

10. Meckley and Benner explained that \$33,881.12 was used to remodel the kitchen of Licensee club, and only \$819.87 was used as donations to charitable organizations. The remaining \$5,871.20 was used to cover operating costs of the club (N.T. 14-15).

CONCLUSIONS OF LAW:

Counts 1, 2, 3, 4, 5, 6 and 7 of the citation are **sustained**.

PRIOR RECORD:

Licensee has been licensed since August 19, 1992, and has had four prior violations:

Citation No. 96-0847. Fine \$2,200.00 and 15 days suspension.

1. Improper admission of members.
2. Sales to nonmembers without prior arrangement.

3. Permitted lewd, immoral or improper entertainment.
4. Permitted entertainers to contact or associate with patrons.

Citation No. 97-0114. Fine \$200.00.

1. Sales to nonmembers without prior arrangement.

Citation No. 05-0481. Fine \$700.00.

1. Possessed or operated gambling devices or paraphernalia or permitted gambling or lotteries, poolselling and/or bookmaking on the licensed premises (cards and machines). February 5 and 6, 2005.

Citation No. 06-3010. Fine \$1,000.00. Fine not paid and license suspended for 1 day and thereafter until fine paid. Fine still not paid and license revoked effective December 17, 2007.

1. Issued worthless checks in payment for malt or brewed beverages. October 28, 2006.

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.

The record in this case clearly indicates that this club was being run by individuals who improperly assumed the role of the officers of the club. There was no election of officers or trustees by the membership. Officers were merely appointed by an outgoing president. It is clear that this organization was not a proper club in any sense of the word. It would be improper for this organization to continue to operate under a club license and for that reason, the license is revoked.

This office takes notice that Licensee's license has previously been revoked at Citation No. 06-3010.

Under the circumstances of this case, the penalty imposed shall be as follows:

- Count 1 – revocation of licensee's license
- Count 2 – revocation of licensee's license
- Counts 3, 4, 5, 6 & 7 merged – revocation of licensee's club license.

ORDER

THEREFORE, IT IS HEREBY ORDERED that the Liquor License No. CC-2390, issued to MANOR SOCIAL CLUB, be **REVOKED** effective at 7:00 a.m. on Monday, July 28, 2008. Any Wholesale Liquor Purchase Permit Card or discount card issued in connection with the aforementioned license is hereby CANCELLED.

Since the license has previously been revoked there is no license to return; therefore, the Bureau of Licensing is hereby directed to mark their records that this license has been **REVOKED**. The Licensee's right to renew his license is hereby CANCELLED.

Jurisdiction is retained pending final resolution of the penalty in this matter.

Dated this 17th day of June, 2008.

Daniel T. Flaherty, Jr., J.

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MOTIONS FOR RECONSIDERATION MUST BE RECEIVED WITHIN 15 DAYS OF THE MAILING DATE OF THIS ORDER IN 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.