

Mailing Date: April 2, 2008

PENNSYLVANIA LIQUOR CONTROL BOARD
HARRISBURG, PA 17124-0001

PENNSYLVANIA STATE POLICE, : Citation No. 07-2746
BUREAU OF LIQUOR CONTROL :
ENFORCEMENT :

vs. :

HARRISBURG KNIGHTS OF : License No. CC-5300
COLUMBUS HOME ASSOCIATION :
145 Peach Street :
Harrisburg, PA 17112-3066 :

Counsel for Licensee: P. Richard Wagner, Esquire
MANCKE WAGNER SPREHA &
McQUILLAN
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Harrisburg, PA 17110

Counsel for Bureau: Thomas M. Ballaron, Esquire
Pennsylvania State Police,
Bureau of Liquor Control Enforcement
3655 Vartan Way
Harrisburg, PA 17110

OPINION

Harrisburg Knights of Columbus Home Association (“Licensee”) appealed from the Adjudication and Order of Administrative Law Judge Daniel T. Flaherty (“ALJ”), wherein the ALJ sustained the citation,

imposed a two thousand dollar (\$2,000.00) fine, and a ten (10)-day suspension of the license.

The citation consisted of two (2) counts. The first count charged that Licensee, by its servants, agents or employees, violated sections 471 and 493(2) of the Liquor Code [47 P.S. §§ 4-471, 4-493(2)], 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], by failing to maintain complete and truthful records covering the operation of the licensed business for a period of two (2) years immediately preceding August 13, 2007, concerning the Local Option Small Games of Chance Act.

The second count of the citation charged that Licensee, by its servants, agents or employees, violated 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 January 1 through 7, January 8 through 14, January 15 through 21, January 22 through 28, February 1 through 7, February 8 through 14, February 15 through 21, February 22 through 28, March 1 through 7, March 8 through 14, March 15 through 21, March 22 through 28, April 1 through 7, April 8 through 14, April 15 through 21, April 22 through 28, May 1 through 7, May 8 through 14,

May 15 through 21, May 22 through 28, June 1 through 7, June 8 through 14, June 15 through 21, June 22 through 28, July 1 through 7, July 8 through 14, July 15 through 21, July 22 through 28, and August 1 through 7, 2007, by offering and/or awarding more than five thousand dollars (\$5,000.00) in cash or merchandise in any seven (7)-day period.

Pursuant to section 471 of the Liquor Code [47 P.S. § 4-471], the appeal in this case must be based solely on the record before the ALJ. The Board shall only reverse the decision of the ALJ if the ALJ committed an error of law or abused his discretion, or if his decision was not based upon substantial evidence. The Commonwealth Court defined "substantial evidence" to be such relevant evidence as a reasonable person might accept as adequate to support a conclusion. Joy Global, Inc. v. Workers' Compensation Appeal Bd. (Hogue), 876 A.2d 1098 (Pa. Cmwlth. 2005); Chapman v. Pennsylvania Bd. of Probation and Parole, 86 Pa. Cmwlth. 49, 484 A.2d 413 (1984).

In its appeal, Licensee contends the ALJ committed an error of law in penalizing the Licensee for alleged violations of the Local Option Small Games of Chance Act [10 P.S. § 315(b)], in that the Liquor Control Board does not have jurisdiction over administration of small games of chance. Licensee

further avers that jurisdiction lies with the Department of Revenue, and enforcement lies with law enforcement officials which do not include by definition, members of the Pennsylvania State Police, Bureau of Liquor Control Enforcement (“Bureau”).

The record reveals that, in response to the citation, on December 4, 2007, Licensee submitted an Admission, Waiver and Authorization Form (“waiver”) to the Office of Administrative Law Judge (“OALJ”).¹ (Admin. Notice). The waiver was signed by Albert Chaki, Licensee’s president.² (Admin. Notice).

The waiver provided that Licensee: (1) acknowledged receipt of the citation; (2) admitted to the violations charged in the citation; (3) waived its right to a hearing; (4) authorized the ALJ to enter an adjudication based upon a summary of facts and Licensee’s prior citation history; (5) acknowledged that the possible penalty included a fine ranging from one thousand dollars (\$1,000.00) to five thousand dollars (\$5,000.00) and/or suspension or revocation of the license and/or permits incidental to the license; and, (6) waived any right to appeal the adjudication. (Admin. Notice). Section 11 of the waiver further states that, “[u]nder penalty of law

¹ The record before the Board is limited because no hearing was held before the ALJ.

² Board records verify that Albert Chaki was Licensee’s president at the time the waiver was submitted.

(18 PA. C.S. §4904, relating to unsworn falsification to authorities), I verify that I am the Licensee, an officer/partner, club steward or attorney authorized to complete and sign this form on behalf of the Licensee... .” (Admin. Notice).

The waiver was in no way conditional, and there is no evidence offered that Licensee was deceived into submitting it. The waiver is clear as to the citation number in question, as only Citation No. 07-2746 is referenced thereon. In the absence of evidence to the contrary, the Board must conclude that Licensee voluntarily relinquished its right to appeal the ALJ’s decision, including the penalty as well as any defects in service. Licensee preserved no affirmative defense for appeal. The Board finds, therefore, that Licensee has waived its right to appeal. See Pennsylvania State Police, Bureau of Liquor Control Enforcement vs. Wilner, 687 A.2d 1216 (Pa. Cmwlth. 1997), citing with approval Pennsylvania Liquor Control Bd. vs. Dentici, 542 A.2d 229 (Pa. Cmwlth. 1988).

While the cases cited above clearly establish that a voluntary waiver of appeal rights is binding against a licensee, Licensee suggests that its appeal on jurisdictional grounds is not subject to waiver. Licensee has not cited any caselaw for the proposition that it cannot, as it did here, voluntarily waive all

appeal rights, including those based on jurisdiction. Nonetheless, the Board will address Licensee's jurisdictional argument.

The Bureau does, in fact, have jurisdiction in matters involving the Local Option Small Games of Chance Act, since such would constitute "other sufficient cause shown" as set forth in section 471 of the Liquor Code, and as acknowledged by the Pennsylvania Supreme Court in Pennsylvania Liquor Control Bd. v. TLK, 544 A.2d 931 (Pa. 1988). For "other sufficient cause" cases, the Bureau must prove by a preponderance of the evidence, in addition to the elements of the underlying offense, that Licensee knew or should have known about the activity on or about its licensed premises, and failed to take substantial affirmative steps to curb the activity. [See TLK, supra]. In the instant case, Licensee executed a waiver admitting to all violations charged, and authorizing the ALJ to enter an adjudication based upon a summary of facts and Licensee's prior adjudication history.

Accordingly, the appeal of Licensee must be dismissed. The decision of the ALJ is, therefore, affirmed.

ORDER

The decision of the ALJ is affirmed.

The appeal of Licensee is dismissed.

It is hereby ordered that Licensee pay the fine of two thousand (\$2,000.00) dollars within twenty (20) days of the mailing date of this Order. Failure to do so will result in license suspension and/or revocation.

It is further hereby ordered that Licensee's Catering Club Liquor License No. CC-5300 be suspended for a period of ten (10) days, beginning at 7:00 a.m. on Monday, May 12, 2008 and ending at 7:00 a.m. on Thursday, May 22, 2008, 2008. Licensee is directed to place the enclosed placard of notice of suspension (identified as Form No. PLCB-1925 and printed with red and black ink) in a conspicuous place on the outside of the licensed premises, or in a window plainly visible from outside of the licensed premises, and to remove the license from the wall and place it in a secure location on the effective date of said suspension.

Licensee must adhere to all other conditions set forth in the ALJ's Order dated January 15, 2008.

Board Secretary