

Mailing Date: October 26, 2011

PENNSYLVANIA LIQUOR CONTROL BOARD
HARRISBURG, PA 17124-0001

PENNSYLVANIA STATE POLICE,	:	Citation No. 10-1368
BUREAU OF LIQUOR CONTROL	:	
ENFORCEMENT	:	
	:	License No. CC-1370
v.	:	
	:	
HOME ASSOCIATION	:	LID 3131
BURT J. ASPER POST NO. 46	:	
AMERICAN LEGION	:	
755 Philadelphia Avenue	:	
Chambersburg, PA 17201-1266	:	

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OPINION

Home Association Burt J. Asper Post No. 46 American Legion (“Licensee”) and the Pennsylvania State Police, Bureau of Liquor Control Enforcement (“Bureau”) cross appeal the March 11, 2011 Adjudication and

Order of Administrative Law Judge Felix Thau (“ALJ”), wherein the ALJ sustained the first count of Citation No. 10-1368 (“the Citation”) and consequently revoked Licensee’s license, but dismissed the second count of the Citation.

The first count of the Citation alleged that, during the periods September 20 through September 26, 2009, October 18 through October 24, 2009, November 15 through November 21, 2009, December 13 through December 19, 2009, January 17 through January 23, 2010, and February 7 through February 13, 2010, Licensee, by its servants, agents or employees, offered and/or awarded more than five thousand dollars (\$5,000.00) in cash or merchandise in a seven (7)-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 (“LOSGCA”) [10 P.S. § 315(b)]. [N.T. 7, 128; Ex. C-2].

The second count of the Citation alleged that, during the period January 1, 2009 through December 31, 2009, Licensee used funds derived from the operation of small games of chance 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 LOSGCA [10 P.S. § 314], and section 901 of the Department of Revenue’s Regulations [61 Pa. Code § 901.701(b)]. [N.T. 7, 128; Ex. C-2].

On February 23, 2011, an evidentiary hearing on the Citation was held before the ALJ. Bureau Officer Jerome D. Botchie (“Officer Botchie”) appeared at the hearing and testified on behalf of the Bureau. Although Licensee was represented by counsel, no witnesses appeared at the hearing and testified on behalf of Licensee.

The record created at the evidentiary hearing held in this matter reveals the following. After receiving a complaint that Licensee was conducting football pools and committing small games of chance violations, the Bureau opened an investigation into Licensee’s operations on November 12, 2009. [N.T. 10]. As part of this investigation, Officer Botchie and another Bureau officer visited the licensed premises on February 22, 2010, in order to conduct a routine inspection. [N.T. 14-15]. While conducting this routine inspection, some of Licensee’s officers provided Officer Botchie and the other Bureau officer with access to the safe, where they found Licensee’s “Jurisdictional Tip Jar Report,” which is used to keep records for small games of chance. [N.T. 21-22].

On March 24, 2010, Officer Botchie examined Licensee’s “Jurisdictional Tip Jar Report.” [N.T. 27]. In doing so, Officer Botchie randomly selected one (1) week out of each month from September 2009 through February 2010 to examine. [N.T. 29]. Specifically, Officer Botchie selected the following weeks

to review: September 9, 2009 through September 26, 2009; October 18, 2009 through October 24, 2009; November 15, 2009 through November 21, 2009; December 13, 2009 through December 19, 2009; January 17, 2010 through January 23, 2010; and February 7, 2010 through February 13, 2010. [N.T. 29-31]. Licensee's "Jurisdictional Tip Jar Report" showed that Licensee awarded small games of chance prizes as follows: eight thousand seven hundred forty-seven dollars (\$8,747.00) for the week of September 20, 2009 through September 26, 2009; sixty-nine thousand seven hundred twenty-two dollars (\$69,722.00) in prizes for the week of October 18, 2009 through October 24, 2009; seventy-two thousand two hundred ten dollars (\$72,210.00) in prizes for the week of November 15, 2009 through November 21, 2009; sixty-four thousand two hundred fourteen dollars (\$64,214.00) in prizes for the week of December 13, 2009 through December 19, 2009; one hundred nine thousand fourteen dollars (\$109,014.00) in prizes for the week January 17, 2010 through January 23, 2010; and ninety-three thousand eight hundred nineteen dollars (\$93,819.00) in prizes for the week of February 7, 2010 through February 13, 2010. [N.T. 32, 35-36, 40, 128; Ex. C-3].

Officer Botchie returned to the licensed premises on April 8, 2010, at which time he met with several of Licensee's officers in an effort to obtain

information regarding Licensee's use of proceeds derived from small games of chance. [N.T. 40-41]. Licensee's officers provided Officer Botchie with Licensee's profit and loss statements for the period covering January 1, 2009 through December 31, 2009. [N.T. 41, 128; Ex. C-4].

Looking at Licensee's profit and loss statements, Officer Botchie determined the following regarding the period covering January 1, 2009 through December 31, 2009. Licensee's total net income for small games of chance was three hundred forty-eight thousand two hundred forty-nine dollars (\$348,249.00). [N.T. 41, 63, 128; Ex. C-4]. Licensee's total income from sources other than small games of chance was three hundred fifty-two thousand six hundred one dollars and four cents (\$352,601.04). [N.T. 41, 61-62, 65, 128; Exs. C-4, C-6]. Licensee's total cost of goods was two hundred eighty-four thousand five hundred sixty-three dollars and sixty-seven cents (\$284,563.67). [N.T. 41, 66, 128; Exs. C-4, C-6]. Licensee's total operating expenses were five hundred fifty-five thousand one hundred fifty-two dollars and thirty-two cents (\$555,152.32). [N.T. 41, 67, 128; Exs. C-4, C-6]. Licensee's total expenses (i.e., cost of goods and operating expenses combined) were eight hundred forty thousand fifteen dollars and ninety-nine cents (\$840,015.99). [N.T. 41, 67, 128; Exs. C-4, C-6]. Licensee's total net income (i.e., total income minus total

expenses) was negative one hundred thirty-nine thousand one hundred sixty-five dollars and ninety five cents (-\$139,165.95). [N.T. 41, 65, 68, 128; Exs. C-4, C-6].

Officer Botchie also noticed that Licensee's profit and loss statements showed that Licensee had made a total of three hundred fifty dollars (\$350.00) in donations during the period in question. [N.T. 41, 45, 128; Ex. C-4]. However, Officer Botchie did not believe that this figure accurately represented Licensee's total donations, and questioned Licensee's officers regarding the same. [N.T. 47]. Licensee's Officers advised Officer Botchie that the Post, the Sons of Legion, and the Ladies Auxiliary had all made donations during the period of time in question. [N.T. 45-47]. They further explained that all three (3) of these organizations use Licensee's small games of chance permit. [N.T. 47]. Licensee's officers provided Officer Botchie with additional records regarding donations on April 17 and May 14, 2010. [N.T. 47, 54-57, 128; Ex. C-5]. After looking at all of the documents that he had received regarding donations, Officer Botchie determined that Licensee and its auxiliary organizations had made a total of twenty-one thousand seven hundred forty-six dollars and forty-six cents (\$21,786.46) in donations during the period in question. [N.T. 60; Exs. C-4, C-5]. Officer Botchie further determined that Licensee spent a total of

thirty-four thousand nine hundred thirty-seven dollars (\$34,937.00) on purchasing additional small games of chance. [N.T. 41, 75, 128; Ex. C-4]. Thus, by subtracting the sum of Licensee's donations and small games of chance expenditures from Licensee's total small games of chance income, Officer Botchie determined that Licensee had a total of two hundred ninety-one thousand five hundred twenty-four dollars and ninety-nine cents (\$291,524.99) in small games of chance proceeds that had been used for purposes other than those permitted by law. [N.T. 75].

On March 11, 2011, the ALJ issued his Adjudication and Order. With regard to the first count of the Citation, the ALJ found that Licensee had paid out prize amounts for small games of chance that exceeded the five thousand dollar (\$5,000.00) weekly prize limit in six (6) different seven (7)-day periods as follows: September 20 through September 26, 2009—eight thousand seven hundred forty-seven dollars (\$8,747.00); October 18 through October 24, 2009—sixty-nine thousand seven hundred twenty-two dollars (\$69,722.00); November 15 through November 21, 2009—seventy-two thousand two hundred ten dollars (\$72,210.00); December 13 through December 19, 2009—sixty-four thousand two hundred fourteen dollars (\$64,214.00); January 17 through January 23, 2010—one hundred nine thousand fourteen dollars

(\$109,014.00); and February 7 through February 13, 2010—ninety-three thousand eight hundred nineteen dollars (\$93,819.00). [ALJ Adjudication, Findings of Fact (“FOF”) ¶10]. As a result, the ALJ sustained the first count of the Citation. [ALJ Adjudication, Conclusions of Law (“COL”) ¶ 1].

However, with regard to second count of the Citation, the ALJ explained that he was not making any findings of fact because the basis for the charge set forth in the second count required expert evaluation, and the Bureau failed to present an accounting expert to prove the charge. [ALJ Adjudication, Discussion at 4]. The ALJ further explained that the Bureau’s rationale in attempting to prove that small games of chance proceeds were improperly used was flawed because the Bureau failed to ascertain Licensee’s overall accounting balance prior to January 1, 2009 and at the end of December 2009. [ALJ Adjudication, Discussion at 5]. The ALJ also noted that small games of chance proceeds do not need to be spent within the same period in which they are collected. [ALJ Adjudication, Discussion at 5]. As a result, the ALJ ultimately concluded that the Bureau failed to prove that Licensee had used funds derived from the operation of small games of chance for purposes other than those authorized by law in violation of section 314 of the LOSGCA and section 901.701(b) of the Department of Revenue’s Regulations during the

period spanning January 1, 2009 through December 31, 2009. [ALJ Adjudication, COL ¶ 2]. Therefore, the ALJ dismissed the second count of the Citation.

Nevertheless, based on his determination that Licensee had violated section 315 of the LOSGCA by exceeding the weekly prize limit, which was Licensee's fourth such violation since 2006, the ALJ revoked Licensee's license effective at 7:00 a.m., on Monday, May 2, 2011.

On March 24, 2011, Licensee filed an Application for Reconsideration with the ALJ, arguing that the ALJ had exceeded his authority by revoking Licensee's license and that the penalty of revocation was excessive. [Application for Reconsideration, March 24, 2011]. However, by Opinion and Order Upon Licensee's Application for Reconsideration mailed March 31, 2011, the ALJ denied reconsideration. [Opinion and Order Upon Licensee's Application for Reconsideration, March 31, 2011].

Licensee now timely appeals the ALJ's Adjudication and Order, challenging the ALJ's revocation of its license. The Bureau also timely cross appeals the ALJ's Adjudication and Order, challenging the ALJ's dismissal of the second count of the Citation.

Pursuant to section 471 of the Liquor Code, the appeals 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 has defined “substantial evidence” as such relevant evidence as a reasonable person might accept as adequate to support a conclusion. Joy Global, Inc. v. Worker’s Compensation Appeal Board (Hogue), 876 A.2d 1098 (Pa. Cmwlth. 2005); Chapman v. Pennsylvania Board of Probation and Parole, 86 Pa. Cmwlth. 49, 484 A.2d 413 (1984).

The Board will begin by considering Licensee’s appeal. In its appeal, Licensee argues that the ALJ erred and/or abused his discretion by revoking Licensee’s license with regard to the first count of the Citation. Licensee contends that the penalty of revocation was excessive because it was imposed based on Licensee’s violations of the LOSGCA, which is a quasi-criminal statute. Licensee asserts that because the ALJ lacked the authority to impose the penalty of revocation or suspension of Licensee’s small games of chance permit, the ALJ exceeded his authority by revoking Licensee’s license. Alternatively, Licensee argues that even if the ALJ did not exceed his authority, the penalty of revocation was excessive under the circumstances of this case

because Licensee did not violate any provisions of the Liquor Code and has otherwise upheld its responsibilities as a licensee.

In response, the Bureau argues that the ALJ did not err and/or abuse his discretion by revoking Licensee's license as the penalty for the first count of the Citation. The Bureau contends that the evidence of record clearly demonstrates that during six (6) randomly selected seven (7)-day periods, Licensee exceeded the five thousand dollar (\$5,000.00) weekly prize limit by thousands of dollars, in violation of section 315(b) of the LOSGCA [10 P.S. § 315(b)]. The Bureau further contends that the ALJ acted within the scope of his statutory authority by revoking Licensee's license as the penalty for Licensee's violation of section 315(b). Additionally, the Bureau contends that the penalty of revocation was particularly appropriate here since Licensee's violation of section 315(b) in the instant matter was Licensee's fourth such violation since 2006.

The Board agrees with the Bureau that the ALJ did not err and/or abuse his discretion by revoking Licensee's license as the penalty for the first count of the Citation.

The first count of the Citation charged Licensee with violating section 315(b) of the LOSGCA [10 P.S. § 315(b)] for awarding more than five thousand

dollars (\$5,000.00) in cash or merchandise in a seven (7)-day period during the periods September 20, 2009 through September 26, 2009, October 18, 2009 through October 24, 2009, November 15, 2009 through November 21, 2009, December 13, 2009 through December 19, 2009, January 17, 2010 through January 23, 2010, and February 7, 2010 through February 13, 2010. Section 315(b) of the LOSGCA provides that “[n]o more than \$5,000 in cash or merchandise shall be awarded by any eligible organization in any seven-day period.” [10 P.S. § 315(b)]. At the hearing, Officer Botchie testified that he randomly selected one (1) week out of each month from September 2009 through February 2010 to review on Licensee’s “Jurisdictional Tip Jar Report,” and such report showed that Licensee awarded small games of chance prizes as follows: eight thousand seven hundred forty-seven dollars (\$8,747.00) for the week of September 20, 2009 through September 26, 2009; sixty-nine thousand seven hundred twenty-two dollars (\$69,722.00) in prizes for the week of October 18, 2009 through October 24, 2009; seventy-two thousand two hundred ten dollars (\$72,210.00) in prizes for the week of November 15, 2009 through November 21, 2009; sixty-four thousand two hundred fourteen dollars (\$64,214.00) in prizes for the week of December 13, 2009 through December 19, 2009; one hundred nine thousand fourteen dollars (\$109,014.00)

in prizes for the week January 17, 2010 through January 23, 2010; and ninety-three thousand eight hundred nineteen dollars (\$93,819.00) in prizes for the week of February 7, 2010 through February 13, 2010. Based on Officer Botchie's uncontested testimony,¹ the ALJ concluded that Licensee violated section 315(b) of the LOSGCA by exceeding the weekly prize limit of five thousand dollars (\$5,000.00) during the weeks set forth in the first count of the Citation. As a penalty for this violation, the ALJ revoked Licensee's license.

The imposition of penalties is the exclusive prerogative of the administrative law judge. The Board may not disturb penalties imposed by an administrative law judge if they are within the parameters set forth in section 471 of the Liquor Code [47 P.S. § 4-471].

While Licensee asserts that the ALJ acted beyond the parameters of section 471 by revoking Licensee's license for a violation of the LOSGCA, the Board disagrees. Section 471 of the Liquor Code provides, in pertinent part, as follows:

(a) Upon learning of any violation of this act or any laws of this Commonwealth relating to liquor, alcohol or malt or brewed beverages, or any regulations of the board adopted pursuant to such laws, or any violation of any laws of this Commonwealth or the Federal Government relating to the payment of taxes on

¹ Licensee's counsel acknowledged during the hearing that Licensee does not dispute the evidence presented by the Bureau with regard to the first count of the Citation. [N.T. 113].

liquor, alcohol or malt or brewed beverages by any licensee within the scope of this article, his officers, servants, agents or employes, *or upon any other sufficient cause shown*, the enforcement bureau may, within one year from the date of such violation or cause appearing, cite such licensee to appear before an administrative law judge, not less than ten nor more than sixty days from the date of sending such licensee, by registered mail, a notice addressed to him at his licensed premises, to show cause why such license should not be suspended or revoked or a fine imposed, or both. The bureau shall also send a copy of the hearing notice to the municipality in which the premises is located.

(b) Hearing on such citations shall be held in the same manner as provided herein for hearings on applications for license. Upon such hearing, if satisfied that any such violation has occurred or for other sufficient cause, the administrative law judge shall immediately suspend or revoke the license, or impose a fine of not less than fifty dollars (\$50) nor more than one thousand dollars (\$1,000), or both, notifying the licensee by registered letter addressed to the licensed premises. . . .

(c) The administrative law judge may consider the licensee's prior citation history when imposing a penalty. If the violation in question is a third or subsequent violation of an offense referred to in subsection (b) or Title 18 of the Pennsylvania Consolidated Statutes (relating to crimes and offenses), occurring within a period of four years, the administrative law judge shall impose a suspension or revocation.

[47 P.S. § 4-471(a)-(c) (emphasis added)].

In Pennsylvania State Police, Bureau of Liquor Control Enforcement v. Harrisburg Knights of Columbus Home Association, 989 A.2d 39 (Pa. Cmwlth. 2009), the Commonwealth Court of Pennsylvania was asked to determine

whether the Bureau has the authority to cite licensees, pursuant to section 471(a) of the Liquor Code, for violations of the LOSGCA. *Id.* at 43. Significantly, the Court determined that the Bureau has jurisdiction to issue citations to licensees for violations of the LOSGCA since such violations would constitute “other sufficient cause shown” as set forth in section 471(a). *Id.* at 44.

Because section 471 grants the Bureau the authority to issue citations to licensees for violations of the LOSGCA, and because section 471 further grants administrative law judges the authority to hold hearings and suspend or revoke a licensee’s license and/or impose fines with regard to citations issued by the Bureau, the Board concludes that the ALJ did not exceed the authority granted to him by section 471 in revoking Licensee’s license.

Moreover, the Board cannot agree with Licensee that the penalty of revocation was excessive under the circumstances of this case. Section 471(c) of the Liquor Code expressly permits administrative law judges to consider a licensee’s prior citation history when fashioning a penalty. [47 P.S. § 4-471(c)]. As the ALJ and the Bureau correctly observed, Licensee’s violation of section 315(b) in the instant matter was Licensee’s fourth such violation since 2006. Further, even if Licensee’s prior citations were removed from consideration, Licensee did not simply exceed the weekly prize limit by a few dollars on one

(1) occasion with regard to the current violation. Rather, Licensee exceeded the weekly prize limit by thousands of dollars on at least six (6) different occasions during the course of a year. And, on five (5) of those six (6) occasions, Licensee exceeded the weekly prize limit by tens of thousands of dollars. Given Licensee's repeated violations of section 315(b) and the egregious nature of the current violation, revocation was clearly warranted in this case.

Furthermore, although Licensee argues that the penalty of revocation was excessive because Licensee did not actually violate the Liquor Code, the Board again cannot agree. As the holder of a liquor license, Licensee had the responsibility to adhere to all of the laws of this Commonwealth, including the LOSGCA, while operating the licensed premises. Licensee's failure to properly adhere to the LOSGCA demonstrates a disregard for its responsibilities as a licensee and constitutes an abuse of the licensing privilege.

Therefore, the Board concludes that the ALJ did not err and/or abuse his discretion in revoking Licensee's license with regard to the first count of the Citation.

The Board now turns to the Bureau's cross-appeal. In its cross-appeal, the Bureau argues that the ALJ capriciously disregarded competent evidence

by failing to make findings of fact with regard to the second count of the Citation based on the fact that the Bureau did not present testimony from an accounting expert. The Bureau further argues that the ALJ erred in dismissing the second count of the Citation because the Bureau was only required to show that Licensee failed to use its small games of chance proceeds for either a public interest purpose or the purchase of additional small games of chance, which it did. The Bureau asserts that it was not required to affirmatively prove how each dollar of Licensee’s small games of chance proceeds were expended and was not required to present an expert witness to prove that a violation of section 314 of the LOSGCA [10 P.S. § 314] and section 901.701(b) of the Department of Revenue’s Regulations [61 Pa. Code § 901.701(b)] occurred.

Section 314 of the LOSGCA requires that “[a]ll proceeds of games of chance shall be used exclusively for public interest purposes or for the purchase of games of chance permitted by this act.” [10 P.S. § 314]. Similarly, section 901.701(b) of the Department of Revenue’s Regulations provides that “[a] licensed eligible organization shall use games of chance proceeds exclusively for public interest purposes or for the purchase of games of chance permitted by this act” [61 Pa. Code § 901.701(b)]. Section 313 of the LOSGCA defines “public interest purposes” as:

One or more of the following:

- (1) Benefiting persons by enhancing their opportunity for religious or education advancement, by relieving or protecting them from disease, suffering or distress, by contributing to their physical, emotional or social well-being, by assisting them in establishing themselves in life as worthy and useful citizens or by increasing their comprehension of and devotion to the principles upon which this nation was founded.
- (2) Initiating, performing or fostering worthy public works or enabling or furthering the erection or maintenance of public structures.
- (3) Lessening the burdens borne by government or voluntarily supporting, augmenting or supplementing services which government would normally render to the people.
- (4) Improving, expanding, maintaining or repairing real property owned or leased by an eligible organization and used for purposes specified in paragraphs (1), (2) and (3).

The term does not include the erection or acquisition of any real property, unless the property will be used exclusively for one or more of the purposes specified in this definition.

[10 P.S. § 313].

There are at least three (3) ways to establish a violation of section 314 of the LOSGCA or section 901.701(b) of the Department of Revenue's Regulations:

- (1) through an admission by a licensee that small games of chance proceeds were used for purposes other than those permitted by law;
- (2) through the

proper presentation of records which directly demonstrate that a licensee has used small games of chance proceeds for purposes other than those permitted by law; or (3) through the proper presentation of circumstantial record evidence from which an inference can clearly be drawn that a licensee used small games of chance proceeds for purposes other than those permitted by law.

In the instant case, the Bureau attempted to use the latter of these three (3) methods to establish that Licensee had violated section 314 of the LOSGCA and section 901.701(b) of the Department of Revenue's Regulations. Unlike the ALJ, the Board does not believe that expert accounting testimony is necessary to prove a violation of section 314 of the LOSGCA and section 901.701(b) of the Department of Revenue's Regulations using this circumstantial evidence approach.² As the individual who conducted the investigation in this matter, Officer Botchie was adequately qualified to testify as to the content of the records that were introduced by the Bureau. Thus, to the extent that the ALJ

² While testimony from an accounting expert is unnecessary, testimony from someone with accounting experience could certainly be beneficial in helping an administrative law judge, as well as the Board, to understand the records being presented and the theories being advanced.

determined that an accounting expert was necessary in this case, the Board concludes that the ALJ committed an error of law.³

However, considering the records that were introduced and the testimony that was presented by Officer Botchie, the Board cannot agree with the Bureau that sufficient testimony and evidence was presented from which a clear inference could be drawn that Licensee used small games of chance proceeds for a purpose other than those permitted by law. While the Bureau presented Licensee's profit and loss statements for the period covering January 1, 2009 through December 31, 2009, which reveal significant information about what Licensee earned and spent during that particular period, those records do not, by themselves, establish that Licensee used small games of chance proceeds for purposes other than those permitted by law. As the ALJ correctly observed, there is no requirement that small games of chance proceeds must be spent in the same period in which they are collected. Thus, it was also necessary for the Bureau to present records showing what funds

³ Although the Bureau correctly points out that the ALJ failed to make any findings of fact regarding the second count of the Citation, the Board cannot agree with the Bureau that the ALJ capriciously disregarded competent evidence since the ALJ devoted the entire discussion portion of his Adjudication and Order to explaining why he was not sustaining the second count based on the evidence that was presented by the Bureau. The error committed by the ALJ is more appropriately characterized as an error of law. Although the ALJ committed an error of law in determining that expert testimony was necessary, the Board concludes that such error was harmless since it does not alter the outcome of this case.

Licensee had at its disposal prior to and after the applicable period, as well as records showing that Licensee did not use any of its small games of chance proceeds from the specific period in question to pay for public interest purpose commitments or additional small games of chance purchases occurring before or after the specific period in question. However, the Bureau failed to present such evidence.⁴ Therefore, the Board concludes that, based on the evidence presented, or lack thereof, the ALJ did not err and/or abuse his discretion in dismissing the second count of the Citation.⁵

For the foregoing reasons, the ALJ's Adjudication and Order is affirmed as to both counts of the Citation.

⁴ While counsel for the Bureau presented an exhibit showing the balances of Licensee's savings and checking accounts after December 31, 2009, counsel acknowledged that such exhibit was a worksheet created in preparation for the appeal and was not a document that the Bureau had obtained from Licensee. [N.T. 65, 78-79, 87, 92-93, 128; Ex. C-6]. Similarly, although the Bureau's counsel verbally conveyed what he believed the balances of Licensee's savings and checking accounts to be after December 31, 2009 [N.T. 87], the Bureau's witness, Officer Botchie, never provided any such testimony.

⁵ Given that Licensee failed to provide Licensee with more detailed records showing how its small games of chance proceeds were utilized, perhaps it would have been more appropriate for the Bureau to cite Licensee for a recordkeeping violation in this instance.

ORDER

Licensee's appeal is denied.

The Bureau's cross-appeal is also denied.

The decision of the ALJ is affirmed as to both counts of the Citation, and Licensee's license remains revoked.

Board Secretary