

Mailing Date: SEP 20 2012

[Appeal](#)
[Amendment](#)

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

PENNSYLVANIA STATE POLICE	:	In Re Citation No.: 11-2185
BUREAU OF LIQUOR CONTROL	:	
ENFORCEMENT (BLCE)	:	
:	:	BLCE Incident No.: W03-432884
v.	:	
THE EAGLES CLUB, INC.	:	
16-22 E. MAIN ST.	:	PLCB LID No.: 3311
WAYNESBORO, PA 17268-1875	:	
:	:	PLCB License No.: CC-2554

ADJUDICATION

BEFORE: Felix Thau, Administrative Law Judge

FOR BLCE: John H. Pietrzak, Esquire

FOR LICENSEE: James A. Snell, Esquire

BACKGROUND:

This proceeding arises out of a citation, containing four counts, that was issued on December 29, 2011, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (Bureau) against The Eagles Club, Inc. (Licensee)

The first count charges Licensee with violations 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 charge is that,

Licensee 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, during the period May 27, 2010 through May 26, 2011.

The second count charges Licensee with violations 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)]. The charge is that Licensee, by your servants, agents, or employees, awarded more than \$5,000.00 in cash or merchandise in any seven-day period, during the periods January 17 through 23, February 14 through 20, March 7 through 13, April 18 through 24, May 2 through 8, June 27 through July 3, July 11 through 17, August 15 through 21, and September 5 through 11, 2011.

The third count charges Licensee with violations 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]. The charge is that Licensee, 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, on February 5 and April 30, 2011.

The fourth count charges Licensee with violations 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]. The charge is that Licensee, 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 September 27, 2011, concerning the Local Option Small Games of Chance Act.

I presided at an evidentiary hearing on July 23, 2012 at the Brandywine Plaza, 2221 Paxton Church Road, Harrisburg, Pennsylvania.

The matter was submitted by way of agreement of facts. Licensee agreed the Bureau complied with the applicable and investigatory requirements of the Liquor Code.

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

FINDINGS OF FACT:

1. The Bureau began its investigation on June 30, 2011 and completed it on November 17, 2011. (N.T. 9)

Count No. 1

2. During the period charged, Licensee directed some funds gained from its Small Games of Chance operation to operating expenses. (N.T. 10-11)

Count No. 2

3. During the seven day's accounting periods charged, Licensee awarded prizes in the following amounts:

<u>Seven Day's Accounting Period Ending</u>	<u>SGOC Payout Amount</u>
a. January 23, 2011	\$47,710.00
b. February 20, 2011	\$73,240.00
c. March 13, 2011	\$88,920.00
d. April 24, 2011	\$51,360.00
e. May 8, 2011	\$48,330.00
f. July 3, 2011	\$61,635.00
g. July 17, 2011	\$68,590.00
h. August 21, 2011	\$49,830.00
i. September 11, 2011	\$49,140.00

(N.T 18-30)

Count No. 3

4. On the dates charged, Licensee permitted other organizations to use its premises for catered events and operate the other organizations' Small Games of Chance. (N.T. 30-31)

Count No. 4

5. During the period charged, Licensee comingled its Small Games of Chance accounting with other financial accounting records. Licensee also did not record financial records regarding some of its Small Games of Chance operations. (N.T. 10-14)

CONCLUSIONS OF LAW:

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

Count Nos. 1 through 4

I sustain the violations as charged.

PRIOR RECORD:

Licensee has been licensed since May 29, 1935, and has had seven prior Adjudications since July 1, 1987, the date the Office of Administrative Law Judge was established.

In Re Citation No.: 88-0784. Fine \$350.00 and 7 days suspension.

1. Offered and/or gave alcoholic beverages as a prize.
2. Possessed or operated gambling devices or paraphernalia or permitted gambling on the licensed premises.

In Re Citation No.: 88-1094. Fine \$500.00 and 14 days suspension.

Possessed or operated gambling devices or permitted gambling on the licensed premises.

In Re Citation No.: 01-0608. Fine \$350.00.

Possessed or operated gambling devices or paraphernalia or permitted gambling or lotteries, poolselling and/or bookmaking on the licensed premises (sports pool) on January 28, 2001.

In Re Citation No.: 04-0746. Fine \$1,000.00.

1. The licensed catering club violated the local option small games of chance act in that you conducted drawings other than those authorized by law on February 19, 2004.

2. Offered and/or awarded more than \$5,000.00 in cash or merchandise in any 7-day period during the period from March 29 through April 4, 2004.
3. Failed to maintain complete and truthful records covering the operation of the licensed business for a period of 2 years concerning the local option small games of chance act on April 7, 2004.

In Re Citation No.: 05-1284. Fine \$1,200.00.

1. Sold games of chance to an organization not licensed under the local option small games of chance act on May 4, 2005.
2. Offered and/or awarded more than \$5,000.00 in cash or merchandise in any 7-day period during the period April 4-10, 2005.

In Re Citation No.: 08-1056. Fine \$1,700.00.

1. Offered and/or awarded more than \$5,000.00 in cash or merchandise in any 7-day period during the periods December 23, 2007, through March 8, 2008.
2. Failed to maintain complete and truthful records covering the operation of small games of chance for a period of 2 years immediately preceding March 26, 2008.
3. Possessed or operated gambling devices or permitted gambling on your licensed premises (pull-tabs and punchboards) on March 21, 2008.

In Re Citation No.: 09-0939. Fine \$3,050.00 and 60 days suspension.

1. Offered and/or awarded more than \$5,000.00 in cash or merchandise in any 7-day period during the periods December 28, 2008 through January 3, 2009, January 11 through 17, and February 8 through 14, 2009.

2. Possessed or operated gambling devices or permitted gambling on the licensed premises (sign-up books and tickets) on February 26, 2009.
3. Failed to fulfill charter purposes on February 26, 2009.
4. Funds derived from the operation of games of chance were used for purposes other than those authorized by law on February 26, 2009.

PENALTY ASSESSMENT CRITERIA:

Mandatory Requirement(s)

Liquor Code Section 471 [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 violations found herein.

Further, this violation is the third violation of the Crimes Code within four years (Count No. 3, In Re Citation No.: 08-1056, and Count No. 3 In Re Citation No.: 09-0939). Liquor Code Section 471(c) [47 P.S. §4-471(c)] requires the penalty herein imposed include license revocation or suspension.

Discretionary Component(s)

At the hearing, Licensee interposed mitigation which amounted to nothing but poor excuse after poor excuse. Licensee attempted to gain sympathy by showing its income has suffered greatly. I responded by saying that Licensee has some control over losses, by decreasing discretionary spending or increasing price structure, for example. (N.T. 47) Furthermore, Licensee has employed a comparison of its most recent finances to those when Licensee profited from an illegal Small Games of Chance operation.

Licensee also requests the imposition of a “very minimal suspension.” What is minimal to one may be disproportionate to another.

Next, as a measure of good faith, Licensee offers to donate \$100,000. It is problematic to determine what organizations are worthy of Licensee’s donations; every organization believes it is the paradigm of worthiness. Bureau counsel noted that Licensee’s offer is actually nothing more than doing that which the Local Option Small Games of Chance Act mandates, thus rendering

Licensee's offer hollow. I do not completely agree with the Bureau because, at its core, the assertion intimates the decision to begin obeying the law is not a mitigating factor.

When I addressed Licensee's prior Adjudication history, the response I heard was that old habits die hard. (N.T. 65) However true the observation may be, we must inevitably pay for the destruction caused by our inability to reform our behavior. It is unquestionably difficult to quit smoking but, in our inability to do so, the detrimental effects of smoking continue to accumulate.

By letter of August 17, 2012, and in an effort to demonstrate Licensee's good faith, Licensee's President provides a list of charities and the amount Licensee contributed to each. The letter fails to identify when or for what period the listing applies.

Corrective measures that a Licensee has taken are always a factor in determining what penalty is to be imposed. In this matter, Licensee's donations pale in comparison to the sum of Licensee's payouts for the nine weeks at issue, nearly \$540,000. Licensee exceeded the \$5,000 limit nearly twelve fold. If the current \$25,000 weekly limit applied, Licensee would still have exceeded that value by almost two times.

I cannot ignore Licensee's deliberate pattern of engaging in some form of unlawful gambling. Dating back to 1988, Licensee has amassed seven Adjudications, all of which involve unlawful gambling. The last four Adjudications directly relate to the unlawful conduct in this matter. The progressively larger penalties I imposed in those Adjudications have been insufficient to alter Licensee's conduct. Now, when judgment day has arrived, Licensee appeals for mercy. By failing to self-correct, Licensee well deserves the penalties I impose:

Count No. 1 - \$1,000.00 fine.

Count No. 2 - \$1,000.00 fine and 120 days suspension.

Count No. 3 - \$1,000.00 fine and 30 days suspension.

Count No. 4 - \$1,000.00 fine.

ORDER:

In Re Citation No.: 11-2185; Licensee, The Eagles Club, Inc.; PLCB LID No.: 3311; PLCB License No.: CC-2554

Imposition of Fine

Licensee must pay a \$4,000.00 fine within twenty days of the mailing date of this Adjudication. The mailing date is located on this Adjudication's first page, upper left corner. If Licensee fails to comply, the Liquor Code requires that I suspend or revoke the license.

Imposition of Suspension

I suspend the license, as well as all other permits or licenses issued by the Pennsylvania Liquor Control Board attendant to the License, for 150 days, beginning Monday, December 10, 2012, 7:00 a.m., and ending Thursday, May 9, 2013, 7:00 a.m.

I order Licensee to post a Notice of Suspension Placard (PLCB Form 1925) in a conspicuous place on the outside of the licensed premises, or in a window plainly visible from the outside of the licensed premises, on or before Monday, December 10, 2012, 7:00 a.m. The Suspension Placard may not be removed until the suspension ends.

In the event Licensee does not comply with all conditions herein, the Bureau may issue an additional citation claiming Licensee has violated this Order. Alternatively, the Bureau may assert the same claim by requesting this Adjudication be reopened.

Retaining Jurisdiction

I retain Jurisdiction to ensure compliance with this Adjudication.

Dated this 18TH day of September, 2012.

A handwritten signature in cursive script that reads "Felix Thau". The signature is written in black ink and is positioned above a horizontal line.

Felix Thau, A.L.J.

bc

General Information

This Adjudication is a legal document. It affects your rights, privileges, and obligations. 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.** 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