

Mailing Date: APR 29 2008

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 07-1613
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W03-346383
v.	:	
	:	LID - 3895
V.F.W. HOME ASSN.	:	
OF ADAMSTOWN	:	
110-114 W. MAIN ST.	:	
ADAMSTOWN, PA 19501	:	
	:	
LANCASTER COUNTY	:	
LICENSE NO. CC-5327	:	

BEFORE: JUDGE THAU

APPEARANCES:

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

For Licensee
Stanley J. Wert, Jr.
President

ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation that was issued on July 26, 2007, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (Bureau) against V.F.W. Home Assn. of Adamstown (Licensee), License Number CC-5327.

This citation¹ contains five counts.

The first count charges Licensee with violations of Sections 5512 and/or 5513 of the Crimes Code [18 Pa. C.S. §5512 and/or §5513] which is incorporated by reference in Liquor Code Section 471 [47 P.S. §4-471] as “other sufficient cause.” The charge is that on April 17 and June 14, 2007, and divers other occasions in the past year, Licensee, by servants, agents or employes, possessed or operated gambling devices or paraphernalia or permitted gambling or lotteries, poolselling and/or bookmaking on its licensed premises.

The second count charges Licensee with violations of Sections 5.71, 5.72 and 5.74 of the Pennsylvania Liquor Control Board Regulations [40 Pa. Code §5.71, §5.72 and §5.74]. The charge is that during the period January 2007 to June 14, 2007, Licensee, by servants, agents or employes, failed to maintain records in conformity with Title 40 of the Pennsylvania Code.

The third 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 May 24, 2007, Licensee, by servants, agents or employes, failed to keep records on the licensed premises.

The fourth count charges Licensee with violations of Section 5.81 of the Pennsylvania Liquor Control Board Regulations [40 Pa. Code §5.81]. The charge is that on May 24, 2007, and divers other occasions in the past year, Licensee, by servants, agents or employes, failed to adhere to by-laws.

The fifth count charges Licensee with a violation of Sections 471 and 493(12) of the Liquor Code [47 P.S. §4-471 and §4-493(12)], Section 311 of the Local Option Small Games of Chance Act [10 P.S. §311] and Section 901 of the Department of Revenue Regulations [61 Pa. Code §901]. 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 June 14, 2007, concerning the Local Option Small Games of Chance Act.

An evidentiary hearing was conducted on April 2, 2008 at Brandywine Plaza, 2221 Paxton Church Road, Harrisburg, Pennsylvania. Licensee was represented by its President, Mr. Stanley J. Wert, Jr.

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

1. Commonwealth Exhibit No. C-2, N.T. 35.

FINDINGS OF FACT:

1. The Bureau began its investigation on January 12, 2007 and completed it on June 15, 2007. (N.T. 10)

2. The Bureau sent a notice of alleged violations to Licensee at the licensed premises by certified mail-return receipt requested on June 28, 2007. The notice alleged violations as charged in the citation. (Commonwealth Exhibit No. C-1, N.T. 7)

Count No. 1:

3. A Bureau Enforcement Officer visited the premises on April 17, 2007 to conduct an administrative inspection. Licensee was operating a weekly drawing at a \$1.00 consideration. Licensee was offering multiple pots on that weekly drawing. (N.T. 12-14)

4. On June 14, 2007, the Officer noted Licensee corrected the multiple pots per week issue. However, the Officer discovered Licensee was operating a raffle throughout the calendar year 2007. The raffle was being operated at a cost of \$1.00 per month. Licensee did have monthly drawings related to the raffle which accumulated with a grand finale in December 2007. There was no proper date listed for the December drawing. No consideration for the raffle was listed on the face of the ticket. Not all tickets had been sold for the raffle. The total number of raffle tickets is required to be documented. The tickets did not have a Small Games of Chance vendor number on them. (N.T. 29-33)

Count Nos. 2, 3 and 4:

5. The Officer went to the premises on May 24, 2007 to continue an administrative inspection. Several club officers were present. Licensee had no liquor invoices available for review for the period June through December, 2005. A club official advised the Officer that a former club manager passed away in August, 2005 and many of the records turned up missing with his passing. (N.T. 12-16)

6. Licensee did not maintain a cash book for the period June through December, 2005. (N.T. 17)

7. Licensee's By-Laws required that there be an Auditing Committee for the purpose of auditing books and records of the club. There was no such Audit Committee in place. One of the By-Laws required detail of various dues rates based on various membership classes. Licensee was not adhering to those requirements as they were now obsolete. (N.T. 18-19)

8. The By-Laws further required new members be investigated. The club did not engage in any formal investigation of social member applicants. Further, the By-Laws required there be a Membership Committee but there was none at the time of the investigation. (N.T. 20)

9. Licensee did not maintain an inactive membership file for the past two years. With respect to Licensee's Minutes, there were no financial reports of the Treasurer attached to the Minutes since January, 2007. There were no records detailing income and expenses for the period January 2007 to May 2007. (N.T. 22-24)

Count No. 5:

10. During the Officer's visit of June 14, 2007, he discovered record keeping regarding Licensee's Small Games of Chance License was not finding its way into Licensee's income and expense records.

11. Prior to the initiation of records regarding the Small Games of Chance in March 2007, Licensee had no financial records whatsoever. Those records were supposedly maintained by an individual who left the club.

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 and 5 are **sustained** as charged.

PRIOR RECORD:

Licensee has been licensed since May 29, 1952, 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-3, N.T. 36):

Adjudication No. 06-0414. Fine \$400.00.

1. Possessed or operated gambling devices or paraphernalia or permitted gambling or lotteries, poolselling and/or bookmaking on your licensed premises (dice).
December 29, 2005.
2. Offered and/or gave alcoholic beverage as a prize.
December 29, 2005.
3. Failed to maintain complete and truthful records covering the licensed business for a period of 2 years concerning the Local Option Small Games of Chance.
January 5, 2006.
4. Failed to maintain records in conformity with Title 40 of the Pennsylvania Code.
January 5, 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 Bureau recommends a total fine of \$1,900.00. I find that amount to be a bit harsh. Particularly when one considers Licensee intends to hire an accountant to insure future violations of the type in question do not occur. Had Licensee not made that commitment at the hearing, it is likely I would have imposed a fine greater than that which was recommended by the Bureau.

I impose:

- Count No. 1 – \$175.00 fine.
- Count No. 2 – \$175.00 fine.
- Count No. 3 – \$175.00 fine.
- Count No. 4 – \$175.00 fine.
- Count No. 5 – \$200.00 fine.

ORDER:

Imposition of Fine

THEREFORE, it is hereby ordered that Licensee pay a fine of \$900.00 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.

Retaining Jurisdiction

Jurisdiction is retained to ensure compliance with this Adjudication.

Dated this 23rd day of April, 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

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