

Mailing Date: January 13, 2010

PENNSYLVANIA LIQUOR CONTROL BOARD
HARRISBURG, PA 17124-0001

PENNSYLVANIA STATE POLICE, : Citation No. 09-1662
BUREAU OF LIQUOR CONTROL :
ENFORCEMENT :

vs. :

THE AMERICAN LEGION CLUB OF :
GETTYSBURG PENNSYLVANIA :
528 E. Middle Street :
P.O. Box 3386 : License No. CC-4570
Gettysburg, PA 17325-0386 :

Counsel for Licensee: William C. Kollas, Esquire
1104 Fernwood Avenue
Camp Hill, PA 17011

Counsel for Bureau: Tara L. Patterson, Esquire
Pennsylvania State Police,
Bureau of Liquor Control Enforcement
3655 Vartan Way
Harrisburg, PA 17110

OPINION

The American Legion Club of Gettysburg Pennsylvania (“Licensee”) appealed from the Adjudication and Order of Administrative Law Judge Felix Thau (“ALJ”), wherein the ALJ sustained the citation and imposed a one

thousand seven hundred fifty dollar (\$1,750.00) fine and seven (7) days suspension.

The first count of the citation charged that, from April 20 through 28 and May 8, 2009, and divers occasions during the previous year, Licensee, by its servants, agents or employees violated 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”, by possessing or operating gambling devices or paraphernalia or permitted gambling or lotteries, poolselling and/or bookmaking on its licensed premises.

The second count of the citation charged that, during the periods March 26 through April 1, April 2 through 8, April 9 through 15 and April 30 through May 6, 2009, Licensee, by its servants, agents or employees violated sections 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)], by offering and/or awarding more than five thousand dollars (\$5,000.00) in cash or merchandise in any seven (7) day period.

Pursuant to section 471 of the Liquor Code [47 P.S. § 4-471], the appeal in this case must be based solely on the record before the ALJ. The Board shall only reverse the decision of the ALJ if the ALJ committed an error of law or

abused his discretion, or if his decision was not based upon substantial evidence. The Commonwealth Court defined “substantial evidence” to be such relevant evidence as a reasonable person might accept as adequate to support a conclusion. Joy Global, Inc. v. Workers’ Compensation Appeal Bd. (Hogue), 876 A.2d 1098 (Pa. Cmwlth. 2005); Chapman v. Pennsylvania Bd. Of Probation and Parole, 86 Pa. Cmwlth. 49, 484 A.2d 413 (1984). Pursuant to section 471 of the Liquor Code, the appeal in this case must be based solely on the record before the ALJ. [47 P.S. § 4-471]. The Board shall only reverse the decision of the ALJ if the ALJ committed an error of law or abused his/her discretion, or if his/her decision was not based upon substantial evidence. The Commonwealth Court defined "substantial evidence" to be such relevant evidence as a reasonable person might accept as adequate to support a conclusion. Joy Global, Inc. v. Workers' Compensation Appeal Bd. (Hogue), 876 A.2d 1098 (Pa. Cmwlth. 2005); Chapman v. Pennsylvania Bd. of Probation and Parole, 484 A.2d 413 (Pa. Cmwlth. 1984).

On appeal, Licensee takes no issue with the stipulation of facts, rather, Licensee appears to disagree with the application of the liquor laws pertaining to enforcement actions involving a club licensee’s operation relative to the Local Options Small Games of Chance Act, 10 P.S. § 301.

A review of the record reveals that there were no factual disputes and counsel for the Pennsylvania State Police, Bureau of Liquor Control Enforcement (“Bureau”) and Licensee’s counsel, William C. Kollas agreed to a stipulation of facts as follows:

The Bureau began its investigation on April 30, 2009 and concluded the investigation on June 4, 2009

The Bureau issued a notice of alleged violation on July 2, 2009 setting forth the alleged charges as set forth in the citation issued on July 16, 2009.

On May 8, 2009, at 10:15 AM a Bureau enforcement officer went to the Licensed premises for purposes of conducting a routine inspection. During the visit, the officer was informed that Licensee’s Small Games of Chance Permit had expired on April 19, 2009 and was not reissued until April 29, 2009. (N.T. 25-26). During the interviewing period, Licensee continued operating its small games of chance (N. T. 26).

During the May 8, 2009 inspection the Officer discovered Licensee also modified an otherwise legally manufactured seal game by overpaying the payouts for both the left and right seal prizes. (N.T. 32-33)

The Bureau officer was provided records of Licensee which evidenced that for the seven day period ending April 1, 2009, Licensee paid out \$33,820.00

in small games of chance prizes. For the similar period ending April 8, 2009, the payout was \$42,071.00. For the period ending April 15, 2009, the payout was \$50,435.00. For the period ending May 6, 2009, the payout was \$60,320.00. (N.T. 40-41, Commonwealth Exhibit No. C-4).

In response to the Licensee's appeal the Bureau argues that resolution of this legal issue is governed by the Board's decision in Knights of Columbus at citation 07-2746. The Board agrees.

By its own admission, Licensee did continue to operate small games of chance during the period when its permit was expired. (N.T. 26). Licensee further admitted to modifying a game called "Little Stinker" by overpaying the left seal prize fifty dollars (\$50.00) and if the left and right seals match, Licensee giving a payout of five hundred dollars (\$500.00) rather than the manufactured amount of one-hundred dollars (\$100.00). (N.T. 32-33). Lastly, Licensee did also admit that during the periods March 26-April 1, April 2-8, April 9-15 and April 30- May 6, 2009, club operators awarded more than five thousand dollars (\$5,000.00) in cash in any seven-day period. (N.T. 40-41).

It is now well settled that the Bureau does, in fact, have jurisdiction in matters involving the Local Option Small Games of Chance Act, (LOSGA) since such would constitute, "other sufficient cause shown" as set forth in section

471 of the Liquor Code, and as acknowledged by the Pennsylvania Supreme Court in Pennsylvania Liquor Control Bd. v. TLK, 544 A.2d 931 (Pa, 1988). For “other sufficient cause” cases, the Bureau must prove by a preponderance of the evidence, in addition to the elements of the underlying offense, that Licensee knew or should have know about the activity on or about its licensed premises, and failed to take substantial affirmative steps to curb the activity. [See TLK, supra]. In the instant case, License stipulated to all relevant facts underlying the two counts in the citation.

In addition, Licensee clearly violated section 5512 and/or 5513 of the Crimes Code [18 Pa. C.S.] in the instant case, License stipulated to all relevant facts underlying the two counts in the citation.

Accordingly, Licensee clearly violated section 5512 and/or 5513 of the Crimes Code [18 Pa. C.S. §§ 5512 and or 5513] and section 315 (b) of the Local Option Small Games of Chance Act. [10 P.S. § 315 (b)]. Whereas the Bureau has jurisdiction in matters concerning the Pennsylvania Crimes Code as well as LOSGCA the ALJ’s decision is clearly supported by substantial evidence. Licensee has simply failed to present any evidence in support of its contention.

For the reasons set forth above, the ALJ acted properly and was well within the parameters established by section 4-471 of the Liquor Code [47 P.S. §

4-471] in sustaining both counts of the citation and in the imposition of a fine and suspension.

ORDER

The decision of the ALJ is affirmed.

The appeal of the Licensee is dismissed.

It is hereby ordered that Licensee pay the fine of one thousand seven hundred and fifty dollars (\$1,750.00) within twenty (20) days of the mailing date of this Order. Failure to do so will result in license suspension and/or revocation.

It is further herby ordered that Licensee's Catering Club Liquor License No. CC-4570 be suspended for a period of seven (7) days, beginning at 7:00 a.m. on Monday, February 22, 2010 and ending at 7:00 a.m. on Monday, March 1, 2010. Licensee is directed to place the enclosed placard of notice of suspension (identified as Form No. PLCB-1925 and 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 of the licensed premises, and to remove the license from the wall and place it in a secure location on the effective date of said suspension.

Licensee must adhere to all other conditions set forth in the ALJ's Order dated November 20, 2009. The case is hereby remanded to the ALJ to ensure compliance with this Order.

Board Secretary