

Mailing Date: JAN 8 2009

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 08-0234
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W03-365071
v.	:	
	:	LID - 1542
POLITICAL CLUB OF THE	:	
7 TH WARD OF HARRISBURG	:	
1550 VERNON ST.	:	
HARRISBURG, PA 17104-1105	:	
	:	
	:	
DAUPHIN COUNTY	:	
LICENSE NO. C-3198	:	

BEFORE: JUDGE THAU

APPEARANCES:

For Bureau of Enforcement
Andrew J. Lovette, Esquire
Pennsylvania State Police
3655 Vartan Way
Harrisburg, PA 17110

For Licensee
Frank C. Sluzis, Esquire
2000 Linglestown Road
Suite 106
Harrisburg, PA 17110

ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation that was issued on April 10, 2008, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (Bureau) against Political Club of the 7th Ward of Harrisburg (Licensee), License Number C-3198.

This citation¹ contains two counts.

The first count charges Licensee with violations of Section 471 of the Liquor Code [47 P.S. §4-471] and Section 901 of the Department of Revenue Regulations [61 Pa. Code §901]. The charge is that on January 3, 2008 and divers occasions since June 2007, Licensee violated the Local Option Small Games of Chance Act, in that funds derived from the operations of games of chance were used for purposes other than those authorized by law.

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 period July 8 through 14, 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 December 4, 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 November 15, 2007 and completed it on January 8, 2008. (N.T. 27)

2. The Bureau sent a notice of alleged violations to Licensee at the licensed premises by certified mail-return receipt requested on January 28, 2008. The notice alleged violations as charged in the citation. (Commonwealth Exhibit No. C-1, N.T. 22)

Count No. 1:

3. On January 3, 2008, two Bureau Enforcement Officers entered the premises and spoke to Licensee's Manager. The meeting was prearranged to review records. (N.T. 31-33)

1. Commonwealth Exhibit No. C-2, N.T. 23.

4. Licensee's Manager admitted the only charitable gifts made during the relevant period were two donations of \$500.00 each for a total of \$1,000.00. Licensee's records, along with an explanation by Licensee's Manager, shows that, for the relevant period, Licensee expenses for Small Games of Chance totaled \$83,811.00. Payouts amounted to \$57,197.00. The difference between the latter and the former is \$26,614.00, the amount available for charity and expenses. The expenses for the relevant period amounted to \$1,684.00, leaving an approximate balance of \$25,000.00 available for charity during the relevant period. (N.T. 64-66)

5. Licensee's checking account balance for December 31, 2007 was \$12,168.90. (N.T. 69-70)

6. Given this information, Licensee should have had a checking account balance of at least \$24,000.00 which would represent the remainder of the approximate \$25,000.00, intended solely for charitable purposes.

Count No. 2:

7. For the seven-days period beginning July 8 through July 14, 2007, Licensee's payout for Small Games of Chance was approximately \$8,200.00. (N.T. 43)

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. **Sustained** as charged.

DISCUSSION:

Count No. 1

The Bureau's case rests entirely on circumstantial evidence. We often hear the term "circumstantial evidence" in our entertainment media as embodying the sense of weak evidence. That meaning is inaccurate. Circumstantial evidence is not necessarily inferior; such evidence is indirect, however.

Were I to go to sleep with no snow on the ground and wake the next morning with window high snow drifts, I would readily conclude it snowed during the night, yet I never saw one flake touch the ground. It is the circumstances I witness in the morning that leads me to that inevitable conclusion.

In this case, Licensee's records and statements provide a basis to conclude the Bureau has proved its case. Licensee's account balance for the end of 2007, was \$12,168.90. This value is about one-half the balance Licensee should have considering Licensee garnered \$25,000 in net profits from Small Games of Chance and spent only \$1,000.00 for charity.

I conclude, by circumstance, that Licensee must have spent the accounted amount of \$12,000.00 for other than charitable purposes.²

PRIOR RECORD:

Licensee has been licensed since May 17, 1937, and has had ten prior violations since July 1, 1987, the date of establishment of the Office of Administrative Law Judge, (Commonwealth Exhibit No. C-5, N.T. 75):

Adjudication No. 94-0868. Fine \$400.00.

Possessed or operated gambling devices or paraphernalia or permitted gambling or lotteries on the licensed premises (tickets, punchboards and machines).

2. Nonetheless, a more thorough accounting of all of Licensee's books ought to have established where that "missing" \$12,000.00 might have been expended.

Adjudication No. 96-2608. Fine \$1,000.00.

1. Failed to require patrons to vacate the premises not later than one-half hour after the required time.
2. Permitted patrons to possess and/or remove alcoholic beverages after 3:30 a.m.

Adjudication No. 99-0452. Fine \$700.00.

Possessed or operated gambling devices or paraphernalia or permitted gambling or lotteries, poolselling and/or bookmaking on the licensed premises (machines).
January 10, 1999.

Adjudication No. 99-1461. Fine \$700.00 and 3 days suspension.

1. Sales between 3:00 a.m. and 7:00 a.m.
August 14, 1999.
2. Failed to require patrons to vacate the premises not later than one-half hour after the required time.
August 14, 1999.
3. Permitted patrons to possess and/or remove alcoholic beverages after 3:30 a.m.
August 14, 1999.
4. Sold malt or brewed beverages for consumption off premises.
August 14, 1999.

Adjudication No. 01-0519. Fine \$50.00 and 1 day suspension.

1. Failed to maintain complete and truthful records covering the operation of the licensed business for a period of two years concerning the Local Option Small Games of Chance Act.
January 4, 2001.
2. Failed to adhere to bylaws.
February 9, 2001.

Adjudication No. 04-0062. Fine \$900.00.

1. Possessed or operated gambling devices or paraphernalia or permitted gambling or lotteries, poolselling and/or bookmaking on the licensed premises (machines, dice cup and football bets).
June 5, August 22, September 5 and 24, 2003.
2. Sales to nonmembers.
June 5, August 22 and September 5, 2003.

Adjudication No. 04-1841. Fine \$750.00.

1. Possessed or operated gambling devices or paraphernalia or permitted gambling or lotteries, poolselling and/or bookmaking on your licensed premises (machine).
September 8, 2004.
2. Sold alcoholic beverages on credit in contravention of the provisions of the Liquor Code and Title 40 of the Pennsylvania Code.
On 11 dates between August 1 and September 8, 2004.

Adjudication No. 06-1393. Fine \$3,500.00 and 30 days suspension.

1. Failed to hold regular meetings.
August 8, September 12 and October 10, 2005 and divers occasions between April 25, 2005 and April 25, 2006.
2. Operated a club not in conformity with the Liquor Code definition of "Club."
April 25, 2005 through April 25, 2006.
3. Failed to maintain complete and truthful records covering the operation of the licensed business for a period of 2 years immediately preceding October 10, 2005.
4. Falsified records covering the operation of the licensed business between April 26, 2005 and October 10, 2005.
5. Failed to maintain records in conformity with Title 40 of the Pennsylvania Code.
September 15, October 20 and 27, 2005.

Adjudication No. 07-1477. Fine \$200.00.

Failed to maintain complete and truthful records covering the operation of Small Games of Chance for a period of two (2) years.
May 10, 2007.

Adjudication No. 07-2634. Fine \$500.00 and 1 day suspension.

Possessed or operated gambling devices or permitted gambling on your licensed premises (tickets).
September 7, 2007.

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 – \$500.00 fine.

Count No. 2 – \$300.00 fine.

ORDER:

Imposition of Fine

THEREFORE, it is hereby ordered that Licensee pay a fine of \$800.00 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 31st day of December, 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. 08-0234
POLITICAL CLUB OF THE
7TH WARD OF HARRISBURG