

Mailing Date: APR 17 2009

[Appeal](#)

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 08-0646
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W03-367659
	:	
v.	:	LID - 2804
	:	
BLUE RIDGE SPORTSMEN'S	:	
ASSOCIATION, INC.	:	
3009 WAYNESBORO PIKE	:	
FAIRFIELD, PA 17320-9709	:	
	:	
	:	
ADAMS COUNTY	:	
LICENSE NO. CC-6194	:	

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 17, 2008, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (Bureau) against Blue Ridge Sportsmen's Association, Inc. (Licensee), License Number CC-6194.

This citation¹ contains three counts.

The first 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 January 31, 2008, concerning the Local Option Small Games of Chance Act.

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 September 2 through 8, October 7 through 13, November 11 through 17, and December 16 through 22, 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.

The third count charges Licensee with violations of Sections 5.71, 5.72, 5.74 and 5.83(b) of the Pennsylvania Liquor Control Board Regulations [40 Pa. Code §5.71, §5.72, §5.74 and §5.83(b)]. The charge is that on January 31, 2008, and divers occasions within the previous year, Licensee, by servants, agents or employes, failed to maintain records in conformity with title 40 of the Pennsylvania Code.

An evidentiary hearing was conducted on February 26, 2009 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 January 10, 2008 and completed it on February 20, 2008. (N.T. 7)

2. The Bureau sent a notice of alleged violations to Licensee at the licensed premises by certified mail-return receipt requested on March 14, 2008. The notice alleged violations as charged in the citation. (Commonwealth Exhibit No. C-1, 08-0646, N.T. 6)

1. Commonwealth Exhibit No. C-2, 08-0646, N.T. 6.
Count Nos. 1 and 3:

3. On Friday, January 18, 2008, a Bureau Enforcement Officer arrived at the premises at 11:10 a.m., to conduct an unannounced administrative inspection. The Officer met with Mr. S., who identified himself as the Club President. (N.T. 8-9)

4. The Officer requested to see Licensee's records. Mr. S. indicated he did not have access to all records at the time. The Officer provided Mr. S. with a request for records and made an appointment to review those records on a later visit. (N.T. 18)

5. The Officer returned on January 31, 2008, arriving at approximately 10:00 a.m., at the prearranged date and time. (N.T. 19-20)

6. The Officer met with Mr. S. Mr. S. indicated Licensee provided free events for its members during 2007. Those events were not in Licensee's records. (N.T. 25-28)

7. Licensee's Minute Book did have the names of members posted but no date of application. (N.T. 33)

8. Licensee further did not maintain an inactive membership list for a period of two years. (N.T. 36)

9. Although Licensee did engage in conducting catered events, Licensee's catering records failed to include the date of the event, the approximate number of guests and the approximate number of guests expected to attend. (N.T. 37-38)

10. Licensee also had several punchboard games that had been played but no records were kept for those games. (N.T. 49)

11. Licensee also failed to maintain its payout records in a seven-day interval. (N.T. 58-59)

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. The Bureau **failed** to prove that during the periods September 2 through 8, October 7 through 13, November 11 through 17 and December 16 through 22, 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.

Count No. 3:

4. **Sustained** as charged.

DISCUSSION:

Licensee objected to the Bureau's repetition as to the contents of Licensee's records based on inadmissible hearsay. Were that repetition offered to prove the truth of the matters within these records, I might have been inclined to agree with Licensee. However, the Bureau's recitation was offered to prove that records were not kept in accordance with regulation, rather than focusing on the contents of those records.²

Commonwealth Exhibit No. C-3, lacks the sufficient level of trustworthiness as it contains notations. Other pages contain cross-outs. Most significant to concluding the Exhibit is suspect is the fact that I am not presented with a full set of documents.

The Bureau presented only those portions of the pertinent documents which the Bureau concluded was sufficient to prove its case. Making such an assumption leading to submission of partial records is a mistake. Whether records are pertinent, for the most part, lies within the purview of the Administrative Law Judge.

Commonwealth Exhibit No. C-4, a summary prepared by the investigating Officer (N.T. 76-77), is based on Commonwealth Exhibit No. C-3. I cannot accord that summary greater value than the source document.

2. I dismiss Count No. 2, as I was troubled by the method of proof which I find to be inadequate.

Additionally the testimony as to how the source document (Commonwealth Exhibit No. C-3) was converted into the entries on the summary (Commonwealth Exhibit No. C-4) was sparse. The question I raised for Bureau Counsel was: "To what extent is an Administrative Law Judge required to verify the accuracy of a summary document without supporting testimony?" Without fundamental explanation regarding calculations, I am unable and ought not to fill in the blanks.

PRIOR RECORD:

Licensee has been licensed since July 21, 1989, and has had four prior violations:

Adjudication No. 91-1720. Fine \$250.00.
Sales to nonmembers.

Adjudication No. 94-0247. Fine \$500.00.
Sales to nonmembers.

Adjudication No. 97-0104. Fine \$600.00.
Sales to nonmembers without prior arrangements.

Adjudication No. 06-2423. Fine \$1,250.00.

1. Awarded an individual prize exceeding the maximum cash value of \$500.00 for any single chance without a special permit.
June 3, 2006.
2. Failed to maintain complete and truthful records covering the operation of Small Games of Chance for a period of 2 years.
August 30, 2006.
3. Offered and/or awarded more than \$5,000.00 in cash or merchandise in any seven-day period. August 6 through 12, 13 through 19 and 20 through 26, 2006.
4. Improper admission of members.

August 30, 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 Count Nos. 1, 2 and 3 in this case.

I impose:

Count No. 1 – \$200.00 fine.

Count No. 2 – Dismissed.

Count No. 3 – \$200.00 fine.

ORDER:

Imposition of Fine

THEREFORE, it is hereby ordered that Licensee pay a fine of \$400.00 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.

Dismissal of Count No. 2:

IT IS FURTHER ORDERED THAT Count No. 2 of Citation No. 08-0646, issued against Blue Ridge Sportsmen's Association, Inc., is DISMISSED.

Retaining Jurisdiction

Jurisdiction is retained to ensure compliance with this Adjudication.

Dated this 15th day of April, 2009.



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. 08-0646

BLUE RIDGE SPORTSMEN'S
ASSOCIATION, INC.