

Mailing Date: NOV 24 2009

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 08-2675
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W09-374042
v.	:	
	:	LID - 31150
CLUBHOUSE INC	:	
T/A LUPO'S BEEF & ALE	:	
2149 READING RD	:	
ALLENTOWN PA 18104-6406	:	
	:	
LEHIGH COUNTY	:	
LICENSE NO. R-AP-SS-14486	:	

JUDGE SHENKLE
BLCE COUNSEL: Roy Harkavy, Esq.
LICENSEE COUNSEL: Theodore J. Zeller, III, Esq.

ADJUDICATION

BACKGROUND:

The Bureau of Liquor Control Enforcement of the Pennsylvania State Police issued this citation on November 14, 2008. The citation alleges that Licensee violated §404 of the Liquor Code, 47 P.S. §4-404, on May 24, June 4, 21, July 16, September 10 and 27, 2008, by failing to adhere to an agreement with the Board putting additional restrictions on the license.

A hearing was held on August 28, 2009, in Plymouth Meeting, Pennsylvania. The parties stipulated to the timely service of the notice letter and the citation.

FINDINGS OF FACT:

1. On May 24, 2008, a liquor enforcement entered the licensed premises at 5:10 p.m. He sat at the bar. He purchased an alcoholic beverage. His age was not questioned. He was 28 years old at the time (N.T. 5-6, 11).
2. On June 4, 2008, the same officer entered the licensed premises at 8:55 p.m. He sat at the bar. He purchased an alcoholic beverage. His age was not questioned. (N.T. 6-7, 11).
3. On June 21, 2008, the same officer entered the licensed premises at 11:15 p.m. He purchased an alcoholic beverage. His age was not questioned. (N.T. 7, 11).
4. On July 16, 2008, the same officer entered the licensed premises at 12:40 p.m. He sat at the bar. He purchased an alcoholic beverage. His age was not questioned. (N.T. 7-8, 11).

5. On September 10, 2008, the same officer entered the licensed premises at 8:35 p.m. He sat at the bar. He purchased an alcoholic beverage. His age was questioned, and a bartender looked at the identification he presented, but no transaction scan device was used. (N.T. 8-9, 11).

6. On September 27, 2008, the same officer entered the licensed premises at 12:00 a.m. He sat at the bar. He purchased an alcoholic beverage. His age was questioned, and a bartender looked at the identification he presented, but no transaction scan device was used. (N.T. 9, 11).

7. An agreement entitled "Conditional Licensing Agreement" between the Board and Licensee was signed on May 30, 2007, by Licensee's president and on June 6, 2007, by the Board's Chief Counsel. Paragraph 7a. of this agreement requires Licensee to become compliant with and remain compliant with the Responsible Alcohol Management Provisions of the Liquor Code. Licensee became R.A.M.P. – certified on March 12, 2008 (N.T. 10, Exhibit C-3, Board records).

8. Paragraph 7c. of said agreement states: "Clubhouse shall utilize its transaction scan device to scan the identification of all patrons entering the premises during all hours of operation." (Ibid).

9. Page 27 of the Board's publication, "A Handbook About Responsible Sales of Alcohol for Pennsylvania Licensees," LCB-223 4/07, states that "it is often recommended that everyone who appears to be **under the age of 30** be considered a potential underage drinker." (Exhibit L-1, emphasis in original).

CONCLUSIONS OF LAW:

Sustained as charged.

DISCUSSION:

Counsel for Licensee argued that the CLA is ambiguous, because on the one hand it requires Licensee to become R.A.M.P. – certified and the PLCB handbook recommends to persons undergoing that process that everyone who appears to be under the age of 30 be asked to provide proper identification and sign a Declaration of Age Card (PLCB-931), while on the other hand it states that "Clubhouse shall utilize its transaction scan device to scan the identification of all patrons entering the premises during all hours of operation."

This is not ambiguous. The Board's handbook provides useful advice for all licensees, but the Board is not thereby prevented from imposing additional restrictions on particular licensees. In fact, the Board is specifically authorized to do this by 47 P.S. §4-404: "... The board may enter into an agreement with the applicant concerning additional restrictions on the license in question. If the board and the applicant enter into such an agreement, such agreement shall be binding on the applicant...."

PRIOR RECORD:

Licensee has been licensed since March 6, 1987, and has had prior violations since July 1, 1987, the date of establishment of the Office of Administrative Law Judge, as follows:

Citation No. 94-2069. \$50.00 fine.

1. Bad checks for malt or brewed beverages.

Citation No. 94-2435. \$100.00 fine.

1. Roman Luknicki, president of Clubhouse, Inc., consumed alcoholic beverages while tending bar or otherwise serving alcoholic beverages.
2. Eugene Luknicki, vice president of Clubhouse, Inc., consumed alcoholic beverages while tending bar or otherwise serving alcoholic beverages.

Citation No. 95-0149. \$50.00 fine and 1 day suspension.

1. Bad checks for malt or brewed beverages.

Citation No. 95-1819. \$250.00 fine.

1. Loudspeakers could be heard outside.
2. Entertainment was visible from outside.

Citation No. 95-2488. 1 day suspension.

1. Failed to post a notice of suspension.
2. Posted notices on the licensed premises indicating that it was closed for a reason other than suspension of the license.

Citation No. 96-0029. 1 day suspension.

1. Operated without a valid health permit or license. December 18, 1995.

Citation No. 97-2473. 1 day suspension.

1. Bad checks for malt or brewed beverages. September 22 and 23, 1997.

Citation No. 98-1723. 1 day suspension.

1. Bad checks for malt or brewed beverages. June 16, 1998.

Citation No. 98-2008. \$600.00 fine and 1 day suspension.

1. Failed to post a notice of suspension.

Citation No. 02-2040. \$1,000.00 fine.

1. Sales to minors. August 10, 2002.

Citation No. 04-0019. \$1,600.00 fine.

1. Sold malt or brewed beverages in excess of 192 fluid ounces in a single sale for consumption off premises. December 10, 2003.
2. Sales to minors. December 10, 2003.

Citation No. 07-1378C. \$1,850.00 fine and R.A.M.P. training mandated.

1. Sales to a minor. May 23, 2007.

Citation No. 07-3149. \$500.00 fine.

1. Failed to maintain complete and truthful records covering the operation of the licensed business for a period of 2 years. October 31, 2007.

2. Failed to adhere to the conditions of an agreement placing additional restrictions on the license. October 1 through November 14, 2007.

Citation No. 08-1112. \$1,400.00 fine.

1. Failed to adhere to an agreement placing additional restrictions on the license. November 8, 17, December 1, 14, 2007, February 8, 21 and March 13, 2008.
2. Gambling (machines). November 17, December 14, 2007 and March 13, 2008.
3. Loudspeakers could be heard outside. December 1, 2007.

PENALTY:

Section 471 of the Liquor Code, 47 P.S. §4-471, prescribes a penalty of license suspension or revocation or a fine in the \$50.00 to \$1,000.00 range, or both, for violations of this type.

ORDER

THEREFORE, it is hereby ORDERED that Licensee, Clubhouse, Inc., t/a Lupo's Beef & Ale, License No. R-AP-SS-14486, shall pay a fine of six hundred dollars (\$600.00) within 20 days of the mailing date of this order. In the event the fine is not paid within 20 days, Licensee's license will be suspended or revoked. Jurisdiction is retained.

Dated this 17TH day of November, 2009.



David L. Shenle, J.

jb

NOTICE: 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 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. 08-2675
Clubhouse, Inc.