

Mailing Date: FEB 15 2012

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

PENNSYLVANIA STATE POLICE,	:	
BUREAU OF LIQUOR	:	Docket No.: 11-0411
CONTROL ENFORCEMENT (BLCE)	:	
	:	BLCE Incident No.: W05-425994
v.	:	
	:	PLCB LID No.: 998
ST. ROCHUS SOC. LODGE NO. 5	:	
OF THE CROATION FRATERNAL	:	PLCB License No.: CC-1561
UNION OF AMERICA	:	
610-612 BROAD ST.	:	
JOHNSTOWN, PA 15906-2524	:	
	:	
CAMBRIA COUNTY	:	

BEFORE: Administrative Law Judge Felix Thau

FOR BLCE: Michael C. Nickles, Esquire

FOR LICENSEE: Kevin J. Rozich, Esquire

ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation, containing one count, that was issued on March 14, 2011, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (Bureau) against St. Rochus Soc. Lodge No. 5 of the Croation Fraternal Union of America (Licensee).

The citation charges Licensee with a violation of Section 471 of the Liquor Code [47 P.S. §4-471] and Sections 5512 and/or 5513 and/or 5514 of the Crimes Code [18 Pa. C.S. §§5512 and/or 5513 and/or 5514]. The charge is that Licensee, by your servants, agents or

employees, on February 16, 2011, possessed or operated gambling devices or paraphernalia or permitted gambling or lotteries, poolselling and/or bookmaking on your licensed premises.

I presided at an evidentiary hearing on September 19, 2011 at the Hampton Inn, 180 Charlotte Drive, Altoona, Pennsylvania.

Therefore, I make the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT:

1. The Bureau began its investigation on February 6, 2011 and completed it on February 24, 2011. (N.T. 7)

2. The Bureau sent a notice of the alleged violation to Licensee at the licensed premises by certified mail, return receipt requested, on March 2, 2011. The notice alleged violations as charged in the citation. (Commonwealth Exhibit No. C-1, N.T. 7)

3. On February 6, 2011, at 5:30 p.m., three Bureau Enforcement Officers entered the premises, at a time when it was open and in operation selling alcohol beverages, to conduct an administrative inspection. The inspection uncovered a NASCAR pool which was used for gambling. The cost per play was \$2.00 with the winner receiving \$50.00. (N.T. 8-11)

4. The inspection further revealed that Licensee modified Small Games of Chance tickets. (N.T. 8-10)

CONCLUSIONS OF LAW:

1. The notice requirements of Liquor Code Section 471 [47 P.S. §4-471] have been satisfied.

2. The violation is sustained as charged. By modifying Small Games of Chance tickets, Licensee also violated 61 Pa. Code §901.732(b).

ADJUDICATION HISTORY:

Licensee has been licensed since January 31, 1934, and has had 7 prior Adjudications since July 1, 1987, the date the Office of Administrative Law Judge was established:

Docket No. 92-2052. Fine \$50.00.
Sales to nonmembers.

Docket No. 92-2281. Fine \$700.00.

1. Sales to nonmembers.
2. Possessed or operated gambling devices or paraphernalia or permitted gambling or lotteries on a licensed premises (poker machines).

Docket No. 95-0106. Fine \$200.00 and 3 days suspension.

Sales to nonmembers.

Docket No. 96-1546. Fine \$750.00 and 1 day suspension.

Sales to nonmembers.

Docket No. 01-1868. Fine \$900.00.

1. Possessed or operated gambling devices or permitted gambling on your licensed premises (machines).
2. Sales to nonmembers.

Docket No. 10-0489. Fine \$1,000.00.

1. Possessed or operated gambling devices or permitted gambling on your licensed premises (horse races, tickets and drawings).
February 13, 2010.
2. Sold and/or served an unlimited or indefinite amount of alcoholic beverages.
February 13, 2010.

Docket No. 10-2030. Fine \$600.00

1. Failed to maintain complete and truthful records covering the operation of small games of chance for a period of 2 years.
August 26, 2010.
2. Funds derived from the operation of games of chance were used for purposes other than those authorized by law.
August 26, 2010.

PENALTY ASSESSMENT CRITERIA:

Mandatory Requirement(s)

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 the violation found herein.

Discretionary Component(s)

The Bureau recommends an \$800.00 fine. I find the recommendation to be a bit harsh as the prize for the NASCAR pool was only \$50.00. Furthermore, Licensee has assured me there will be no more such violations. Therefore, I impose a \$200.00 fine.

ORDER:

Fine Imposition

Licensee must pay the \$200.00 fine within 20 days of the mailing date of this Adjudication. The mailing date is located in this Adjudication's first page, upper left corner. If Licensee fails to comply, the Liquor Code requires that I suspend or revoke the license.

Retaining Jurisdiction

Jurisdiction is retained to ensure compliance with this Adjudication.

Dated this 8TH day of February, 2012.



Felix Thau, A.L.J.

bc

General Information

This Adjudication is a legal document. The information which follows is a general guide. Therefore, you may want to consult with an attorney.

Applying for Reconsideration

If you want the Administrative Law Judge to reconsider this Adjudication, you must submit a written application and a nonrefundable \$25.00 filing fee. Both must be received by the Office of Administrative Law Judge, (PLCB - Office of Administrative Law Judge, Brandywine Plaza, 2221 Paxton Church Road, Harrisburg, PA 17110-9661) within fifteen days of this Adjudication's mailing date. Your application must describe the reasons for reconsideration. The full requirements for reconsideration can be found in Title 1 Pa. Code §35.241.

Appeal Rights

If you wish to appeal this Adjudication, you must file an appeal within thirty days of the mailing date of this Adjudication by contacting the Office of Chief Counsel of the Pennsylvania Liquor Control Board (717-783-9454). For further information, visit www.lcb.state.pa.us. The full requirements for an appeal can be found in 47 P.S. §4-471.

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