

Mailing Date: MAY 04 2009

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 08-1745
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W03-373005
v.	:	
	:	LID - 527
THE STEITZ CLUB	:	
402 CUMBERLAND ST.	:	
LEBANON, PA 17042-5314	:	
	:	
	:	
	:	
	:	
	:	
LEBANON COUNTY	:	
LICENSE NO. C-239	:	

BEFORE: JUDGE THAU

APPEARANCES:

For Bureau of Enforcement
Thomas M. Ballaron, Esquire
Pennsylvania State Police
3655 Vartan Way
Harrisburg, PA 17110

For Licensee
Horace M. Ehrgood, Esquire
410 Chestnut Street
Lebanon, PA 17042

ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation that was issued on August 14, 2008, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (Bureau) against The Steitz Club (Licensee), License Number C-239.

This citation¹ contains four counts.

The first count charges Licensee with violations of Sections 491(1), 492(2) and 493(16) of the Liquor Code [47 P.S. §4-491(1), §4-492(2) and §4-493(16)]. The charge is that on March 6 and 20, 2008, Licensee, by servants, agents or employes, sold alcoholic beverages after its Club Liquor license expired on February 29, 2008, and had not been renewed and/or validated.

The second count charges Licensee with a violation of Section 493(12) of the Liquor Code [47 P.S. §4-493(12)]. The charge is that on May 15, 2008, Licensee, by servants, agents or employes, failed to keep records on the licensed premises.

The third count charges Licensee with violations of Sections 493(12) of the Liquor Code [47 P.S. §4-493(12)] and Sections 5.71 and 5.74 of the Pennsylvania Liquor Control Board Regulations [40 Pa. Code §5.71 and §5.74]. The charge is that on May 15, 2008, and divers other occasions in the past year, Licensee, by servants, agents or employes, failed to maintain records in conformity with the provisions of the Liquor Code and Title 40 of the Pennsylvania Code.

The fourth count charges Licensee with a violation of Section 5.81 of the Pennsylvania Liquor Control Board Regulations [40 Pa. Code §5.81]. The charge is that on May 15, 2008, Licensee, by servants, agents or employes, failed to adhere to by-laws.

An evidentiary hearing was conducted on April 1, 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 April 15, 2008 and completed it on June 19, 2008. (N.T. 7 and 8)

2. The Bureau sent a notice of alleged violations to Licensee at the licensed premises by certified mail-return receipt requested on July 15, 2008. The notice alleged violations as charged in the citation. (Commonwealth Exhibit No. C-1, N.T. 45)

1. Commonwealth Exhibit No. C-2, N.T. 45.

Count No. 1:

3. Licensee's license expired on February 29, 2008 and was renewed effective March 28, 2008. (Commonwealth Exhibit No. C-3; N.T. 9-11)

4. It is Licensee's custom to have a "dinner party," bi-weekly, on Thursdays. (N.T. 11-13)

5. On March 6 and March 20, 2008, during those regularly scheduled bi-weekly "dinner parties," Licensee furnished alcoholic beverages.

6. During those "dinner parties," as well as the quantity served each attendee, Licensee maintained records of all of those who received alcoholic beverages. (Commonwealth Exhibit Nos. C-4 and C-5; N.T. 18-19)

7. Those who attended the "dinner parties" paid for the drinks according to the tabulation sheets (Commonwealth Exhibit Nos. C-3 and C-4), at a later date. (N.T. 20-25)

Count Nos. 2, 3 and 4:

8. On May 15, 2008, during an administrative inspection of the premises, a Bureau Enforcement Officer determined the tally sheets (Commonwealth Exhibit Nos. C-3 and C-4) were not on the licensed premises but with the book keeper. (N.T. 25-26)

9. Licensee's Minutes were defective as the financial report of the Treasurer was not maintained within those Minutes. There was no financial report of the Treasurer attached at all. Licensee admitted new members. However, the dates of application of each new applicant was missing from the Minutes.² (N.T. 31-32)

2. While the issue in this case was not the improper admission of new members, it is still appropriate for me to comment. There is no such thing as a "Conditional Member" within the meaning of the Liquor Code. An applicant does not become a member until: the applicant completes a written application; the club conducts some investigation concerning the applicant; the club votes on and admits the applicant. (See the definition of "Club" in Liquor Code Section 102 [47 P.S. §1-102]).

Count No. 4:

10. Article 3 and Article 4 of Licensee's By-Laws require Licensee to keep records on the licensed premises. (N.T. 41-42)

CONCLUSIONS OF LAW:

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

2. Count Nos. 1, 2, 3 and 4 are **sustained** as charged.

DISCUSSION:

The contrivance concocted by Licensee to avoid selling alcoholic beverages without a license fails to relieve Licensee of responsibility in this matter. Liquor Code Section 493(2) [47 P.S. §4-493(2)] authorizes club liquor licensees to extend credit. It is Licensee's assertion, by serving alcoholic beverages on day one and subsequently receiving payment for those alcoholic beverages on day 90, for example, some how erases the sale component of the transaction.

This argument elevates what is no more than accounting process to a level above the essence of the transaction. Liquor Code Section 102 [47 P.S. §1-102] defines "sale" as including any transfer of an alcoholic beverage for a consideration.

The substance of a sale as defined in the Liquor Code and as generally accepted in our law is firmly embedded in contract law. It is primarily the intention of the parties which control. In this matter, when the transfer of alcoholic beverages occurred, it was unquestionably the intention of the parties that the consumer was to pay for those alcoholic beverages at a later date. Thus, the contract between purchaser and provider has been sealed.

It is of no moment that the consideration for the alcoholic beverages was tendered to Licensee at a later date. At the time of the transaction, it was the intention of Licensee and the purchaser to transfer alcoholic beverages for a consideration.

PRIOR RECORD:

Licensee has been licensed since January 1, 1934, and has had one prior violation since July 1, 1987, the date of establishment of the Office of Administrative Law Judge, (Commonwealth Exhibit No. C-8, N.T. 47):

Adjudication No. 07-1324. Fine \$300.00.
Failed to maintain records in conformity with
Title 40 of the Pennsylvania Code.
April 19, 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 \$1,000.00 or more than \$5,000.00 or both for violations of the type found in Count No. 1 and 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. 2, 3 and 4 in this case.

I impose:

Count No. 1 – \$1,100.00 fine.
Count Nos. 2, 3 and 4 – merged – \$150.00 fine.

ORDER:

Imposition of Fine

THEREFORE, it is hereby ordered that Licensee pay a fine of \$1,250.00 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 23RD 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

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THE STEITZ CLUB