

Mailing Date: AUG 28 2009

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

PENNSYLVANIA STATE :
POLICE, BUREAU OF : Citation No. 09-0058
LIQUOR CONTROL ENFORCEMENT :
 : Incident No. W01-379684
v. :
 : LID - 642
STAR SOCIAL CLUB :
212 E MARKET ST :
WEST CHESTER PA 19380-6702 :
 :
CHESTER COUNTY :
LICENSE NO. C-601 :

JUDGE SHENKLE
BLCE COUNSEL: Erik S. Shmukler, Esq.
LICENSEE COUNSEL: Albert P. Massey, Jr., Esq.

ADJUDICATION

BACKGROUND:

The Bureau of Liquor Control Enforcement of the Pennsylvania State Police issued this citation on January 21, 2009. There are three counts in the citation.

The first count alleges that Licensee violated §406(a)(1) of the Liquor Code, 47 P.S. §4-406(a)(1), on July 17, 24, August 14 and September 11, 2008, by selling alcoholic beverages to nonmembers.

The second alleges that Licensee violated §§471 and 493(31) of the Liquor Code, 47 P.S. §§4-471 and 4-493(31), and §780-101, *et seq.*, of the Pennsylvania Controlled Substance, Drug, Device and Cosmetic Act, 35 P.S. §780-101, on July 24, August 14 and September 11, 2008, by aiding, abetting or engaging in the traffic in, or sale of, a controlled substance on its licensed premises and/or permitting the use of the licensed premises in the furtherance of the traffic in, or use of, a controlled substance.

The third count alleges that Licensee violated §471 of the Liquor Code, 47 P.S. §4-471, and §§5512 and/or 5513 of the Crimes Code, 18 Pa. C.S. §§5512 and/or 5513, on July 17, 24, August 14 and September 11, 2008, by possessing or operating gambling devices or paraphernalia or permitting gambling or lotteries, poolselling and/or bookmaking on the licensed premises.

A hearing was held on June 16, 2009, in Plymouth Meeting, Pennsylvania. The parties stipulated to the timely service of the notice letter and the citation.

FINDINGS OF FACT:

1. On July 17, 2008, a female liquor enforcement officer acting in an undercover capacity arrived at the licensed premises at about 4:50 p.m. She rang a bell and got buzzed in. There were 30 patrons attended by two bartenders. The officer purchased an alcoholic beverage on this occasion as well as on July 24, August 14 and September 11, 2008. She has never been a member of this club (N.T. 8-10).

2. On July 24, 2008, the same officer arrived at the premises at 7:30 p.m. She was admitted as before. There were about 15 patrons and two bartenders. The officer was seated at the bar in front of the pool table, where there was a man. A woman was seated next to the officer, and she asked the man something. She gave him money. He gave her a little baggie with white stuff in it (N.T. 10-11).

3. On August 14, 2008, the same officer entered the premises at 6:40 p.m. The same bartenders were attending about 30 patrons. The officer was seated at the bar when a man approached her, making small talk. He asked the officer if she had any marijuana. She said she did not. The man then purchased marijuana from a man who was sitting across from the officer. At that time the bartender was serving drinks, so the transaction was in plain view (N.T. 12).

4. The man asked the officer if she wanted to go smoke the marijuana in the back with him. She said yes, and the two people left the premises. Outside, the man went to "Lorenzo's" next door, where he bought a blunt. While he was doing that the officer got on the phone with someone else and then made an excuse that she had to leave, she couldn't smoke. The man gave her his phone number and the officer left (N.T. 20).

5. Another officer was watching the female undercover officer when she came out of the premises, ostensibly to smoke with the man. After the female officer left, this officer saw the man get into a white car and drive away. A West Chester Police Department officer became aware that this man was driving, and also knew that the man did not have a license. This last officer stopped the vehicle, arrested the driver, and found the marijuana (Exhibit B-3, N.T. 6).

6. On September 11, 2008, the officer entered the premises at 5:30 p.m. She saw the same bartenders and about 45 patrons. A police detail then raided the premises. They seized \$464 and three video machines. Four people were arrested on drug charges (N.T. 13-14).

7. One of the officers participating in the raid saw a man reach into his pocket, remove a clear packet of marijuana, and toss it to the floor (Exhibit B-3, N.T. 6).

8. A uniformed female police officer participating in the raid saw a woman run into the women's restroom. She followed the woman, searched her, and found her to be in possession of cocaine. The officer asked another woman in the restroom if she was in possession of anything illegal, and the woman produced a rolled-up piece of paper, which contained a blue Ziploc bag containing cocaine (Exhibit B-3, N.T. 6).

9. A liquor enforcement officer inspected the premises on September 11, 2008. He was unable to locate a Small Games of Chance license for 2008. Since the club president could not produce a license, the officer seized all of Licensee's pull-tab games and its vending machine for the same (Exhibit B-3, N.T. 6).

10. Licensee's president stated that the machines had been in the premises for at least six years. The machines, as well as a Touch Jukebox, a pool table, a Pac Man game, and a Mega Touch tabletop game, are owned by a vending company, which splits the proceeds evenly with Licensee. The president stated that players receive \$5 for each ticket disbursed by the machine. He explained the method to knock off accumulated points. He signed a waiver of rights and consent to search relating to the three seized machines (Exhibit B-3, N.T. 6).

11. The three machines each required the deposit of five cents, required no skill, had a playing time of three to five seconds, and had the capability to reduce accumulated credits instantly to zero (Exhibit B-3, N.T. 6).

12. It is the policy of Licensee not to tolerate the possession of unlawful drugs on its premises. Persons who violate this policy will be barred from the club for life. Signs presently on the premises warn members and guests against doing anything illegal. Guns, knives, drugs and outside alcohol are banned. Nothing may be sold inside the club. Fighting is prohibited. "Hoodies" are prohibited (N.T. 29-38, Exhibits Star 1, 2, 5).

13. Neither of the bartenders on duty at the time of the events described by the undercover officer saw any illegal drug transaction or activity, or suspected that any such was occurring (N.T. 39-43).

CONCLUSIONS OF LAW:

Licensee violated §406(a)(1) of the Liquor Code, 47 P.S. §4-406(a)(1), on July 17, 24, August 14 and September 11, 2008, by selling alcoholic beverages to nonmembers.

The evidence presented did not persuade me that Licensee violated §§471 and 493(31) of the Liquor Code, 47 P.S. §§4-471 and 4-493(31), and §780-101, *et seq.*, of the Pennsylvania Controlled Substance, Drug, Device and Cosmetic Act, 35 P.S. §780-101, on July 24, August 14 and September 11, 2008, by aiding, abetting or engaging in the traffic in, or sale of, a controlled substance on its licensed premises and/or permitting the use of the licensed premises in the furtherance of the traffic in, or use of, a controlled substance.

Licensee violated §471 of the Liquor Code, 47 P.S. §4-471, and §§5512 and 5513 of the Crimes Code, 18 Pa. C.S. §§5512 or 5513, on July 17, 24, August 14 and September 11, 2008, by possessing and operating gambling devices and permitting gambling on the licensed premises.

PRIOR RECORD:

Licensee has been licensed since January 1, 1934, and has had prior violations since July 1, 1987, the date of establishment of the Office of Administrative Law Judge, as follows:

Citation No. 91-2014. \$350.00 fine.

1. Sales to nonmembers.

Citation No. 91-2892. \$350.00 fine and 3 days suspension.

1. Sales to nonmembers.

Citation No. 94-0819. \$500.00 fine and 3 days suspension.

1. Sales to nonmembers.

Citation No. 01-1271. \$150.00 fine.

1. Purchased malt or brewed beverages on credit.

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 the type found in this case. Penalties are assessed as follows:

- Count 1 – a fine of \$600.00.
- Count 2 – DISMISSED.
- Count 3 – a fine of \$500.00.

ORDER

THEREFORE, it is hereby ORDERED that Licensee, Star Social Club, License No. C-601, shall pay a fine of one thousand one hundred dollars (\$1,100.00) 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 11TH day of AUGUST, 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