

Mailing Date: JAN 18 2012

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 11-0888
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W08-425768
v.	:	
	:	LID - 1682
ITALIAN AMERICANIZATION	:	
SOCIETY	:	
14 MAIN STREET BASEMENT	:	
BRADFORD PA 16701-2018	:	
	:	
	:	
	:	
MCKEAN COUNTY	:	
LICENSE NO. C-3598	:	

BEFORE: JUDGE RODERICK FRISK

APPEARANCES:

BLCE COUNSEL: Michael Nickles, Esquire

LICENSEE COUNSEL: Pro Se

ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation that was issued on May 23, 2011, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter Bureau) against Italian Americanization Society, License Number C-3598 (hereinafter Licensee).

The citation contains thirteen (13) counts.

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The first count charges Licensee with violation of Sections 403(h) and 471 of the Liquor Code, [47 P.S. §§4-403(h) and 4-471], in that on May 27, 2010, Licensee, by its servants, agents or employees, supplied false information on application for Club Liquor License for the term expiring July 31, 2011.

The second count charges Licensee with violation of Section 5.91 of the Liquor Control Board Regulations, [40 Pa. Code §5.91], in that Licensee, by its servants, agents or employees, failed to report a change of officers with its renewal application for the term expiring July 31, 2011.

The third count charges Licensee with violation of Section 102 of the Liquor Code, [47 P.S. §1-102], in that on February 23, 2011, Licensee's charter was not in possession of the original incorporators or their direct or legitimate successors.

The fourth count charges Licensee with violation of Section 5.75(1) of the Liquor Control Board Regulations, [40 Pa. Code §5.75(1)], in that on February 23, 2011, Licensee, by its servants, agents or employees, failed to maintain a photostatic or certified copy of the charter on its licensed premises.

The fifth count charges Licensee with violation of Section 102 of the Liquor Code, [47 P.S. §1-102], in that on February 23, 2011, Licensee, by its servants, agents or employees, improperly admitted members.

The sixth count charges Licensee with violation Section 102 of the Liquor Code, [47 P.S. §1-102], in that on February 23, 2011, Licensee, by its servants, agents or employees, failed to conduct business through officers regularly elected.

The seventh count charges Licensee with violation of Section 102 of the Liquor Code, [47 P.S. §1-102], in that in February 23, 2011, Licensee, by its servants, agents or employees, failed to hold regular meetings.

The eighth count charges Licensee with violation of Section 102 of the Liquor Code, [47 P.S. §1-102], in that on February 23, 2011, the primary interest and activity of its licensed organization is the sale of alcoholic beverages.

The ninth count charges Licensee with violation of Section 493(12) of the Liquor Code, [47 P.S. §4-493(12) and Section 5.52 of the Liquor Control Board Regulations, [40 Pa. Code §5.52], in that during the period February 23, 2010 through February 23, 2011, Licensee, by its servants, agents or employees, failed to maintain malt or brewed beverage dispensing system cleaning records.

The tenth count charges Licensee with violation of Section 5.51(c) of the Liquor Control Board Regulations, [40 Pa. Code §5.51(c)], in that during the period February 23, 2010 through February 23, 2011, Licensee, by its servants, agents or employees, failed to clean malt or brewed beverage dispensing system at least once every seven (7) days.

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The eleventh count charges Licensee with 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], in that Licensee, by its 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 23, 2011, concerning the Local Option Small Games of Chance Act.

The twelfth count charges Licensee with violation of Section 471(d) of the Liquor Code, [47 P.S. §4-471(d)], in that during the period January 17 through February 23, 2011, Licensee failed to comply with the order of the Administrative Law Judge at Citation No. 10-1611 mandating responsible alcohol management training.

The thirteenth count charges Licensee with violation of Section 493(12) of the Liquor Code, [47 P.S. §4-493(12)] and Section 5.71, 5.72, 5.73 and 5.74 of the Liquor Control Board Regulations, [40 Pa. Code §§5.71, 5.72, 5.73 and 5.74], in that during the period February 23, 2010 through February 23, 2011, Licensee, by its servants, agents or employees, failed to maintain records in conformity with the provisions of the Liquor Code and Title 40 of the Pennsylvania Code.

An administrative hearing was conducted on October, 19, 2011, at Homewood Suites, 2084 Interchange Road, Erie, PA 16565. The Bureau was represented by Michael Nickles, Esquire. Licensee was not present.

After hearing the testimony presented, and upon review of the evidence submitted, the following Findings of Fact and Conclusions of Law are entered:

FINDINGS OF FACT:

1. The Bureau commenced its investigation of Licensee's premises on February 3, 2011, and completed its investigation on February 23, 2011. (N.T. 6, Exhibits C-1)
2. The Bureau notified Licensee of the nature of the alleged violations disclosed by its investigation by letter dated March 10, 2011, which was sent by certified mail and received by Licensee on March 14, 2011. (N.T. 6, Exhibits C-2)
3. The citation was issued on May 23, 2011, and was sent by certified mail and received by Licensee on May 26, 2011. (N.T. 7, Exhibits C-3, C-4)

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4. The notice relative to the date, time and place of the evidentiary hearing was mailed to Licensee's premises on September 2, 2011 by first class mail as well as certified mail. (N.T. 4, Exhibits C-4)

5. The aforementioned certified mail of the notice of hearing was signed by licensee. The notice of hearing was also mailed to Italian Americanization Society, 14 Main Street Basement, Bradford, PA 16701-2018, by first class mail, which was not returned. (N.T. 4, Exhibits C-4)

6. On February 23, 2011, at 4:40 p.m., two Liquor Enforcement officers entered Licensee's premises and identified themselves to Brenda Travis who was tending bar with no patrons present as Licensee was preparing to open for the day. The Enforcement officers advised Ms. Travis that they were present to conduct an inspection of the premises. At this time, Ms. Travis contacted Licensee's Treasurer/Secretary Jim Deloe who arrived at the premises a short time later. (N.T. 8, Exhibits C-7)

COUNTS 1 & 2

7. During the course of this inspection, the Enforcement officers discovered that Mr. Deloe submitted a Status/Change of Manager or Steward of Club form along with a validation application, Club License, and Liquor or Retail dispenser form. These forms were received by the Board on March 27, 2010, for the term ending July 31, 2011. (N.T. 9-11, Exhibits C-6)

8. A review of the Status/Change of Manager form represents that a meeting was held on May 11, 2010, when it was resolved that Mr. Jim Deloe and Clifford E. Veite were authorized to execute the application. (N.T. 11, Exhibits C-7)

9. Upon questioning, Mr. Deloe advised the Enforcement officers that a meeting was never held and that the statement set forth on the Status/Change of Manager Form submitted to the Board was false. (N.T. 11, Exhibits C-8)

10. Upon review of Licensee's list of club officers, Rick Sung and Jim Shall were listed as Trustees. However, Rick Sung and Jim Shall were not listed on any current or previous renewal forms. Mr. Deloe admitted to the Enforcement Officers that Licensee held no meetings on or about May 11, 2010. (N.T. 11, Exhibits C-8)

COUNTS 3 & 4

11. Upon request, Mr. Deloe was unable to produce Licensee's charter or a photostatic copy of the charter. Mr. Deloe further advised the Enforcement officers that he had never seen a charter at the premises. (N.T. 11, Exhibits C-8)

COUNT 5

12. During the course of this inspection, the Enforcement officers questioned Mr. Deloe regarding the manner in which individuals became members of Licensee's club. Mr. Deloe advised the Enforcement officers that the individuals were required by Licensee to complete paperwork and pay a \$15.00 fee in order to become a member. (N.T. 16, Exhibit C-8)

13. Licensee's by-laws require that an individual requesting membership in Licensee's club must be investigated and a vote by Licensee's officers must be taken to admit the applicant as a member. (N.T. 16, Exhibit C-8)

14. Mr. Deloe admitted to the Enforcement officers that Licensee did not follow its by-laws regarding the admission of members. Applicants were never investigated and Licensee's officers never voted on an applicant's approval as a member. (N.T. 17, Exhibit C-8)

COUNTS 6 & 7

15. Licensee's by-laws require that regular meetings be held and that club officers be elected during such meetings. (N.T. 18-19, Exhibits C-8)

16. Upon asking when Licensee held its last regular scheduled meeting, Mr. Deloe advised the Enforcement officers that Licensee does not conduct meetings. (N.T. 19, Exhibits C-8)

17. Mr. Deloe further advised the Enforcement officers that the only discussions held regarding the operation of Licensee's club are between individuals at the bar on an as-needed and irregular basis. (N.T. 19, Exhibits C-8)

18. The Enforcement officers asked Mr. Deloe how individuals became club officers. Mr. Deloe simply replied that those individuals have always been officers with an occasional change. As an example, Mr. Deloe reflected upon a change of officer that was only discussed among the members present at Licensee's bar at that time. (N.T. 19, Exhibits C-8)

COUNT 8

19. During the course of this inspection, the Enforcement officers asked Mr. Deloe to explain the primary purpose of Licensee's club. Mr. Deloe with the assistance of Ms. Travis was unable to explain the primary purpose of the club. Mr. Deloe and Ms. Travis repeatedly stated that Licensee's club was a place for individuals to obtain "cheap" alcoholic beverages and that Licensee did not conduct any other activities such as fund raisers for charitable organizations. (N.T. 20, Exhibits C-8)

COUNTS 9 & 10

20. This inspection revealed that tap heads and barrels were not affixed to the draft distribution system. Mr. Deloe advised the Enforcement officers that Licensee presently does not sell draft beer, but did sell draft beer within the past year. (N.T. 21, Exhibits C-8)

21. Mr. Deloe advised the Enforcement officers that no cleaning records relative to its beer tap system were available and that the system has not been cleaned in years. (N.T. 22, Exhibits C-8)

22. The Enforcement officers inspected the beer tap systems and observed yeast and mold throughout the system. (N.T. 22, Exhibits C-8)

COUNT 11

23. Upon questioning, Mr. Deloe advised the Enforcement officers that Licensee did not maintain any Small Games of Chance records. Mr. Deloe further admitted that he was advised to maintain Small Games of Chance records during a previous investigation conducted by the Bureau, but failed to do so as he did not have the time. (N.T. 24, Exhibits C-8)

24. During the course of this inspection, the officers found two open bags containing Small Games of Chance paraphernalia including "pull-tabs." Mr. Deloe advised the Enforcement officers that these "pull-tabs" were used a few weeks earlier on the premises. (N.T. 25, Exhibits C-8)

25. The Small Games of Chance license posted at the premises expired September 20, 2010. Mr. Deloe stated to the Enforcement officers that he did not have time to renew that license. (N.T. 24, Exhibits C-8)

COUNT 12

26. In an Order issued by this Court dated November 17, 2010, at Citation No. 10-1611, Licensee was ordered to complete R.A.M.P. training by January 16, 2011. (N.T. 33, Exhibits C-8)

27. In a letter issued by the Board dated December 2, 2010, Licensee was informed that 45 days remained to complete the R.A.M.P. training components and receive certification. (N.T. 33, Exhibits C-6)

28. During the course of this open inspection, Mr. Deloe admitted to the Enforcement officers that he received the R.A.M.P. order and letter, but had not taken any action to complete the R.A.M.P. requirements. (N.T. 34, Exhibits C-8)

COUNT 13

29. The Enforcement officers were unable to complete this inspection as Licensee did not maintain any of the required records. (N.T. 34, Exhibits C-8)

CONCLUSIONS OF LAW:

1. The notice provisions as prescribed by Section 471 of the Liquor Code [47 P.S. §4-471] have been satisfied.
2. On May 27, 2010, Licensee, by its servants, agents or employees, supplied false information on application for Club Liquor License for the term expiring July 31, 2011, in violation of Sections 403(h) and 471 of the Liquor Code, [47 P.S. §§4-403(h) and 4-471].
3. Licensee, by its servants, agents or employees, failed to report a change of officers with its renewal application for the term expiring July 31, 2011, in violation of Section 5.91 of the Liquor Control Board Regulations, [40 Pa. Code §5.91].
4. On February 23, 2011, Licensee's charter was not in possession of the original incorporators or their direct or legitimate successors, in violation of Section 102 of the Liquor Code, [47 P.S. §1-102].
5. On February 23, 2011, Licensee, by its servants, agents or employees, failed to maintain a photostatic or certified copy of the charter on its licensed premises, in violation of Section 102 of the Liquor Code, [47 P.S. §1-102].
6. On February 23, 2011, Licensee, by its servants, agents or employees, improperly admitted members, in violation of Section 102 of the Liquor Code, [47 P.S. §1-102].
7. On February 23, 2011, Licensee, by its servants, agents or employees, failed to conduct business through officers regularly elected, in violation Section 102 of the Liquor Code, [47 P.S. §1-102].
8. In February 23, 2011, Licensee, by its servants, agents or employees, failed to hold regular meetings, in violation of Section 102 of the Liquor Code, [47 P.S. §1-102].
9. On February 23, 2011, the primary interest and activity of its licensed organization is the sale of alcoholic beverages, in violation of Section 102 of the Liquor Code, [47 P.S. §1-102].
10. During the period February 23, 2010 through February 23, 2011, Licensee, by its servants, agents or employees, failed to maintain malt or brewed beverage dispensing system cleaning records, in violation of Section 493(12) of the Liquor Code, [47 P.S. §4-493(12) and Section 5.52 of the Liquor Control Board Regulations, [40 Pa. Code §5.52].

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11. During the period February 23, 2010 through February 23, 2011, Licensee, by its servants, agents or employees, failed to clean malt or brewed beverage dispensing system at least once every seven (7) days, in violation of Section 5.51(c) of the Liquor Control Board Regulations, [40 Pa. Code §5.51(c)].

12. Licensee, by its 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 23, 2011, 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].

13. During the period January 17 through February 23, 2011, Licensee failed to comply with the order of the Administrative Law Judge at Citation No. 10-1611 mandating responsible alcohol management training, in violation of Section 471(d) of the Liquor Code, [47 P.S. §4-471(d)].

14. During the period February 23, 2010 through February 23, 2011, Licensee, by its servants, agents or employees, failed to maintain records in conformity with the provisions of the Liquor Code and Title 40 of the Pennsylvania Code, in violation of Section 493(12) of the Liquor Code, [47 P.S. §4-493(12) and Section 5.71, 5.72, 5.73 and 5.74 of the Liquor Control Board Regulations, [40 Pa. Code §§5.71, 5.72, 5.73 and 5.74].

DISCUSSION:

Upon thorough review of the testimony and evidence presented, this court is of the opinion that the Bureau has established the violations as charged in counts one through thirteen of this citation by a clear Preponderance of the evidence. *Pennsylvania Liquor Control Board v. Leggens*, 542 A.2d 653 (Pa. Cmwlth. 1988); *Omicron Enterprises*, 449 A.2d 857 (Pa. Cmwlth. 1982); *Com. v. Moreno*, 14 A.3d 133 (Pa.Super. 2011).

PRIOR RECORD:

Licensee has been licensed since August 2, 1938, and has had five (5) prior violation(s) since July 1, 1987, the date of establishment of the Office of Administrative Law Judge, to wit:

Citation No. 95-0970. Fine \$250.00.

1. Sales to nonmembers.

Citation No. 01-0276. Fine \$150.00.

1. Failed to maintain record in conformity with Title 40 of the Pennsylvania Code.

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Citation No. 02-2171. Fine \$250.00.

1. Sales to nonmembers.

Citation No. 03-0219. Fine \$350.00.

1. Sales to nonmembers.

Citation No. 10-1611. Fine \$1,500.00 and R.A.M.P. training mandated. Licensee's request for reconsideration modified penalty to 6 days suspension and mandatory R.A.M.P. training.

1. Sales to visibly intoxicated person.
March 6, 2010.
2. Failed to maintain complete and truthful records covering the Operation of Small Games of Chance for a period of 2 years.
June 21, 2010.
3. Funds derived from the Operation of Games of Chance were used for purposes other than those authorized by law.
April 28 and May 27, 2010.

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 types found in this case.

Licensee's failure to submit a Pre-Hearing memorandum and its failure to appear at the Administrative hearing demonstrates a clear lack of interest in this Club liquor license. Moreover, the violations established against Licensee in this citation go to the very essence of the privilege of holding a Club Liquor license.

Accordingly, these circumstances, particularly when viewed in light of the prior record, leads this court to conclude that revocation of Licensee's Club liquor license is the most appropriate remedy.

ORDER:

THEREFORE, IT IS HEREBY ORDERED that Liquor License No. C-3598, issued to Italian Americanization Society, be **REVOKED** effective at 7:00 a.m. on Monday, February 20, 2012. Any Wholesale Liquor Purchase Permit Card or discount card issued in connection with the aforementioned license is hereby CANCELLED.

Licensee is directed to remove its license from the wall on Monday, February 20, 2012 and return the license and Wholesale Liquor Purchase Permit Card and/or discount card to the Liquor Control Board, Office of Administrative Law Judge, Brandywine Plaza, 2221 Paxton Church Road, Harrisburg PA 17110 personally or by mail so as to be received no later than January 17, 2012.

Jurisdiction is retained to ensure compliance with this order.

Dated this 11TH day of JANUARY, 2012.



Roderick Frisk, J.

clm

NOTE: MOTIONS FOR RECONSIDERATION MUST BE RECEIVED WITHIN 15 DAYS OF THE MAILING DATE OF THIS ORDER IN 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.

IF YOU WISH TO APPEAL THE DECISION OF THE ADMINISTRATIVE LAW JUDGE'S ORDER, THE APPEAL MUST BE FILED WITHIN 30 DAYS OF THE MAILING DATE OF THE ORDER. PLEASE CONTACT CHIEF COUNSEL'S OFFICE AT 717-783-9454.

Detach Here and Return Stub with Payment

The fine must be paid by Treasurer's Check, Cashier's Check, Certified Check or Money Order. **Personal checks, which include business-use personal checks, are not acceptable.** 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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Italian Americanization Society