

Mailing Date: OCT 12 2010

[Appeal](#)

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 09-0939
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W03-387381
	:	
v.	:	
	:	LID - 3311
	:	
THE EAGLES CLUB, INC.	:	
16-22 E. MAIN ST.	:	
WAYNESBORO, PA 17268-1875	:	
	:	
FRANKLIN COUNTY	:	
LICENSE NO. CC-2554	:	
	:	
	:	

BEFORE: JUDGE THAU
BUREAU COUNSEL: Thomas M. Ballaron, Esquire **LICENSEE:**
James A. Snell, Esquire

ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation that was issued on October 22, 2009, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (Bureau) against The Eagles Club, Inc. (Licensee), License Number CC-2554.

This citation¹ contains four 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 December 28, 2008 through January 3, 2009, January 11 through 17 and February 8 through 14, 2009, Licensee, by servants, agents or employes, offered and/or awarded more than \$5,000.00 in cash or merchandise in any seven-day period.

1. Commonwealth Exhibit No. C-2, N.T. 8.

The second count charges Licensee with violations of Sections 5512 and/or 5513 of the Crimes Code [18 Pa. C.S. §5512 and/or §5513], which is incorporated by reference in Liquor Code Section 471 [47 P.S. §4-471] as “other sufficient cause.” The charge is that on February 26, 2009, and divers other occasions in the past year, Licensee, by servants, agents or employes, possessed or operated gambling devices or paraphernalia or permitted gambling or lotteries, poolselling and/or bookmaking on its licensed premises.

The third count charges Licensee with violations of Section 102 of the Liquor Code [47 P.S. §1-102]. The charge is that on February 26, 2009, and divers other occasions in the past year, Licensee, by servants, agents or employes, failed to fulfill charter purposes.

The fourth count charges Licensee with violations of Section 471 of the Liquor Code [47 P.S. §4-471] and Section 314 of the Local Option Small Games of Chance Act [10 P.S. §314] and Section 901 of the Department of Revenue Regulations [61 Pa. Code §901]. The charge is that on February 26, 2009, and divers occasions in the past year, Licensee violated the Local Option Small Games of Chance Act, in that funds derived from the operation of games of chance were used for purposes other than those authorized by law.

An evidentiary hearing was conducted on August 10, 2010 at Brandywine Plaza, 2221 Paxton Church Road, Harrisburg, Pennsylvania. The matter was submitted by way of Agreement of Facts.

After review of the transcript of that proceeding, the following Findings of Fact and Conclusions of Law are entered.

AGREEMENT OF FACTS:

1. The Bureau began its investigation on January 13, 2009 and completed it on March 17, 2009. (Commonwealth Exhibit No. C-1, N.T. 8)
2. The Bureau sent a notice of alleged violations to Licensee at the licensed premises by certified mail-return receipt requested on April 14, 2009. The notice alleged violations as charged in the citation. (Commonwealth Exhibit No. C-1, N.T. 8)

Count No. 1:

3. For the following seven-day periods ending on the dates indicated, Licensee awarded prizes in the amounts listed: (N.T. 10)

<u>Seven-Day Period Ending</u>	<u>Amount</u>
January 3, 2009	\$ 92,240.00.
January 17, 2009 \$115,420.00. February 14, 2009	\$190,000.00.

Count No. 2:

4. On the date charged, Licensee maintained two Pull Tab games which Licensee altered. (N.T. 12)
5. Licensee will no longer alter games. (N.T. 15)

Count No. 3:

6. During the period charged, Licensee's Charter stated that Licensee was not permitted to generate revenue in excess of \$10,000.00. The Charter has been corrected. (N.T. 15-16)

Count No. 4:

7. During the period charged, Licensee diverted funds accumulated from the Small Games of Chance operation to underwrite Licensee's day to day business operations. (N.T. 17-20)

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.²

2. Licensee's counsel argues, in a post-hearing submission, that funds derived through Small Games of Chance may be dedicated to operating expenses. Counsel will have to convince the Pennsylvania Liquor Control Board which has determined otherwise. See: *American Legion Home Assn. of Annville*, Adjudication No. 06-0213.

PRIOR RECORD:

Licensee has been licensed since May 29, 1935, and has had six prior violations since July 1, 1987, the date of establishment of the Office of Administrative Law Judge, (Commonwealth Exhibit No. C-3):

Adjudication No. 88-0784. Fine \$350.00 and 7 days suspension.

1. Offered and/or gave alcoholic beverages as a prize.
2. Possessed or operated gambling devices or paraphernalia or permitted gambling on the licensed premises.

Adjudication No. 88-1094. Fine \$500.00 and 14 days suspension.
Possessed or operated gambling devices or permitted gambling on the licensed premises.

Adjudication No. 01-0608. Fine \$350.00.

Possessed or operated gambling devices or paraphernalia or permitted gambling or lotteries, poolselling and/or bookmaking on the licensed premises (sports pool).

Adjudication No. 04-0746. Fine \$1,000.00.

1. The licensed catering club violated the local option small games of chance act in that you conducted drawings other than those authorized by law.

February 19, 2004.

2. Offered and/or awarded more than \$5,000.00 in cash or merchandise in any 7-day period. March 29-April 4, 2004.

3. Failed to maintain complete and truthful records covering the operation of the licensed business for a period of 2 years concerning the Local Option Small Games of Chance Act.

April 7, 2004.

Adjudication No. 05-1284. Fine \$1,200.00.

1. Sold games of chance to an organization not licensed under the local option small games of chance act.

May 4, 2005.

2. Offered and/or awarded more than \$5,000.00 in cash or merchandise in any 7-day period.

April 4-10, 2005.

Adjudication No. 08-1056. Fine \$1,700.00.

1. Offered and/or awarded more than \$5,000.00 in cash or merchandise in any seven-day period.
December 23, 2007 through March 8, 2008.
2. Failed to maintain complete and truthful records covering the operation of Small Games of Chance for a period of 2 years.
March 26, 2008.
3. Possessed or operated gambling devices or permitted gambling on your licensed premises (pull-tabs and punchboards).
March 21, 2008.

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, 2, 3 and 4 in this case.

At the conclusion of the hearing, counsel and I engaged in a colloquy as to what an appropriate penalty might be. I offered Licensee the possibility of voluntarily and temporarily halting any Small Games of Chance operations. Were Licensee to do so, I would consider that as mitigation. Licensee did not notify me that Licensee agreed to take this mitigating approach. (N.T. 41-47)

I further recognize this is Licensee's fourth violation related to exceeding the statutory \$5,000.00 weekly payout limit. Furthermore, the payouts recorded in this Adjudication are exceedingly large. Licensee leaves me no choice but to impose a severe sanction.

Considering this shocking pattern of violations, I cannot adopt the Bureau's recommended penalties, as I find them to be entirely inadequate.

I impose:

Count No. 1 - \$1,000.00 fine and a 90 days suspension.

Count No. 2 - \$1,000.00 fine.

Count No. 3 - \$50.00 fine.

Count No. 4 - \$1,000.00 fine.

ORDER:

Imposition of Fine

THEREFORE, it is hereby ordered that Licensee pay a fine of \$3,050.00 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 The Eagles Club, Inc., License No. CC-2554, be suspended for a period of ninety (90) days, **BEGINNING** at 7:00 a.m., on Friday, December 3, 2010, and **ENDING** at 7:00 a.m., on Thursday, March 3, 2011.

Licensee is directed, on Friday, December 3, 2010, 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 Thursday, March 3, 2011, at 7:00 a.m., to remove the placard of suspension and return its license to its original wall location.

Retaining Jurisdiction

Jurisdiction is retained to ensure compliance with this Adjudication.

Dated this 30TH day of September, 2010.



Felix Thau, A.L.J.

pm

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 Cashier's Check, Certified Check or Money Order. **Personal and business checks, are not acceptable unless bank certified.** 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

Citation No. 09-0939
THE EAGLES CLUB, INC.