

Mailing Date: NOV 28 2007

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 07-0931
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W09-341726
v.	:	
	:	LID – 1623
WESTON CLUB, INC.	:	
1317 LEHIGH ST.	:	
EASTON, PA 18042-4017	:	
	:	
	:	
	:	
	:	
	:	
	:	
	:	
NORTHAMPTON COUNTY	:	
LICENSE NO. C-3439	:	

**BEFORE:** JUDGE THAU

APPEARANCES:

For Bureau of Enforcement  
Craig A. Strong, Esquire  
Pennsylvania State Police  
8320 Schantz Road, Second Floor  
Breinigsville, PA 18031

For Licensee  
Ex-Parte

**ADJUDICATION**

BACKGROUND:

This proceeding arises out of a citation that was issued on May 9, 2007, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (Bureau) against Weston Club, Inc. (Licensee), License Number C-3439.

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 October 25, 2006, Licensee, by servants, agents or employes, sold alcoholic beverages to nonmembers.

The second count charges Licensee with a violation of Sections 471 and 493(31) of the Liquor Code [47 P.S. §4-471 and §4-493(31)] and Section 780-101, et seq., of the Pennsylvania Controlled Substance Drug, Device and Cosmetic Act [35 P.S. §780-101]. The charge is that on October 25, 2006, Licensee, by servants, agents or employes, aided, abetted or engaged in the traffic in, or sale of, a controlled substance on its licensed premises and/or permitted the use of the licensed premises in the furtherance of the traffic in, or use of, a controlled substance.

An evidentiary hearing was conducted on October 19, 2007 at the Lehigh County Courthouse, Room 730, 7<sup>th</sup> Floor, 455 West Hamilton Street, Allentown, Pennsylvania. Licensee did not appear personally or have 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 August 30, 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: "moved left no address, unable to forward, return to sender." (N.T. 4)
2. On August 31, 2007, I issued a Pre-Hearing Order directing Licensee to submit its pre-hearing memorandum. That Order reiterated the date, time and place of hearing. (N.T. 4)
3. The Bureau began its investigation on October 18, 2006 and completed it on April 4, 2007. (N.T. 15)
4. The Bureau sent a notice of alleged violations to Licensee at the licensed premises by certified mail-return receipt requested on April 6, 2007. The notice alleged violations as charged in the citation. (Commonwealth Exhibit No. C-1, 07-0931, N.T. 7)

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1. Commonwealth Exhibit No. C-2, 07-0931, N.T. 16

Count No. 1:

5. On October 25, 2006, a Bureau Enforcement Officer was able to gain entry to the premises in an undercover capacity and received a non-member service of alcoholic beverages. The Officer was requested to show identification and he showed a fictional driver's license. (N.T. 13-20)

Count No. 2:

6. While the Officer sat at the bar, a customer, who was sitting three stools away, ordered a drink. He took a cigar out and emptied out the tobacco that was inside. He repacked it with what the Officer believed to be marijuana. The customer began to smoke the marijuana. The Officer's assessment that the smoking material was marijuana was based on his professional training. (N.T. 21)

CONCLUSIONS OF LAW:

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

Count No. 1:

2. **Sustained** as charged.

Count No. 2:

3. The Bureau **failed** to prove that on October 25, 2006, Licensee, by servants, agents or employes, aided, abetted or engaged in the traffic in, or sale of, a controlled substance on its licensed premises and/or permitted the use of the licensed premises in the furtherance of the traffic in, or use of, a controlled substance.

DISCUSSION:

I dismiss Count No. 2 based on the Pennsylvania Supreme Court's reasoning in *Pa. Liquor Control Bd. V. TLK, Inc.*, 544 A.2d 931 (Pa. 1988) in which strict liability for Crimes Code violations was abrogated. Instantly, the Bureau established the presence of a customer engaging in criminal conduct<sup>2</sup> and a bartender. There is no proof the bartender was a club official. *TLK, Inc.*, is applicable to employe conduct as well as that of patrons, the bartender's obvious acquiescence, does not remove the case from *TLK*.

Given the relatively brief duration of the criminal conduct and the lack of proof of the presence of a club official, I reluctantly conclude Licensee neither knew nor should have known of the illegal conduct.

Once again I am compelled to remark, the regulation which excuses clubs from reporting changes in officers except at license renewal or validation [40 Pa. Code §5.91(e)] presents profound enforcement difficulties. I recognize this limited requirement is no doubt driven by cost savings.

From where I sit, the cost savings do not outweigh the loss of governmental knowledge and control. The regulation renders it exceedingly difficult to establish who is in charge at any given moment. Multiple changes may occur within a licensing year without government having any sense about a club's leadership. Indeed, 40 Pa. Code §3.35 relating to criminal history checks, may be easily and intentionally avoided during a licensing year thus allowing individuals to become club officers who would otherwise be prohibited from doing so.

PRIOR RECORD:

Licensee has been licensed since March 1, 1938, and has had four prior violations since July 1, 1987, the date of establishment of the Office of Administrative Law Judge, (Commonwealth Exhibit No. C-4, N.T. 14):

Adjudication No. 91-1035. \$300.00 fine.

Used loudspeakers or devices whereby music could be heard outside.

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2. I do not believe a chemical analysis of the smoking material (marijuana) is required given the Officer's experience and the lower level of proof in these proceedings.

Adjudication No. 96-0126. \$850.00 fine.

1. Failed to maintain records in conformity with Title 40 of the Pennsylvania Code.  
May 1 through October 20, 1995.
2. Failed to adhere to by-laws.  
May 1 through October 20, 1995.
3. Improper admission of members.  
May 1 through October 20, 1995.
4. Operated a club not in conformity with the Liquor Code definition of "club."  
May 1 through October 20, 1995.
5. Purchased malt or brewed beverages on credit.  
On 33 dates between April 29 and October 6, 1995.

Adjudication No. 01-0028. \$600.00 fine.

1. Failed to maintain complete and truthful records covering the operation of the licensed business for a period of two years immediately preceding September 1, 2000.
2. Failed to maintain records in conformity with Title 40 of the Pennsylvania Code.  
Between March 1, 1999 and September 1, 2000.

Adjudication No. 03-0426. Fine \$150.00.

Failed to maintain records in conformity with  
Title 40 of the Pennsylvania Code.  
April 2002 to January 2003.

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 No. 1 in this case.

As Licensee has failed to appear and obey process, I impose:

- Count No. 1 – \$1,000.00 fine.  
Count No. 2 – Dismissed.

ORDER:

**Imposition of Fine**

THEREFORE, it is hereby ordered that Licensee pay a fine of \$1,000.00 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.

**Dismissal of Count No. 2:**

IT IS FURTHER ORDERED that Count No. 2 of Citation No. 07-0931 issued against Weston Club, Inc., is DISMISSED.

**Retaining Jurisdiction**

Jurisdiction is retained to ensure compliance with this Adjudication.

Dated this 16<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

Citation No. 07-0931