

This proceeding arises out of a citation that was issued on October 2, 2008, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (Bureau) against Home Assn. Charles Nitterhouse Post 1599 V.F.W. (Licensee), License Number CC-5257.

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 315(b) of the Local Option Small Games of Chance Act [10 P.S. §315(b)]. The charge is that during the periods February 11 through 17, February 18 through 24, February 25 through March 2, March 3 through 9 and March 10 through 16, 2008, 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 second 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 March 19, 2008, concerning the Local Option Small Games of Chance Act.

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 2, 2008 and completed it on August 15, 2008. (N.T. 19)
2. The Bureau sent a notice of alleged violations to Licensee at the licensed premises by certified mail-return receipt requested on September 3, 2008. The notice alleged violations as charged in the citation. (Commonwealth Exhibit No. C-1, N.T. 17)

1. Commonwealth Exhibit No. C-2, N.T. 17.

Count No. 1:

3. The Officer engaged in an audit of Licensee's records to determine if Licensee was exceeding the \$5,000.00 cash limit for a seven-day accounting period. The total payouts were the following:

February 11, 2008 through February 17, 2008	-	\$15,610.00.
February 18, 2008 through February 24, 2008	-	\$11,130.00.
February 25, 2008 through March 2, 2008	-	\$16,210.00.
March 3, 2008 through March 9, 2008	-	\$12,870.00.
March 10, 2008 through March 16, 2008	-	\$ 5,040.00

Count No. 2:

4. On March 12, 2008, a Bureau Enforcement Officer conducted an administrative inspection of the premises. The Officer left a request for records. He returned on March 19, 2008, entering at 9:00 a.m. The Officer was allowed to enter the premises to continue with the administrative inspection. (N.T. 22-26)

5. Because of Licensee's prior record, the Officer inquired of the Club Steward, Mr. H., as to what efforts Licensee had been making to stay in compliance with the Small Games of Chance. Mr. H. identified Licensee's operating week as beginning Monday and ending Sunday. Mr. H. offered an explanation in response to the Officer's inquiry. The Officer reviewed the profit and loss statement for February, 2008. The Officer noticed there were numerous photocopied documents attached to the profit and loss statement. The Officer found a photocopy of a check on an account with F. & M. Trust (Commonwealth Exhibit No. C-3). The Officer questioned Mr. H. regarding that check. In the Officer's mind, the response was suspicious so he pressed Mr. H. and Mr. C., Licensee's Quartermaster. The Officer asked if Licensee was operating Small Games of Chance that were not being recorded during January and February, 2008. Mr. H. admitted the statement was accurate. Mr. H. further explained the checking account was set up for the express purpose of funnelling unrecorded income from Small Games of Chance into the account. Mr. H. further acknowledged checks would be written from the account and issued back to Licensee to cover Licensee's operational costs. (N.T. 30-34)

CONCLUSIONS OF LAW:

1. The notice requirements of Liquor Code Section 471 [47 P.S. §4-471] have been satisfied.
2. Count Nos. 1 and 2 are **sustained** as charged.

DISCUSSION:

Preliminarily, Licensee raised several constitutional issues. Prior to taking testimony, I engaged counsel in a colloquy which became rather heated. However, as the hearing progressed, counsel and I reached a calmer understanding of our positions.

The Bureau's presentation was thorough and complete. Having heard the initial testimony, Licensee's counsel conceded the Bureau's computations were accurate. Counsel further recognized that, given the size of the payouts, a few hundred dollars on one side of the ledger or the other was insignificant. (N.T. 87-91)

PRIOR RECORD:

Licensee has been licensed since December 11, 1951, and has had four prior violations since July 1, 1987, the date of establishment of the Office of Administrative Law Judge, (Commonwealth Exhibit No. C-9, N.T. 98):

Adjudication No. 94-1912. Fine \$550.00. Possessed or operated gambling devices or paraphernalia or permitted gambling or lotteries on a licensed premises (machines).

Adjudication No. 03-1324. Fine \$200.00.
Offered and/or awarded more than \$5,000.00 in cash or merchandise in any seven-day period.
May 25 through 31, 2003.

Adjudication No. 07-0392. Fine \$1,500.00 and 5 days suspension. 1. Possessed or operated gambling devices or permitted gambling on your licensed premises (sports pool, sports bets and generic pull tabs).
January 26, 2007.

2. Offered and/or awarded more than \$5,000.00 in cash or merchandise in any seven-day period. December 1 through 7, 2006 and January 1 through 7, 2007.

Adjudication No. 07-2288. Fine \$3,000.00 and 40 days suspension.

1. Possessed or operated gambling devices or

- permitted gambling on your licensed premises (tickets).
July 1 through August 1, 2007.
2. Failed to maintain complete and truthful records covering the operation of Small Games of Chance for a period of 2 years.
August 1, 2007.
 3. Offered and/or awarded more than \$5,000.00 in cash or merchandise in any 7-day period.
April 1 through April 7, May 6 through May 12,
June 10 through 16, and July 15 through July 21, 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.

We speak so often of gambling as having an addicting quality. We do so in relationship to the gambler. This matter demonstrates how gambling can be addicting for the promoter. Profits from gambling are easy money. What was once no more than an added source of revenue, quickly transitions into a fundamentally necessary resource.

Licensee has been so stung by the gambling bug that Licensee admits it cannot exist without the added income beyond legal limits. The disease is so pervasive that counsel candidly admits he cannot assure me that Licensee will not continue to violate the law in the same manner.

The addiction is of such proportion that Licensee has gone so far to employ a money laundering scheme in an attempt to hide the illegality. Otherwise law abiding citizens, a group of veterans whose military service was dedicated to preserving and protecting a way of life, partly to obey the law, seem to have lost all shame. They apparently have lost their moral and ethical compasses, too. They would rather preserve the organization no matter what the legal, moral or ethical costs. They would rather teach their children that lawlessness is appropriate if and when one decides that disobedience promotes a personal need.

Unquestionably, citizens of this Commonwealth do get mixed messages about gambling. So many forms have been legalized; the Commonwealth promotes gambling in any number of ways. That practice does not excuse Licensee from crossing the line, however.

The questions I have of Licensee are: How much is enough? When the current revenue flow is no longer sufficient, and that day will surely come, what laws will Licensee toss by the wayside in order to generate more income?

The Bureau strongly argues license revocation is the only remedy. That assertion falls into the category of be careful what you wish for as you may get it. Small Games of Chance operations are not ancillary or incidental to the liquor license. Were I to follow through with the Bureau's wishes, the ability to regulate and control Licensee's gambling activities in an administrative setting would be gone.²

Licensee ought not to view this result as an opportunity to disobey the law without penalty. There may come a day when the local authorities take action to seek sanction against Licensee, as well as individual Club officers, by way of the criminal justice system. There, the result may be the loss of personal freedom and the permanent brand of "criminal." Unlawful gambling, may also subject Licensee's funds and equipment to governmental confiscation.

Licensee suggests revoking the license will place many innocent people in financial jeopardy. Interestingly, Licensee had little concern for that as it engaged in unlawful gambling. I am sure there was some level of empathy but the primary motivator was to keep the organization, as it was then operating, afloat.

The reality is that the innocent always suffer when others disobey the law. The clearest example is, of course, the victim of crime. Much less noticed but every bit as destructive is the harm visited upon the family of a criminal whose children lose financial and emotional support. Harm to the innocent is certainly a relevant consideration but not necessarily an overriding one.

In the last Adjudication Licensee's counsel assured me Licensee has taken corrective measures to avoid additional violations as herein charged. It seems those measures have worked to some degree as the gambling income is much lower in this Adjudication when compared to the previous one, albeit nevertheless above the legal limit.

2. I am unaware of any administrative procedure for suspending, fining, revoking or refusing to issue a Small Games of Chance Permit.

Weighing all the factors, I have decided to impose a severe sanction but not license revocation. I impose:

Count No. 1 - \$1,000.00 fine and 45 days suspension.
Count No. 2 - \$1,000.00 fine and 136 days suspension.

This sanction has no impact on Licensee's authority to operate pursuant to its Small Games of Chance Permit. Accordingly, in an effort to exercise some indirect control of that Permit in an administrative setting, I offer Licensee the following. In the event Licensee voluntarily agrees to cease operating pursuant to its Small Games of Chance Permit for a period of 90 days and notifies me of that intention within fifteen days of the mailing date of this Adjudication, in writing, by way of Application for Reconsideration, I am likely to shorten the length of the suspension period to a combined 90 days, during which Licensee's commitment to cease operating Small Games of Chance will be in place.

ORDER:

Imposition of Fine

THEREFORE, it is hereby ordered that Licensee pay a fine of \$2,000.00 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.

Imposition of Suspension

IT IS FURTHER ORDERED that the Catering Club liquor license of Home Assn. Charles Nitterhouse Post 1599 V.F.W., License No. CC-5257, be suspended for a period of 181 days, **BEGINNING** at 7:00 a.m., on Monday, June 22, 2009, and **ENDING** at 7:00 a.m., on Sunday, December 20, 2009.

Licensee is directed, on Monday, June 22, 2009, at 7:00 a.m., to place a placard of notice of suspension (identified as Form No. PLCB-1925 and as printed with red and black ink) in a conspicuous place on the outside of the licensed premises or in a window plainly visible from outside the licensed premises and to remove said license from the wall and place it in a secure location.

Licensee is advised, if replacement placards are needed for any reason, they are available at all Pennsylvania Liquor Stores/Wine & Spirits Shoppes.

The Bureau is directed to visit and monitor the aforementioned licensed premises for compliance with this Order.

Licensee is authorized, on Sunday, December 20, 2009, at 7:00 a.m., to remove the placard of suspension and return its license to its original wall location.

Voluntary Agreement

IT IS FURTHER ORDERED THAT if Licensee voluntarily agrees to cease operating pursuant to its Small Games of Chance Permit for a period of 90 days and notifies me of that intention within fifteen days of the mailing date of this Adjudication, in writing, by way of Application for Reconsideration, I will shorten the length of the suspension period to a combined 90 days, during which Licensee's commitment to cease operating Small Games of Chance will be in place.

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, Pennsylvania 17110-9661

HOME ASSN. CHARLES NITTERHOUSE
POST 1599 V.F.W.
CITATION NO. 08-2205

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1599 V.F.W.