

Mailing Date: DEC 09 2009

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 08-1888
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W03-372600
v.	:	
	:	LID - 56899
CLUB XS, INC.	:	
T/A CLUB XS	:	
36-38 W. 11 TH AVE.	:	
NORTH YORK	:	
YORK, PA 17404-2007	:	
	:	
YORK COUNTY	:	
LICENSE NO. R-AP-SS-EHF-16758	:	

**BEFORE JUDGE FLAHERTY
BUREAU COUNSEL BALLARON
LICENSEE: NO APPEARANCE**

ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation that was issued on September 4, 2008, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter "Bureau") against CLUB XS, INC., License Number R-AP-SS-EHF-16758 (hereinafter "Licensee").

The citation contains two counts.

The first count charges Licensee with violation of Section 491(10) of the Liquor Code [47 P.S. §4-491(10)] in that on June 16, 2008, Licensee, by its servants, agents or employes, fortified, adulterated and/or contaminated liquor.

The second count charges Licensee with violation of Section 3.52(c) of the Liquor Control Board Regulations [40 Pa. Code §3.52(c)] in that on April 16, 2008, Licensee, by its servants, agents or employes, operated another business on the licensed premises without Board approval.

The investigation which gave rise to the citation began on April 11, 2008 and was completed on June 17, 2008; and notice of the violation was sent to Licensee by Certified Mail on July 15, 2009 and Amended July 17, 2009. The notice of violation was received by Licensee.

An evidentiary hearing was held on this matter on August 18, 2009 in the Office of Administrative Law Judge, Brandywine Plaza, 2221 Paxton Church Road, Harrisburg, Pennsylvania. No one appeared at the hearing on behalf of Licensee. A citation hearing notice was sent to Licensee(s) at its address of record, 36-38 W. 11th Ave., North York, York, PA 17404-2007 by certified mail, return receipt requested and by first class mail on July 2, 2009. The notice set forth the date and time of the hearing as August 18, 2009 at 10:30 a.m., and the place of hearing as Brandywine Plaza, 2221 Paxton Church Road, Harrisburg, PA.

Upon review of the transcript of this hearing, we make the following Findings of Fact and reach the following Conclusions of Law:

FINDINGS OF FACT:

COUNT 1

1. During a routine inspection conducted on the licensed premises on June 16, 2008, an officer of the Bureau discovered 11 bottles of liquor among 150 examined that were contaminated with insects and debris (Stipulation N.T. Exhibit C-5, paragraphs 36 and 38).

COUNT 2

2. On April 16, 2008 at approximately 6:55 p.m. an officer of the Bureau entered the licensed premises for the purpose of conducting undercover surveillance (Stipulation N.T. Exhibit C-4, paragraph 1).

3. Upon entry, the officer observed a male bartender rendering service to seven patrons (Stipulation N.T. Exhibit C-4, paragraph 2).

4. The officer observed a red curtain which closed off an area of the premises (Stipulation N.T. Exhibit C-4), paragraph 3).

5. Shortly after noticing the curtain, the officer heard the bartender ask if they were "ready to get started." (Stipulation N.T. Exhibit C-4, paragraph 4).

6. The curtain was pulled back a few moments later, and the officer observed that the previously curtained off area contained what appeared to be bingo playing paraphernalia (Stipulation N.T. Exhibit C-4, paragraphs 5, 7, 8 and 9).

7. The officer entered this area and observed a male standing behind a table containing different types of bingo cards (Stipulation N.T. Exhibit C-4, paragraphs 6 and 10).

8. The officer purchased several bingo cards, and played bingo. She exited the establishment at 10:30 p.m. having won \$55.00 (Stipulation N.T. Exhibit C-4, paragraphs 11, 12 and 13).

9. The officer determined that the York County Treasurer's Office had issued a bingo license for the licensed premises in the name Common Road, Inc. The bingo license was posted on the licensed premises along with Licensee's liquor license and health certificate (Stipulation N.T. Exhibit C-4, paragraphs 14, 15, 22, 23 and 24).

10. The bingo games were not operated by Licensee, but by people affiliated with Common Road, Inc. The bingo games are operated within the provisions of the Bingo Law (Stipulation N.T. Exhibit C-4, paragraphs 26 and 27).

11. Common Roads, Inc. is a Pennsylvania Non-Profit Corporation, Entity No. 3040285 incorporated on December 10, 2001 (Stipulation N.T. Exhibit C-4, paragraph 28).

12. Common Roads, Inc. is a bona fide charitable organization and is registered as a charity with the Pennsylvania Department of State, Registration No. 29435 (Stipulation N.T. Exhibit C-4, paragraph 29).

13. All money generated by the bingo games held on the licensed premises goes to the benefit of Common Roads, Inc., except that Licensee is paid a small rental for the use of the area where the bingo games are held (Stipulation N.T. Exhibit C-4, paragraph 30).

14. Licensee did not have Board approval to allow the bingo games to be held on the licensed premises (Stipulation N.T. Exhibit C-4, paragraph 35).

CONCLUSIONS OF LAW:

Count 1 of the citation is **sustained**.

Count 2 of the citation is **dismissed**.

DISCUSSION:

COUNT 1

The record clearly establishes that officers of the Bureau discovered eleven bottles of liquor which were contaminated with insects and debris while conducting an inspection on June 16, 2008. It is therefore clear that the violation charged in this count has been established and Count No. 1 of the citation is sustained.

COUNT 2

The activity conducted on the licensed premises is specifically permitted by Regulation of the Liquor Control Board [40 Pa. Code §1.1 et seq.]. Therefore, further approval of the Board to conduct this activity is not required.

Section 3.52(c) of the Regulations of the Liquor Control Board [40 Pa. Code §3.52(c)] generally prohibits a liquor licensee from operating another business on the licensed premises without prior Board approval. However, a specific exception to this prohibition has been carved out in section 5.32 of the Regulations [40 Pa. Code §5.32] which in pertinent part reads as follows:

Section 5.32 Restrictions/exceptions.

...(d) A hotel, restaurant, club, privately owned public golf course, privately owned private golf course, municipal golf course... may not hold or permit to be held on the licensed premises an event tournament or contest, nor advertise, offer, award or permit the award on the licensed premises of trophies, prizes or premiums for any purpose except as follows:

...(4) Hotel, restaurant...may permit the conduct of tournaments and contests on the licensed premises for the benefit of, and officially sponsored by, bona fide charitable organizations.

(i) A charitable organization for the purposes of this section is defined as one qualified, approved by and registered with the Department of State under 49 Pa. Code Part I, Subpart B (relating to charitable organizations).

(ii) Charitable organization functions shall be operated in accordance with the Solicitation of Funds for Charitable Purposes Act [10 P.S. §162.1-162.24] and, if applicable the Local Option Small Games of Chance Act [10 P.S. §311-327] and the Bingo Law [10 P.S. §301-308.1].

In this case the conduct of the bingo games meets all of the qualifications of the regulation set forth above. The fact that Common Roads, Inc., the charitable organization in question, pays a fee for use of the area where the bingo games are held, in my opinion, in no way changes the circumstances of this case. The Board, through passage of the regulations, has given blanket approval for activities which comply with its terms to take place without further approval.

Based upon the foregoing, I conclude that Count 2 of the citation must be dismissed.

PRIOR RECORD:

Licensee has been licensed since September 21, 2006, and has had no prior violations. Licensee is, therefore, entitled to be treated as a first time offender.

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 this case.

Under the circumstances of this case, the penalty imposed shall be as follows:

Count 1 - \$150.00 fine
Count 2 – dismissed

ORDER

THEREFORE, it is hereby ordered that Licensee CLUB XS, INC., pay a fine of \$150.00 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.

IT IS FURTHER ORDERED that Count No. 2 of the citation be **DISMISSED**.

Jurisdiction is retained pending final resolution of the penalty in this matter.

Dated this 2ND day of December, 2009.



Daniel T. Flaherty, Jr., J.

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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 submit 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.** Make 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. 08-1888
Club XS, Inc.