

Mailing Date: JUN 25 2008

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

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| PENNSYLVANIA STATE | : | |
| POLICE, BUREAU OF | : | Citation No. 07-2018 |
| LIQUOR CONTROL ENFORCEMENT | : | |
| | : | Incident No. W01-351677 |
| v. | : | |
| | : | LID - 51345 |
| 1061 CEDARWOOD INC | : | |
| 1061 CEDARWOOD RD | : | |
| GLENOLDEN PA 19036-1534 | : | |
| | : | |
| DELAWARE COUNTY | : | |
| LICENSE NO. R-AP-SS-18331 | : | 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 September 7, 2007. There are two counts in the citation.

The first count alleges that Licensee violated §471 of the Liquor Code, 47 P.S. §4-471, and §5513 of the Crimes Code, 18 Pa. C.S. §5513, on July 20, 2007, by possessing or operating gambling devices or paraphernalia or permitting gambling or lotteries, poolselling and/or bookmaking on the licensed premises.

The second count alleges that Licensee violated §493(1) of the Liquor Code, 47 P.S. §4-493(1), on March 23, 2007, by selling, furnishing, and/or giving or permitting such sale, furnishing or giving of alcoholic beverages to one male minor, nineteen years of age.

A hearing was held on April 3, 2008, in Plymouth Meeting, Pennsylvania. The parties stipulated to the timely service of the notice letter and citation, and to a summary of facts in support of Count No. 2, only.

FINDINGS OF FACT:

1. On March 23, 2007, a man whose birth date was June 2, 1987, entered the licensed premises at about 2:00 p.m., not accompanied by a parent or guardian. He purchased and drank

approximately fifteen to twenty alcoholic beverages during his visit, served by two different bartenders. His age was not questioned (Bureau's prehearing memorandum ¶ II. A. 4.).

2. Liquor Enforcement Officer Eric Gall visited the licensed premises on July 20, 2007, and spoke with the owner, Gerald Connolly, about the "Riviera High Score" and the "Draw Poker" model video poker machines which were in the premises. Officer Gall "basically asked if he was paying out on these two machines, at which time Mr. Connolly acknowledged that yes, he was paying out on these machines." (N.T. 7-12).

CONCLUSIONS OF LAW:

Licensee violated §471 of the Liquor Code, 47 P.S. §4-471, and §5513 of the Crimes Code, 18 Pa. C.S. §5513, on July 20, 2007, by possessing and operating gambling devices in the licensed premises.

Licensee violated §493(1) of the Liquor Code, 47 P.S. §4-493(1), on March 23, 2007, by selling alcoholic beverages to one male minor, nineteen years of age.

DISCUSSION:

In the context of the conversation reported between Mr. Connolly and Officer Gall, I am satisfied that the statements of Mr. Connolly were sufficient to sustain the conclusion that both video poker machines were being used for gambling. There is room to quibble about whether the questionnaires completed during the investigation were filled out appropriately, but the minor procedural irregularities did not cause me to discount the import of Mr. Connolly's admission.

PRIOR RECORD:

Licensee has been licensed since July 30, 2003, and has had no prior violations.

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 No. 1, 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 will be as follows:

Count 1 – a fine of \$250.00.

Count 2 – a fine of \$1,750.00 plus mandatory R.A.M.P. certification.

ORDER

THEREFORE, it is hereby ORDERED that Licensee, 1061 Cedarwood, Inc., License No. R-AP-SS-18331, shall pay a fine of two thousand dollars (\$2,000.00) within 20 days of the mailing date of this order. In the event the fine is not paid within 20 days, Licensee's license will be suspended or revoked. Jurisdiction is retained.

IT IS FURTHER ORDERED that Licensee shall comply with the requirements set forth in Liquor Code Section 471.1, pertaining to Responsible Alcohol Management in the following manner. The Licensee is directed to contact the Bureau of Alcohol Education, Pennsylvania Liquor Control Board (toll free telephone: 1-866-275-8237; www.lcb.state.pa.us) within thirty (30) days of the mailing date of this adjudication in order to receive assistance in the compliance process. Licensee must receive certification within ninety (90) days of the mailing date of this adjudication. Licensee must remain in compliance for a period of one year from the date such certification is issued. The Bureau of Liquor Control Enforcement is further directed to monitor compliance with this adjudication.

Failure to comply with this order will be grounds for modification of penalty in this case. Failure to comply may also constitute grounds for issuance of a new citation as authorized by Section 471(d) of the Liquor Code, 47 P.S. Section 4-471(d).

Dated this 9TH day of JUNE, 2008.

David L. Shenke, 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

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