

Mailing Date: May 2, 2011

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 08-0058
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W03-362881
v.	:	
	:	LID - 45529
DETRICH-BRECHBILL HOME	:	
ASSN., INC.	:	
PO BOX 303	:	
ST. THOMAS, PA 17252-9776	:	
	:	
FRANKLIN COUNTY	:	
LICENSE NO. CC-6291	:	
	:	

BEFORE: JUDGE THAU
BUREAU COUNSEL: John H. Pietrzak, Esquire
LICENSEE: P. Richard Wagner, Esquire

ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation that was issued on February 14, 2008, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (Bureau) against Detrich-Brechbill Home Assn., Inc. (Licensee), License Number CC-6291.

This citation¹ contains two counts.

The first count charges Licensee with a violation 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 December 19, 2007, 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.

1. Commonwealth Exhibit No. C-2, N.T. 6.

The second 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 July 2 through 8 and November 19 through 25, 2007, 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 March 4, 2011 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 October 7, 2007 and completed it on December 22, 2007. (N.T. 6-7)
2. The Bureau sent a notice of alleged violations to Licensee at the licensed premises by certified mail-return receipt requested on January 8, 2008. The notice alleged violations as charged in the citation. (Commonwealth Exhibit No. C-1, N.T. 6)

Count No. 1:

3. On Sunday, October 7, 2007, a Bureau Enforcement Officer conducted an undercover visit which began at approximately 5:50 p.m. The Officer observed a board hanging behind the bar with columns. One column was marked Hogs while the other was identified as, Reds. Under the Hogs column, 400 was listed, four times followed by a 50. Under the Reds column, 400 was listed, twice. (N.T. 7-11)
4. On November 3, 2007 and November 24, 2007, the Officer conducted on-premises, undercover visits. His observations were similar to those identified in Finding of Fact No. 3. (N.T. 12)

5. On December 19, 2007, the Officer arrived at the premises at 2:30 p.m., to conduct an administrative inspection. The Officer rang the doorbell. The bartender opened the door. The Officer introduced himself and displayed his credentials. He explained the purpose of his visit. The bartender told the Officer that the premises was not open for business, but allowed him entry to conduct the administrative inspection. The bartender said she would assist the Officer in any way she could. She called the Steward, Mr. G., who arrived at the premises at 2:45 p.m. (N.T. 13-14)

6. The Officer found several envelopes behind the bar, each with notations on them and cash inside. The Officer questioned Mr. G. about the notations on the board and the envelopes. Mr. G. explained, it is Licensee's practice, for two of the pull-tab games (Hogs and Reds), to alter the structure in order to create larger prizes than intended. The games were originally designed to award two prizes, called a "Seal" prize. There are two seal prizes for each game. When all of the numbers in a game have been selected, the two seals are removed to identify the winning numbers. The person who purchases the number identified under the \$100.00 seal receives that amount. The person who purchases the number under the \$50.00 seal receives that amount. (N.T. 15-16)

7. Licensee altered the games to conduct progressive jackpots. When all available numbers on a game are sold, the two seals are removed. If the number appearing under the \$100.00 seal is the same as that under the \$50.00 seal, the winning ticket holder receives both prizes, or \$150.00. However, if the winning number under the \$100.00 seal differs from that under the \$50.00 seal, only the \$100.00 prize is awarded. The \$50.00 prize is retained. When the sum of the \$50.00 prizes retained reaches \$400.00, that amount is awarded in the next game. (N.T. 17-20)

Count No. 2:

8. During the visit, Mr. G. went to his office to review records that were kept on the computer in a program called: "Tip Jar Sales Report." Mr. G. provided the Officer with copies of the report. The Officer asked Mr. G. to print records for two, seven-day periods as identified in Count No. 2 (Commonwealth Exhibit No. C-3). (N.T. 17-20).

9. The Officer targeted games that were opened and completed during the two, seven-day periods charged, in order to determine the total prize money Licensee awarded for each of the two accounting periods. Mr. G. supplied the Officer with a flare card for each game. A flare card lists the prize amounts for each game, as prepared by the manufacturer.² The Officer advised Mr. G. he required the flare cards to calculate a payout total. Mr. G. neither denied nor affirmed the flare card payout amounts accurately represented Licensee's payouts. The Officer applied the flare card values to calculate total payouts. (N.T. 30; 61)

10. The Officer added the flare card payout value for every game that was put into play and completed during the seven-day accounting period ending July 8, 2007. The Officer found six games, the flare cards for which identified prizes valued at \$505.00 each. He identified 29 pertinent games with a flare card value of \$520.00 each. Licensee's records also revealed three qualifying games, the flare card for which listed a payout value of \$685.00 each. There was one additional qualifying game with a flare card payout value of \$2,470.00. Adding, the flare card values for each qualifying game, the Officer arrived at a sum of \$27,675.00 for all games that were started and completed during the seven-day accounting period ending July 8, 2007. (N.T. 28-34)

11. The Officer applied the same process for the second, seven-days accounting period ending November 25, 2007. He arrived at a sum of \$10,920.00. (N.T. 34-35)

12. On October 17, 2006, the Federation of Clubs of Franklin and Fulton Counties conducted a meeting. Questions were put to a Bureau Enforcement Officer who attended the meeting, to provide guidance and information to the Organization's members. Several attendees believed the Officer advised that progressive jackpots were legal as long as the prize did not exceed \$500.00. Based on that belief, Licensee engaged in the practice. (N.T. 74-92)

13. The Officer was assigned to go to the October 17, 2006 meeting to provide a presentation on routine inspections and respond to any questions regarding Small Games of Chance. There were no more than three questions asked of the Officer in relationship to Small Games of Chance. The Officer did not say that progressive jackpots were lawful. Because he participated in investigations of progressive jackpots, prior to the meeting, there is no way the Officer would have made the comment attributed to him. (N.T. 99-100)

2. See 61 Pa. Code §901.1 [61 Pa. Code §901.1] for the definition of "flare."

CONCLUSIONS OF LAW:

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

Count No. 1:

2. On December 19, 2007, 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 violating Section 5513 of the Crimes Code [18 Pa. C.S. §5513], Section 471 of the Liquor Code [47 P.S. §4-471]. Licensee also violated 61 Pa. Code §901.731(b)(1). 18 Pa. C.S. §5512 does not apply, as it deals with lotteries and numbers.

Count No. 2:

3. **Sustained** as charged.

DISCUSSION:

Introduction

Although this matter has been pending for compelling reasons, this Adjudication is issued approximately forty months since Licensee engaged in the conduct at issue. A Pavlovian would be quick to remark, the greater the time between a behavior and its reinforcement, whether designed to encourage or prevent repetition, the less potent that reinforcement becomes. Our legal system has a corresponding principle embodied in the expression: "Justice delayed is justice denied."

Time has a way of diluting an event's urgency. What was once a maelstrom in a macrocosm devolves into a tornado in a tin cup. I am cognizant this Adjudication is largely an intellectual exercise. In saying so, I have not turned my eyes away from the prize which is to provide a comprehensive and fair evaluation of the facts and related legal issues.

After Hearing Submission³

I have carefully read the briefs submitted by the parties. The Bureau only refers to the evidentiary concept that silence, when we expect a reasonable person to speak, may be treated as an affirmation of the statement to which the silence is connected. That principle applies to Count No. 2. I am disappointed the brief offers no further guidance for this charge and provides no discussion relating to Count No. 1.

I also had difficulty with Licensee's submission. There are three instances within the document where I am reminded of Bureau counsel's response to one of my inquiries during the hearing. I asked Bureau counsel to cite the provision of law which is violated by progressive jackpots. Counsel responded by saying his research uncovered no specific language prohibiting progressive jackpots (N.T. 51). Apparently, Licensee believes that repeating counsel's response transforms it into dogma.⁴

A lawyer's assertion of law is never a controlling element. Were that the case I would pack my bags for a very long vacation and allow counsel to resolve citations based on who can muster the greater weight of legal principles, both in number and relevance.

I am baffled by Licensee's brief, page 8, footnote 4. It begins with a reference "to several legal issues not embodied in this memo." That thought is later repeated when Licensee introduces the second issue by saying Licensee "is not raising it in the body of the Memorandum." The footnote goes on, at some length, to address these issues. It is not clear whether Licensee's introductory comments were meant to alert me that these issues are not pertinent, or that they were deliberately placed in footnote No. 4, but are still on the agenda. Therefore, the better option is to address Licensee's commentary.

Footnote 4, first discusses the purported necessity of probable cause which the government must establish before reviewing a licensee's Small Games of Chance records. Assuming the argument is valid, counsel forgets the Officer conducted the administrative inspection of December 19, 2007 with consent. Indeed, were there no consent, the Liquor Code would have forbade entry to the licensed premises, since Licensee was not open for business. (Liquor Code Sections 493(12) and (21) [47 P.S. §4-493(12) and (21)]).

3. I am not one who casually dismisses an attorney's product if it contains little substance or demonstrates an acute lack of research. I am even less tolerant when I sense a flim flam afoot in the form of a bedazzling display of smoke and mirrors. My remarks are designed to promote good work not to chastise.

4. Bureau counsel's declaration is also taken out of context. Counsel also directed me to 61 Pa. Code §901.731, as the provision Licensee violated.

Footnote 4 goes on to address a second issue. During the hearing, Licensee's counsel and I engaged in a discussion in which I remarked that a violation of a regulation may be criminal, or words to that effect (N.T. 64-68). The brief challenges my declaration by providing several examples of why violations of regulations "do not necessarily constitute crimes or illegalities."⁵ I find the excerpted phrase to be logically inconsistent. A violation of law, by definition, is an "illegality." Furthermore and in addition to taking my statement out of context, the quoted response is couched in uncertainty since the writer chose to include the word: "necessarily."⁶

Footnote 4 goes on to point to a lack of specific authority for the Bureau to investigate possible violations related to Small Games of Chance in Liquor Code Section 211 [47 P.S. §2-211]. The observation is correct. However, sub-section (4) of Liquor Code Section 211 authorizes the Bureau to investigate and issue citations for violations of the Liquor Code. Liquor Code Section 471 which, among other things, provides for citations to issue "upon any other sufficient cause shown," has been held to incorporate violations related to Small Games of Chance.⁷

Progressive Jackpots

Progressive jackpots are illegal. They offend 18 Pa. C.S. §5513. This provision is **in para materia** with the Local Option Small Games of Chance Act (LOSGCA) which details narrowly prescribed exceptions to the general ban against gambling as codified in the Crimes Code. If a qualifying organization does not adhere to every criterion within the (LOSGCA) and regulations promulgated pursuant thereto, any consequences may be dispensed through the Criminal Justice system.

5. Licensee's counsel requested I suppress all statements provided by Licensee's officials to the investigating Officer if, as I asserted, these violations have criminal law implications (N.T. 64). Counsel was invoking the governmental duty to provide "Miranda warnings." Counsel's request is based on a misreading of *Miranda v. Arizona*, 384 U.S. 436, 86 S.Ct. 1602, 16 L.Ed. 2d 694, 1966 U.S. Lexis 2817. Miranda warnings apply only to custodial interrogations. Instantly, Licensee's officials spoke to the Officer willingly, in a non-custodial environment.

6. See 61 Pa. Code §901.534 [61 Pa. Code §901.534] which classifies certain acts as misdemeanors of the first degree.

7. *Pa Police v. Harrisburg Knights of Columbus*, 989 A.2d 39 (Pa.Cmwth. 2009). Petition for Allowance of Appeal denied, 8 A.3d 347; Adjudication No. 10-0654, *Progress Fire Co. Home Assn.* and Pennsylvania Liquor Control Board Opinion and Order on Appeal which may be accessed at www.lcb.state.pa.us.

Some have bestowed on the phrase: “upon any other sufficient cause shown,” dominion over virtually a limitless array of conduct. I take no repast at that table. There is no question the quoted words invite expansive construction. Yet, if the excerpt has no limits, then a licensee who fails to smile when a Bureau Officer identifies herself could be cited for failing to do so. The absurdity in this example underscores the deficiency in an unfettered reading.

After years of study and application, I am led to a resolution which identifies the contours of Liquor Code Section 471 with some but not absolute precision. The terminology: “upon any other sufficient cause shown” casts its shadow upon any rule, legislatively enacted, which protects the public interest. Liquor Code Section 471 is derivative. There must be a violation of a qualifying law before Liquor Code Section 471 is activated, i.e., Liquor Code Section 471 cannot stand alone as a basis for a charge.⁸

Title 61 Pa. Code §901.731(b)(1), in pertinent part, provides:

A licensed eligible organization may not permit the...operation of a punchboard or pull-tab which may have been marked,...or operated in a manner... which affects the chances of winning or losing upon the taking of a chance thereon.

Progressive jackpots violate the above provision, as incorporated by Liquor Code Section 471.

Progressive jackpots affect the chances of winning or losing. As manufactured, a game provides for a fixed chance of winning. In this matter, each game was manufactured to award two prizes. When one of the two is eliminated, the chance of winning is materially altered. If a game contains 200 plays, the odds of winning one prize are 200 to 1. The odds of winning the second prize are 199 to 1.⁹ By eliminating one of the two prizes, the chance of winning the remaining prize is unchanged at 200 to 1. As there is no second prize, the former odds of 199 to 1 are now reduced to zero.

Citing no authority, Licensee contends, even if the regulation was violated, the citation contains no reference to it, thus requiring a dismissal. I have unwaveringly maintained, the reference to law in a citation has no bearing on what I do; these references are irrelevant. I am to address the conduct described. If proved, I then determine what law the conduct has antagonized.¹⁰

8. Enforcing a civil action, such as a claim of negligence, or a court’s injunction through Liquor Code Section 471, are impermissible.

9. Both at the hearing and in the brief, Licensee argues the regulation could not have been violated because Licensee employed no deception (N.T. 50-58). Because this one-sentence regulation employs “or,” no less than six times, the provision may be parsed into multiple, independent thoughts, only one of which is consistent with Licensee’s argument regarding deception.

10. If a licensee sells beer to a minor and the citation refers to the Code of Hammurabi, I will nevertheless sustain the charge as a violation of the Liquor Code. Similarly, if a citation describes a sale to a minor without any reference to law, I will find the very same Liquor Code violation.

The Pennsylvania Liquor Control Board's (PLCB's) recent decision to the contrary notwithstanding,¹¹ there is abundant case law supporting the principal that due process is served when a citation notifies a licensee of the nature and date of the alleged violation. The PLCB, now the Bureau, is given wide latitude in the generality of its charges. *Com. v. Reda*, 463 A.2d 108 (Pa.Cmwlth. 1983); *In Re Concord Ranch, Inc.*, 578 A.2d 1339 (Pa.Cmwlth. 1990); *Pa Police v. Harrisburg Knights of Columbus*.¹²

11. *3001 Castor, LLC*, Adjudication No. 10-1722, mailed April 20, 2011.

12. I have yet to see a more tortuous and unnecessarily encumbered appellate review process than that designed for this system. In *State Police v. Cantina Gloria's*, 639 A.2d 14 (Pa. 1994), the Pennsylvania Supreme Court interpreted the appellate review process delineated in Liquor Code Section 471, which was amended by Act 14, 1987, as similar to that which was in place prior to Act 14, 1987. It is a result which continues to trouble me.

Had the Pennsylvania Supreme Court analyzed the consequences resulting from its interpretation (1 Pa. C.S.A. §1921(b)), I am confident the decision would have been more closely aligned to that of the Commonwealth Court in *Appeal of Iggy, Inc.*, 592 A.2d 122 (Pa.Cmwlth. 1991).

Prior to Act 14, 1987, the PLCB was both prosecutor and adjudicator; it was only licensees who were permitted to appeal. Act 14, 1987 installed a significantly altered adjudicatory process which includes an independent adjudicatory agency (Office of Administrative Law Judge) as well as a separate and distinct prosecuting agency (Bureau of Liquor Control Enforcement). The latter now has rights of appeal coextensive with that of licensees.

Applying the pre-Act 14, 1987 interpretation to the present system creates a number of holes in statutory construction. For example, there is nothing in Liquor Code Section 471 to guide the **de novo** court regarding penalty perimeters. Had the Legislature intended the result reached by the Pennsylvania Supreme Court, one would think the Legislature would have provided for that.

By grafting the former process on the current system, other anomalies result. The approved **de novo** review process severely weakens its preceding administrative process, which includes appellate review by the PLCB. In some instances, **de novo** review eviscerates the administrative process.

Case law is quite clear, both before and after Act 14, 1987, the **de novo** hearing process cures all defects that may have occurred in the administrative proceeding. *L. & G., Inc. v. Com. Liq. Cont. Bd.*, 402 A.2d 305 (Pa.Cmwlth.); *Pa. Police v. Harrisburg Knights of Columbus*. The outcome in *Cantina Gloria's*, now permits the government a second opportunity to cite a licensee.

When the Administrative Law Judge and/or the PLCB conclude a citation must be dismissed, the Bureau may file a **de novo** appeal, giving the Bureau the opportunity to correct any deficiencies in the administrative process. Because the former system admitted only of appeals by licensees and the chances of a prevailing licensee filing a **de novo** appeal being virtually nonexistent, it was incumbent upon the government to get it right the first time.

The Commonwealth's Court determination in *G.C.P. Enterprises v. PA State Police*, 740 A.2d 1205 (Pa.Cmwlth. 1999) offers no solace for the confused. Here, the Commonwealth Court recognized it was obligated to interpret Liquor Code Section 471 in conjunction with Liquor Code Section 464 [47 P.S. §4-464], as directed by the Pennsylvania Supreme Court in *Cantina Gloria's*. Struggling with this responsibility, the Commonwealth Court nevertheless determined the appeal period for adjudications was thirty days as specified in Liquor Code Section 471 rather than twenty days as called for in Liquor Code Section 464. Some may argue this determination does not fully follow the approach taken in *Cantina Gloria's*.

Licensee suggests it engaged in progressive jackpots based on assurances provided by an Officer who is alleged to have remarked that progressive jackpots are legal (Finding of Fact No. 14). Estoppel is a cognizable defense in this administrative arena. The burden of proof rests with the proponent, *In Re Concord Ranch Inc.*, supra. Having found the Officer offered no such assurances, the defense must fail. I am permitted to evaluate Licensee's belief as a mitigating factor when setting a penalty and will do so as I find Licensee's witnesses to be truthful.

Exceeding Weekly \$5,000.00 Prize Limit

Whether Licensee exceeded the \$5,000.00 prize limitation as charged in Count No. 2 turns on evidentiary principles, requiring me to sharpen my understanding of burden of proof, inferences, and admissions.

It was to the Pennsylvania Law Encyclopedia, Evidence that I directed my attention. The venture, proved to be more demanding than I first imagined. When studying what amounts to theoretical, legal abstractions, after a time, their relationships become obscured. Accordingly, I take the time to navigate through these conventions to the point of reciting, almost word for word, portions of the Pennsylvania Law Encyclopedia.

Burden of proof is frequently used indiscriminately to describe two concepts: (1) the burden on the party going forward to support a favorable finding, and (2) the risk of failing to persuade, which comes into play after the burden of going forward has been satisfied. The party who bears that risk has the burden of convincing the fact finder of the existence of those facts as to which the party bears the risk. The term imports the ultimate duty of establishing a proposition; it also marks the peculiar duty of one who has the risk on any given proposition upon which the parties are at issue.

The burden of persuasion, alternatively described as the burden of going forward with the evidence, is not a burden which rests forever on one party. The burden of evidence is a rule for determining upon whom the obligation rests of going further if the party wishes to prevail.

The burden of proof never shifts. It remains on the party affirming a fact supporting the party's case. One who carries the burden of proof must establish an asserted fact by proof as required by law. The party cannot prevail if it is so uncertain, inadequate, or unequivocal as to make a finding or legitimate inferences therefrom mere conjecture. Evidence of an adverse party, and all proper inferences therefrom may be utilized to sustain the burden of proof (PLE, Evidence §37)

When evidence that would properly be part of a case is within the control of a party in whose interest it would apparently be to produce the evidence, an inference may be drawn that the evidence would be unfavorable to such party, if produced. It is a factual inference rather than a legal presumption. Failure to produce such evidence cannot, without more, supply the entire proof needed to sustain plaintiff's case (PLE, Evidence §30).

A party who remains silent when the witness stand is available cannot complain if the most damaging inferences consistent with logic are drawn from the opposing party's testimony. The inference that a litigant's testimony, if truthful, would have been unfavorable is justified. If a litigant testifies and fails to assert a fact which, if true, would be natural to assert, a presumption arises that the fact does not exist (PLE, Evidence §31).

The commentary in PLE, Evidence §31 also applies to witnesses; it is known as the missing witness rule. The rule does not apply if a witness is equally available to both sides in the litigation. The inferences a fact finder may draw from the failure of a party to call a witness, applies only to those witnesses within the reach and knowledge of one of the parties. Where a party has no burden to meet or concludes the opposition has not met its burden, an adverse inference may not be drawn for failure to produce the witness (PLE, Evidence §32).

An admission by conduct, silence, or acquiescence (tacit admission) may be as effective as an oral or written admission. The weight to be given a tacit admission depends largely on the surrounding circumstances. In the case of silence, there must be a probability that a reasonable person would offer a denial (PLE, Evidence §185).

Title 61 Pa. Code §901.608 [61 Pa. Code §901.608] relating to pull-tab flares and 61 Pa. Code §901.627 [61 Pa. Code §901.627] relating to punchboard flares, prohibit the altering of a flare card after it leaves the manufacturer's possession and control. Both provisions also require that the flare card lists each of the prizes available and the number or symbol that wins each prize. The two regulations permit an exception detailed in 61 Pa. Code §901.731(b)(2) [61 Pa. Code §901.731(b)(2)]. Flare cards may be altered to indicate that merchandise of an equivalent value, will substitute for a cash prize.

Since the unaltered flare card prize values, by virtue of law, must represent the actual prizes awarded, the Officer's application of those values is totally appropriate. Otherwise, Licensee would escape liability because Licensee violated other regulations. The herein analysis is enough to end the burden of proof inquiry. Nevertheless, I would be remiss were I not to address additional factors which place this matter squarely in the sustained column.

Licensee's Steward provided the Officer with all relevant flare cards after the Officer explained his purpose (Finding of Fact #10). The Steward's silence, at a time when he knew the Officer's purpose, leads me to draw the inference the Steward supported the Officer's understanding that Licensee awarded prizes consistent with flare card values. One would reasonably have expected the Steward to speak, if the flare card values did not reflect the actual prizes Licensee awarded. This inference adds to the Bureau's overwhelming burden of proof fulfillment.

Licensee suggests, the column in Commonwealth Exhibit No. 3 identified as "Pay Outs" indicates Licensee awarded no cash. Licensee is interpreting the column heading's meaning. When I noted this at the hearing, I offered Licensee the opportunity to present a witness to support that interpretation Licensee did not do so (N.T. 39-42; 113-114).

Licensee also hinted that merchandise could have been awarded in lieu of cash (N.T. 39-42). Being aware that Licensee presented no testimony to support this point, I offered Licensee the option of creating a record to prove Licensee did award merchandise instead of cash. That offer was also not accepted (N.T. 111). Further, 61 Pa. Code Section 901.464 [61 Pa. Code §901.464] requires that an organization must keep records identifying the cash value of all prizes as well as the organization's cost of merchandise.¹⁴

14. Licensee places itself in the unenviable position of requesting a charge be dismissed because Licensee violated other legal requirements. Because I afforded Licensee the prerogative of calling witnesses who buttress its defenses with facts of record, and Licensee failed to do so, I draw the inference that Licensee's claims are baseless.

PRIOR RECORD:

Licensee has been licensed since March 6, 2000, 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 of not less than \$50.00 or more than \$1,000.00 or both for violations of the type found in Count Nos. 1 and 2 in this case.

I impose:

Count No. 1 – \$200.00 fine.

Count No. 2 – \$500.00 fine.

ORDER:

Imposition of Fine

THEREFORE, it is hereby ordered that Licensee pay a fine of \$700.00 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 29th day of April, 2011.



Felix Thau, A.L.J.

pm

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 cashier's check, certified check or money order. **Personal and business checks, are not acceptable unless bank certified.** 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. 08-0058
DETRICH-BRECHBILL HOME ASSN., INC.