

Mailing Date: MAR 27 2008

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 07-1073
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W03-344791
v.	:	
	:	LID - 3493
YANKEE ATHLETIC ASSN.	:	
260 LAFAYETTE ST.	:	
PO BOX 1363	:	
YORK, PA 17403-2140	:	
	:	
YORK COUNTY	:	
LICENSE NO. CC-3371	:	

BEFORE: JUDGE THAU

APPEARANCES:

For Bureau of Enforcement
Thomas M. Ballaron, Esquire
Pennsylvania State Police
3655 Vartan Way
Harrisburg, PA 17110

For Licensee
James A. Snell, Esquire
322 S. 8th Street
Lebanon, PA 17042

ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation that was issued on May 24, 2007, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (Bureau) against Yankee Athletic Assn. (Licensee), License Number CC-3371.

This citation¹ contains four counts.

The first count charges Licensee with a violation of Sections 5.71 and 5.74 of the Pennsylvania Liquor Control Board Regulations [40 Pa. Code §5.71 and §5.74]. The charge is that on March 29, 2007, Licensee, by servants, agents or employes, failed to maintain records in conformity with Title 40 of the Pennsylvania Code.

The second count charges Licensee with a violation of Section 5.81 of the Pennsylvania Liquor Control Board Regulations [40 Pa. Code §5.81]. The charge is that on March 29, 2007, Licensee, by servants, agents or employes, failed to adhere to by-laws.²

The third count charges Licensee with violations of Section 102 of the Liquor Code [47 P.S. §1-102]. The charge is that on July 3, August 7, September 4, October 2 and November 6, 2006, Licensee, by servants, agents or employes, failed to hold regular meetings.

The fourth count charges Licensee with violations 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)]. The charge is that during the periods November 5 through 11 and December 10 through 16, 2006, Licensee, by servants, agents or employes, offered and/or awarded more than \$5,000.00 in cash or merchandise in any seven-day period.

An evidentiary hearing was conducted on February 19, 2008 at Brandywine Plaza, 2221 Paxton Church Road, Harrisburg, Pennsylvania.

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 December 13, 2006 and completed it on March 29, 2007. (Commonwealth Exhibit No. C-1, N.T. 8)

2. The Bureau sent a notice of alleged violations to Licensee at the licensed premises by certified mail-return receipt requested on April 26, 2007. The notice alleged violations as charged in the citation. (Commonwealth Exhibit No. C-1, N.T. 8)

1. Commonwealth Exhibit No. C-2, N.T. 8.

2. The Bureau motioned to withdraw Count No. 2 of the Citation. I granted said Motion.

Count No. 1:

3. A Bureau Enforcement Officer conducted an administrative inspection of the premises on March 29, 2007 finding that Licensee' records of current officers did not conform to information Licensee provided to the Pennsylvania Liquor Control Board on a renewal application. (N.T. 11-12)

Count No. 3:

4. On the dates charged, Licensee did not hold any meetings. Those dates were required meeting dates by virtue of Licensee's By-Laws. (N.T. 14-16)

Count No. 4:

5. During the two, seven-days period charged, Licensee awarded prizes in the amount of \$9,315.00 and \$10,843.00, respectively. (N.T. 23-24)

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. **Withdrawn.**

Count No. 3:

4. **Sustained** as charged.

Count No. 4:

5. **Sustained** as charged.

PRIOR RECORD:

Licensee has been licensed since February 1, 1939, and has had six prior violations since July 1, 1987, the date of establishment of the Office of Administrative Law Judge, (Commonwealth Exhibit No. C-3, N.T. 31):

Adjudication No. 88-0004. Fine \$700.00.

Possessed or operated gambling devices or paraphernalia or permitted gambling or lotteries on a licensed premises (punchboard, tickets and poker machines).

Adjudication No. 88-1458. Fine \$2,100.00.

1. Sales to nonmembers without prior arrangement.
2. Possessed or operated gambling devices or paraphernalia or permitted gambling or lotteries on a licensed premises (tickets, punchboards and poker machines).
3. Displayed obscene films on the licensed premises.

Adjudication No. 95-0238. Fine \$600.00.

1. Sales to nonmembers without prior arrangement.
December 28, 1994.
2. Possessed or operated gambling devices or paraphernalia or permitted gambling or lotteries on a licensed premises (sport pools).
December 28, 1994 and January 25, 1995.

Adjudication No. 95-2266. Fine \$400.00.

Sales to nonmembers without prior arrangement.
July 15, 1995.

Adjudication No. 97-2698. Fine \$1,500.00 and 3 days suspension.

1. Used loudspeakers or devices whereby music could be heard outside.
July 12 and October 11, 1997.
2. Sales to nonmembers without prior arrangement.
July 12, August 8 and 29, 1997.
3. Possessed or operated gambling devices or paraphernalia or permitted gambling or lotteries, poolselling and/or bookmaking on your licensed premises (machines).
August 8 and September 9, 1997.
4. Possessed or operated gambling devices or paraphernalia or permitted gambling or lotteries when your Small Games of Chance license expired (tickets and punchboards).
August 8, 29 and September 9, 1997.

Adjudication No. 99-0473. Fine \$1,000.00 and 5 days suspension.

1. Permitted lewd, immoral or improper entertainment.
2. Permitted entertainers to contact or associate with patrons.
3. Sales to nonmembers without prior arrangement.

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, 3 and 4 in this case.

As Licensee has asserted it will be more vigilant in the future, I impose:

- Count No. 1 - \$50.00 fine.
- Count No. 2 – Withdrawn.
- Count No. 3 - \$50.00 fine.
- Count No. 4 - \$400.00 fine.

ORDER:

Imposition of Fine

THEREFORE, it is hereby ordered that Licensee pay a fine of \$500.00 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.

Withdrawal of Count No. 2:

IT IS FURTHER ORDERED THAT Count No. 2 of Citation No. 07-1073, issued against Yankee Athletic Assn. is WITHDRAWN.

Retaining Jurisdiction

Jurisdiction is retained to ensure compliance with this Adjudication.

Dated this 17th day of March, 2008.

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

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. 07-1073