

Mailing Date: JUNE 04 2010

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 09-1793
LIQUOR CONTROL ENFORCEMENT	:	
	:	
v.	:	Incident No. W08-382342
	:	
EN FUEGO INC	:	
T/A PLAYERS BAR AND GRILL	:	LID-39512
275 SENECA ST	:	
OIL CITY PA 16301-1303	:	
	:	
	:	
VENANGO COUNTY	:	
LICENSE NO. R-AP-SS-13118	:	

ADJUDICATION

JUDGE: ROBERT F. SKWARYK

APPEARANCES:

BUREAU COUNSEL: Emily L. Gustave, Esq.

LICENSEE COUNSEL: Michael Hadley, Esq.

BACKGROUND:

This proceeding arises out of a citation that was issued on August 3, 2009, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter Bureau) against En Fuego, Inc., T/A Players Bar and Grill, License Number R-AP-SS-13118 (hereinafter Licensee).

The citation charges Licensee with violation of Section 471 of the Liquor Code [47 P.S. §4-471], in that on, September 11, 14, 18, 21, 25, 28, October 2, 5, 9, 12, 16, 19, 23, 26, 30, November 2, 6, 9, 13, 16, 20, 23, 27, 30, December 4, 7, 11, 14, 18, 21, 2008, January 15, 22, 25, 29, February 5, 8, 12, 15, 19, 22, 26, March 1, 5, 8, 12, 15, 19, 26, May 28, 31 and June 3, 2009, Licensee, by its servants, agents or employees, possessed or operated gambling devices or paraphernalia or permitted gambling or lotteries, poolselling and/or bookmaking on the licensed premises.

The investigation which gave rise to the citation began on October 3, 2008, and was completed on June 21, 2009. The notice of violation letter was mailed to Licensee on July 17, 2009.

An evidentiary hearing was held on this matter on February 24, 2010, in Erie, Pennsylvania.

Upon review of the transcript of the hearing and the Pre-Hearing Memorandum, we make the following Findings of Fact and reach the following Conclusions of Law:

FINDINGS OF FACT:

1. Licensee is a corporation located in Venango County, Pennsylvania and holds Restaurant Liquor license number R-AP-SS-13118. (N.T. 4).
2. On October 24, 2008, an enforcement officer spoke with Licensee's bartender about Licensee's poker tournament. (N.T. 14-15).
3. On Sunday, November 23, 2008, an enforcement officer entered the licensed premises and found a Texas Hold 'Em poker tournament taking place. (N.T. 16).
4. Licensee's tournament was patterned after the World Tavern Poker Texas Hold 'Em poker tournament. (N.T. 62).
5. The bartender informed the officer, in an area of the dance floor, that it cost \$5.00 to enter the tournament with the nightly winner being paid a \$25.00 gift certificate for use in the premises, and a \$250.00 cash winner at the completion of the Tuesday and Sunday night tournaments. (N.T. 17, 28, 53-56).
6. Licensee's bartender and tournament organizer told the officer that a new tournament would take place in January, 2009. (N.T. 17-18).
7. Licensee held two seasons of Texas Hold 'Em poker tournaments consisting of 13 weeks per season and two nights per week, for a total of 52 nights of Texas Hold 'Em poker. (N.T. 57, Exhibit C-3).
8. On January 22, 2009, the officer returned to the licensed premises and found individuals playing in a new Texas Hold 'Em poker tournament taking place on Thursdays and Sundays, costing \$5.00 to participate in and the winner receiving a \$25.00 bar tab and \$500.00 at the end of the tournament, fourteen weeks later. (N.T. 18-20).
9. The tournament took place in an area of the dance floor with a sign stating "\$5.00 cover charge to enter." (N.T. 28, 53-56, Exhibit L-1).
10. On Thursday, January 29, 2009, at 7:20 p.m., the officer returned to the licensed premises and paid \$5.00 to enter the Texas Hold 'Em poker tournament to the bartender, which was placed in an envelope inside the cash register. (N.T. 20-21).
11. The officer observed other individuals pay \$5.00 to play poker. (N.T. 21).

12. The officer used a fictitious name, Doug Kelly, when he signed the tournament sheet, and chose a token which determined his position and table in the Texas Hold ‘Em poker tournament, (N.T. 21, 30, 44, 47, Exhibit C-3).

13. The officer played and won; however, he did not receive anything of value, including the \$25.00 gift certificate for his bar tab, and was told by the organizer that the only award was at the end of the tournament. (N.T. 23-24).

14. On Thursday, February 12, 2009, the officer returned to the licensed premises and again paid \$5.00 to play in the poker tournament; however, he did not win and departed at 10:25 p.m. (N.T. 24).

15. The officer had accumulated enough points to play in the tournament. (N.T. 29-30, 44, 47-48).

16. On Thursday, March 26, 2009, the officer telephoned the premises to learn the date of the championship tournament and was told by a bartender that the 11th place person participated in his place. (N.T. 25).

17. On May 1, 2009, the officer returned to the licensed premises and found no Texas Hold ‘Em poker signs and was told that there would be no more poker tournaments.

18. During his investigation the officer never received or saw a reward or bar tab paid out, except for points accrued to play in the tournament championship. (N.T. 29, 44, 47-48, 53-56, 60).

19. On occasion Licensee did award gift certificates for a first, second or third place finish. (N.T. 56-57).

20. On June 3, 2009, at 5:40 p.m., a second enforcement officer conducted a routine inspection of the licensed premises, met with president, William Hadley, and observed a clipboard with a Billy’s tournament sign up sheet for Thursday and Sunday poker dated May 28, 2009, and Sunday poker results for spring, 2009. (N.T. 33-34).

21. After conferring with his supervisor and Licensee’s attorney, the officer seized a total of 52 tournament sign up sheets and the poker result sheets from the bar area and the office area without a search warrant. (N.T. 35-43, Exhibit C-3).

22. The officer departed the premises at 7:30 p.m. (N.T. 41).

23. Approximately 8 to 15 poker players attended the tournament each night during the two seasons. (N.T. 58, Exhibit C-3).

24. Licensee stopped hosting the Texas Hold ‘Em poker tournaments after the BLCE seized the tournament sheets and poker result sheets on June 3, 2009. (N.T. 63-64, 66).

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CONCLUSION OF LAW:

Sustained as charged.

DISCUSSION:

At the hearing held on the matter, counsel for the Licensee moved that the citation be quashed because the charge was too vague and an unconstitutional delegation of legislative power.

Licensee was charged with violating Section 471 of the Liquor Code for permitting gambling in the licensed premises on 51 listed dates from September 11 to June 3, 2009.

When a citation informs the Licensee as to the type and date of the alleged violation, it comports with due process requirements, Com., Pa. Liquor Control Bd. v. Reda, 463 A.2d 108 (Pa. Cmwlth. 1983). Further, the other sufficient cause language of Section 471 has been held to be constitutional. Matter of Revoc. Of Rest. Liq. License, 467 A.2d 85 (Pa. Cmwlth. 1983).

I find that the citation meets all necessary legal standards; therefore, Licensee's motion to quash is denied.

At the hearing held on the matter, an enforcement officer testified in detail as to participating in the second season of Licensee's Texas Hold 'Em poker tournament by paying \$5.00 to enter the special poker tournament playing area with the potential to win a \$25.00 drink gift certificate per day and a \$250.00 tournament prize. He played on January 27, 2009 and February 12, 2009, and won enough points to play in the tournament final, but was not called to play in it. A second officer testified as to conducting a routine inspection of the premises and seizing 52 tournament sign up sheets and poker result sheets without a warrant. Licensee objected to the warrantless search; however, it was proper under Section 211 of the Liquor Code, In re Catering Club Liquor License, etc., 438 A.2d 662 (Pa. Cmwlth. 1981).

Licensee's president testified that he held the tournament, patterned after the World Tavern Texas Hold 'Em poker tournament, to accommodate his patrons. He telephoned the Board's legal bureau for guidance, but did not receive an opinion letter. He also did research on the internet. (N.T. 53).

Poker playing on a licensed premises constitutes gambling and is sufficient cause to invoke sanctions for violation of the Liquor Code. PLCB v. Kehler, 538 A.2d 979 (Pa. Cmwlth. 1988).

Gambling consists of three elements, consideration, chance and reward. PLCB v. PPC Circus Bar, Inc., 506 A.2d 522, (Pa. Cmwlth. 1986). In this case, the \$5.00 entrance fee is the consideration, the chance is the drawing of cards and choosing a token for player position and table, and the element of reward is the \$25.00 gift certificate or the \$250.00 tournament prize.

Counsel for Licensee argued that Texas Hold 'Em is a game of skill, not chance and cited a case from Columbia County, Pa. However, this case was reversed on appeal. Commonwealth v. Dent, 2010 Pa. Super. 47 (Pa. Super. 2010).

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As such, the citation is sustained as charged.

PRIOR RECORD:

Licensee has been licensed since November 22, 1996, and has six (6) prior violations; to wit:

Citation No. 97-2013. Fine \$150.00.

1. Not a bona fide restaurant in that you failed to provide food upon request.
2. Not a bona fide restaurant in that food items, eating utensils and dishes were insufficient.

Citation No. 98-1524. Fine \$400.00.

1. Not a bona fide restaurant in that you failed to provide food upon request.
2. Used loudspeakers or similar devices whereby music could be heard outside.
3. Sold malt or brewed beverages in excess of 192 fluid ounces in a single sale consumption off premises.

Citation No. 00-1038. Fine \$100.00.

1. Discounted the price of alcoholic beverages between 12:00 midnight and 2:00 a.m.

Citation No. 02-0099. Fine \$1,000.00 and 7 days suspension of amusement permit.

1. Used loudspeakers or similar devices whereby music could be heard outside.
2. Noisy and/or disorderly operation.

Citation No. 08-0635C. Fine \$1,250.00 and R.A.M.P. training mandated.

1. Sales to a minor.
February 14, 2008.

Citation No. 08-2778C. Fine \$1,250.00.

1. Sales to a minor.
October 29, 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 a violation of the type found in this case.

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Further, Section 471(c) of the Liquor Code [47 P.S. §4-471(c)] requires that the penalty imposed for the citation include license revocation or suspension where the violation in question is the third or subsequent violation of any of the offenses referred to in subsection 471(b) of the Liquor Code [47 P.S. §4-471(b)] and/or the Crimes Code within a four year period. The following Adjudication No's., in combination with this citation, require that license revocation or suspension be included as part of the penalty: 08-0635C and 08-2778C.

After due consideration of the circumstances giving rise to the citation and Licensee's citation history, a fine of \$400.00 and a one (1) day suspension will be imposed as the penalty in this case.

ORDER:

THEREFORE, it is hereby ordered that Licensee, En Fuego, Inc, T/A Players Bar and Grill, pay a fine of \$400.00 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.

IT IS ALSO ORDERED that the restaurant liquor license of Licensee, En Fuego, Inc, T/A Players Bar and Grill, be suspended for a period of one day **BEGINNING** at 7:00 a.m., on Monday, July 26, 2010, and **ENDING** at 7:00 a.m. on Tuesday, July 27, 2010. Licensee is directed on Monday, July 26, 2010, at 7:00 a.m. to place the enclosed 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 Tuesday, July 27, 2010, at 7:00 a.m. to remove the placard of suspension and return his license to its original wall location.

JURISDICTION IS RETAINED UNTIL CASE IS CLOSED.

Dated this 1ST day of JUNE, 2010.



Robert F. Skwaryk, J.

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MOTIONS FOR RECONSIDERATION MUST BE RECEIVED WITHIN 15 DAYS OF THE MAILING DATE OF THIS ORDER TO THE OFFICE OF ADMINISTRATIVE LAW JUDGE AND REQUIRE A \$25.00 FILING FEE. A WRITTEN REQUEST FOR RECONSIDERATION MUST BE SUBMITTED WITH THE 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 PA 17110-9661

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