

Mailing Date: MAR 21 2011

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

| | | |
|------------------------------|---|-----------------------------|
| PENNSYLVANIA STATE | : | |
| POLICE, BUREAU OF | : | Citation No. 09-1679 and |
| LIQUOR CONTROL ENFORCEMENT | : | 07-1537 |
| | : | (consolidated for |
| | : | Adjudication purposes only) |
| | : | |
| | : | Incident No. W3-387026 |
| v. | : | W3-351355 |
| | : | |
| | : | LID – 23110 |
| THE MECHANICSBURG CLUB | : | |
| 333 HEINZ ST. | : | |
| MECHANICSBURG, PA 17055-3211 | : | |
| CUMBERLAND COUNTY | : | |
| LICENSE NO. CC-5354 | : | |

**BEFORE JUDGE FLAHERTY
BUREAU COUNSEL THOMAS M. BALLARON
LICENSEE: P. RICHARD WAGNER, ESQ.**

CONSOLIDATED ADJUDICATION

BACKGROUND 09-1679:

The proceeding docketed at 09-1679 arises out of a citation that was issued on July 9, 2009, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter “Bureau”) against The Mechanicsburg Club, License Number CC-5354 (hereinafter “Licensee”).

The Citation charged the licensee with the following violations:

1. On January 14 and 26, 2009, and divers occasions in the past year, you, by your servants, agents or employees, possessed or operated gambling devices or paraphernalia or permitted gambling or lotteries, poolselling and/or bookmaking on your licensed premises, in violation of Section 471 of the Liquor Code, 47 P.S. §4-471 and Sections 5512 and/or 5513 of the Crimes Code, 18 Pa. C.S. §§5512 and/or 5513.

2. On January 26, 2009, you, by your servants, agents or employees, failed to keep on the licensed premises and/or provide an authorized employee of the Enforcement Bureau access to, or the opportunity to copy, complete and truthful records covering the operation of the licensed business, in violation of Section 493(12) of the Liquor Code, 47 P.S. §4-493(12).

3. During the periods July 14 through 20, July 21 through 26, August 4 through 10, August 11 through 17, September 1 through 7, September 8 through 14, November 3 through 9, November 10 through 16 and December 1 through 7, 2008, you, by your servants, agents or employees, offered and/or awarded more than \$5,000.00 in cash or merchandise in any seven-day period, in violation 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).

4. You, by your servants, agents or employees, failed to maintain complete and truthful records covering the operation of the licensed business for a period of two (2) years immediately preceding February 11, 2009, concerning the Local Option Small Games of Chance Act, in 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.

5. During the period August 1 through September 30, 2008, you 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, in violation of Section 471 of the Liquor Code, 47 P.S. §4-471, 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 parties have submitted Stipulations of Fact in lieu of testimony, and have requested that the same constitute the factual record upon which this Court may enter Findings of Fact and Conclusions of Law.

FINDINGS OF FACT 09-1679:

NOTICE:

1. The investigation which gave rise to the citation was opened and assigned on January 5, 2009 and was completed on June 19, 2009. (Stipulation of Fact No. 15)

2. The Notice of Violation letter was sent to the Licensee by Certified Mail on July 6, 2009 and received by the Licensee on July 7, 2009. (Stipulation of Fact No. 16)

3. The Citation was issued by the Bureau and sent to the Licensee by Certified Mail on July 9, 2009. (Stipulation of Fact No. 18)

COUNT 1

4. On January 14, 2009, 259 generic flair cards for pull tab games were possessed by the Club and seized by the Commonwealth. The flair cards were for unlawful pull tabs which had been sold by the Club. (Stipulation of Fact No. 21)

5. During the period described in Count 1, the Club operated a “weekly drawing book” with the drawings being made weekly on Monday and also offered for sale and sold two-part tickets commonly referred to as “50/50 tickets”, which were offered for sale daily, with the drawing also made weekly on Mondays. (Stipulation of Fact No. 22)

6. During the period described in Count 1, the Club operated a “losers” drawing in which individuals paid a consideration and entered expended strip tickets in a drawing for a cash reward. (Stipulation of Fact No. 23)

7. During the period described in Count 1, the Club sold and conducted “50/50” raffles. These “50/50” tickets did not include all information required by the LOSGCA for raffle tickets.¹ During the period described in Count 1, the Club did not possess a special raffle permit. (Stipulation of Fact No. 24)

COUNT 2

8. On January 21, 2009, Liquor Enforcement Officer Harry Royer during the course of a routine inspection presented a written request for records to Michael Gallagher, Club Manager, said records to be produced at 9:00 a.m. on January 26, 2009. (Stipulation of Fact No. 25)

9. On January 26, 2009, Liquor Enforcement Officer Harry Royer returned to the licensed premises. He met with Michael Gallagher. (Stipulation of Fact No. 26)

10. Mr. Gallagher refused to provide the requested records. (Stipulation of Fact No. 27)

¹ The Club’s “raffle tickets” failed to set forth the following: The time of drawing, the location of drawing, the special raffle permit number, the price of the ticket, and the prize or prizes to be awarded, as enumerated under Section 901.745 of the Department of Revenue Regulations, 61 Pa Code § 901.745.

COUNT 3

11. Based upon Mr. Gallagher's refusal to provide records on January 26, 2009, on February 11, 2009, Liquor Enforcement Officer Harry Royer, along with additional enforcement officers and a State Police corporal, as well as additional State Police officers entered the licensed premises and served a search warrant on the Licensee. Club treasurer, Michael Bender, was present. (Stipulation of Fact No. 28)

12. Seized during this visit were three computers and/or computer records, which contained the Club's small games of chance records. (Stipulation of Fact No. 29)

13. Based upon an analysis of those records, the Club paid out cash and/or merchandise prizes in excess of \$5,000.00 at least in the following amounts during the period described in the Citation²:

| SEVEN DAY PERIOD | TOTAL PAYOUTS |
|-------------------------|----------------------|
| July 14 - 20, 2008 | \$40,974.00 |
| July 21 - 26, 2008 | \$37,234.00 |
| August 4 - 10, 2008 | \$43,257.00 |
| August 11 - 17, 2008 | \$41,683.00 |
| September 1 -7, 2008 | \$52,841.00 |
| September 8 - 14, 2008 | \$39,953.00 |
| November 3 - 9, 2008 | \$44,808.00 |
| November 10 - 16, 2008 | \$46,201.70 |
| December 1 - 7, 2008 | \$47,400.00 |

(Stipulation of Fact No. 30)

COUNT 4

14. Based upon an analysis of the records seized pursuant to the search warrant, during the period described in the Citation, 11 entries of LOSGCA payout records were in an unlawful eight-day format, and one entry of LOSGCA payout records was in an unlawful four-day period.³ (Stipulation of Fact No. 31)

² This is in violation of Section 471 of the Liquor Code, 47 P.S. § 4-471, Section 315(b) of the Local Option Small Games of Chance Act, 10 P.S. § 315(b), and Section 901.702(b) of the Department of Revenue Regulations, 61 Pa Code § 901.702(b).

³ This is in 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 901.461 of the Department of Revenue Regulations, 61 Pa. Code § 901.461.

15. Based upon an analysis of the records seized pursuant to the search warrant during the period described in the Citation, the Club failed to list the form and serial numbers for each game, the specific date in and out of play, the total number of plays per game, or the cost per play, the total cash value of all prizes per game and the amount over/short.⁴ (Stipulation of Fact No. 32)

16. Based upon an analysis of the records seized pursuant to the search warrant, during the period described in the Citation, the Club failed to record winners who received payouts of \$100.00 or more.⁵ (Stipulation of Fact No. 33)

COUNT 5

17. Based upon an analysis of the records seized pursuant to the search warrant, during the two-month period described in the Citation, in excess of \$50,000 in LOSGCA revenues earned by the Club were used for operational expenses.⁶ (Stipulation of Fact No. 34)

CONCLUSIONS OF LAW:

09-1679:

(1) The notice requirements of Liquor Code Section 471 (47 P.S. § 4-471) had been satisfied.

Count 1:

(2) Sustained as charged.

Count 2:

(3) Sustained as charged.

⁴ This is in 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 Sections 901.464(2-6) and 901.465 of the Department of Revenue Regulations, 61 Pa. Code §§ 901.464(2-6) and 901.465.

⁵ This is in 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 Sections 901.463(4), 901.464(9), and 901.464a(9) of the Department of Revenue Regulations, 61 Pa. Code §§ 901.463(4), 901.464(9) and 901.464a(9).

⁶ This is in violation of Section 471 of the Liquor Code, 47 P.S. § 4-471, Section 314 of the Local Option Small Games of Chance Act, 10 P.S. § 314 and Sections 901.701 and 901.701a of the Department of Revenue Regulations, 61 Pa Code §§ 901.701 and 901.701a.

Count 3:

(4) Sustained as charged.

Count 4:

(5) Sustained as charged.

Count 5:

(5) Sustained as charged.

BACKGROUND 07-1537:

The proceeding docketed at 07-1537 arose from a citation that was issued on July 12, 2007, which was heard by this Court on November 17, 2008, and adjudicated on October 7, 2009 [Mailing Date: October 15, 2009]. At the request of counsel, this Court held the Order in abeyance pending the within consolidation and settlement.

FINDINGS OF FACT AND CONCLUSIONS OF LAW 07-1537:

The findings of fact and conclusions of law set forth in Adjudication 07-1537 are incorporated and merged herein and made a part hereof as if fully set forth below.

DISCUSSION:

The Parties have submitted stipulations of fact in lieu of testimony in this case and have requested this Court to incorporate and merge the adjudication from 07-1537 into the within Adjudication and Order. The Parties have requested this Court to issue a Consolidated Order in order to advance what has been described to this Court as a “global settlement” of several legal actions involving the Bureau and Licensee. These legal actions involve non-traffic citations filed against the Licensee by the Bureau and currently on appeal in the Cumberland County Court of Common Pleas; a previous adjudication found at Adjudication 06-2592, also on appeal in the Court of Common Pleas and the within citations.

This Court has chosen to endorse the same, finding and concluding that the settlement of this case in the manner specified and approved herein, advances the public interest and is consistent with the legislative intent of the LOSGCA and Liquor Code, upon which these cases were based.

The essential element of the settlement agreement is the payment of the sum of \$1,000,000.00 to a group of selected and approved charities from the proceeds earned by the Licensee from the sale of small games of chance. Payment will be made under the aegis of an Order to be issued by the Court of Common Pleas of Cumberland County pursuant to a Consent Agreement settling and resolving four (4) non-traffic criminal citations and three (3) administrative cases against the Licensee.

The Licensee will pay a fine as set forth in the Order of this Court. Additionally, a period of suspension will be imposed against the Licensee's liquor license, the same of which will be held in abeyance pending the Licensee's satisfaction of the terms of probation imposed by this Court and incorporated into the Court of Common Pleas Order.

PRIOR RECORD:

Licensee has been licensed since September 26, 1952, and has had three (3) prior violation(s) since July 1, 1987, the date of establishment of the Office of Administrative Law Judge:

CITATION NO. 89-1041. (CLUB LIQUOR LICENSE) FINE \$900.00.
WAIVER OF HEARING. (JUDGE THAU)

1. POSSESSED OR OPERATED GAMBLING DEVICES OR PARAPHERNALIA OR PERMITTED GAMBLING OR LOTTERIES ON YOUR LICENSED PREMISES. (LL and CC)

CITATION NO. 05-0611. FINE \$250.00. WAIVER OF HEARING. (JUDGE FLAHERTY)

1. OFFERED AND/OR AWARDED MORE THAN \$5,000.00 IN CASH OR MERCHANDISE IN ANY SEVEN-DAY PERIOD. (LL and Small Games of Chance Act)
February 13 through 19, 2005.

CITATION NO. 06-2592. FINE \$2,600.00 AND 10 DAYS SUSPENSION.
LICENSEE'S APPEAL TO BOARD PENDING. (JUDGE FLAHERTY)

1. POSSESSED OR OPERATED GAMBLING DEVICES OR PARAPHERNALIA OR PERMITTED GAMBLING OR LOTTERIES, POOLSELLING AND/OR BOOKMAKING ON YOUR LICENSED PREMISES (FOOTBALL POOLS, DRAWINGS AND TICKETS). (LL and CC)
August 28, September 4 and 6, 2006.

2. FAILED TO MAINTAIN RECORDS IN CONFORMITY WITH TITLE 40 OF THE PENNSYLVANIA CODE. (RR)
September 19, 2006.
3. OFFERED AND/OR AWARDED MORE THAN \$5,000.00 IN CASH OR MERCHANDISE IN ANY SEVEN-DAY PERIOD. (LL and Small Games of Chance Act)
July 31 - August 6, August 7 - 13, August 14 - 20 and August 21 - 27, 2006.
4. FAILED TO MAINTAIN COMPLETE AND TRUTHFUL RECORDS COVERING THE OPERATION OF YOUR LICENSED BUSINESS FOR A PERIOD OF 2 YEARS CONCERNING THE LOCAL OPTION SMALL GAMES OF CHANCE ACT. (LL and Small Games of Chance Act)
September 27, 2006.

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 Counts 1, 2, 3, 4 and 5 of Citation No. 09-1679.

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 Counts 1, 2 and 3 of Citation No. 07-1537.

ORDER

(A) Consolidation of Citations:

IT IS HEREBY ORDERED that the Adjudication issued by this Court in Citation 07-1537 [Mailing Date: October 15, 2009] the same of which was held in abeyance at the request of counsel, be merged with and consolidated with the present adjudication. Both cases share similar facts and legal issues and this Court finds and concludes that it is in the public interest and in the interest of judicial economy to consolidate and merge these cases for Adjudication purposes only.

To that end, the Order found at 07-1537 is hereby VACATED and the Adjudications are hereby consolidated and merged.

(B) Imposition of Fine:

THE LICENSEE IS ORDERED to pay the fine of \$7,000.00 (\$2,000 from Adjudication 07-1537; \$5,000 from Adjudication 09-1679 - \$1,000 per count) within 20 days of the mailing date of this Order. In the event the fine is not paid within 20 days from the mailing date of this Order, the Licensee will be found in violation of the terms of probation as set forth below.

(C) Suspension of Licensee:

IT IS FURTHER ORDERED that the Licensee's club liquor license No. CC-5354, including all permits, (except for the LOSGCA Permit issued by the Cumberland County Treasurer) be suspended for a period of sixty days [20 days with respect to Citation 07-1537; 40 days with respect to Citation 09-1679 (Count 1: 5 days; Count 2: 5 days; Count 3: 10 days; Count 4: 10 days and Count 5: 10 days)]. The sixty days suspension is held in abeyance in favor of a period of probation as set forth below.

(D) Disgorgement of LOSGCA Proceeds:

IT IS FURTHER ORDERED that pursuant to this Court's Adjudication in 07-1537, the Licensee is ORDERED to disgorge the amount of \$1,000,000.00 to be paid to legitimate charities, the same of which is held in abeyance pursuant to the terms of probation as set forth below.

(E) Probation:

IT IS FURTHER ORDERED that the Licensee is to undergo a period of probation as follows:

1. The Licensee will comply with the Liquor Code and the LOSGCA and its intended regulations.
2. The term of probation will begin with the issuance of the within Order and continue for a period of at least one year expiring on either of the expiration of one (1) calendar year from the mailing date of this adjudication or the expiration of the consolidated Order and probation agreement issued by the Cumberland County Court of Common Pleas whichever is later.
3. The Licensee will pay the sum of \$1,000,000.00 to legitimate charities previously selected by the Licensee and approved by this Court. The sum of \$750,000.00 will be paid to the selected charities upon issuance of the Order of the Court of Common Pleas approving of the consent agreement.

4. Correspondence identifying the selected charities and copies of the subject checks will be filed by the Licensee with the Court of Common Pleas and with the Bureau within five (5) business days of payment.

5. The Licensee will pay the remaining \$250,000.00 within one year of the execution of the consent agreement to legitimate charities of its own choosing.

6. Correspondence identifying the selected charities and copies of the subject checks will be filed by the Licensee with the Court and with the Bureau within five (5) business days of payment.

7. Upon notification by the Court of Common Pleas or the Bureau that the Licensee has satisfied the terms of probation as set forth above, this Court will mark the aforementioned sixty days suspension as VACATED.

8. Licensee's failure to comply with any of the provisions of this Order will constitute a violation of probation and cause the full sixty (60) days to be served on dates specified in a Supplemental Order of this Court.

(F) Abeyance:

IT IS FURTHER ORDERED that Section (C), (D) and (E) of this Order is held in abeyance for a period of sixty (60) days in order to facilitate the parties completion of the Consent Agreement and Order for the Court of Common Pleas

Jurisdiction is retained pending final resolution of these consolidated cases in the Court of Common Pleas.

Dated this 4TH day of March, 2011.



Daniel T. Flaherty, Jr., J.

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 submit 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.** Make 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. 09-1679 and 07-1537
(As Consolidated)