

Mailing Date: NOV 02 2012

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

| | | |
|-------------------------------|---|-------------------------------|
| PENNSYLVANIA STATE POLICE, | : | In Re Citation No.: 12-0374 |
| BUREAU OF LIQUOR CONTROL | : | |
| ENFORCEMENT (BLCE) | : | |
| | : | BLCE Incident No.: W07-433789 |
| v. | : | |
| | : | |
| CATHOLIC MEN'S FRATERNAL CLUB | : | PLCB LID No.: 2884 |
| 307 S. ST. MARYS ST. | : | |
| SAINT MARYS, PA 15857-1623 | : | |
| | : | PLCB License No.: CC-242 |

ADJUDICATION

BEFORE: Felix Thau, Administrative Law Judge

FOR BLCE: Emily L. Gustave, Esquire

FOR LICENSEE: Frank C. Sluzis, Esquire

BACKGROUND:

This proceeding arises out of a citation, containing three counts, that was issued on April 13, 2012, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (Bureau) against Catholic Men's Fraternal Club (Licensee).

The first count charges Licensee with violations of Sections 401(b) and 406(a)(1) of the Liquor Code [47 P.S. §§4-401(b) and 4-406(a)(1)]. The charge is that Licensee, by your servants, agents, or employees, sold alcoholic beverages to nonmembers, on September 4 and November 2, 2011.

The second 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, on June 13, July 12 and November 1, 2011.

The third 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 January 29, 2012, concerning the Local Option Small Games of Chance Act.

I presided at an evidentiary hearing on September 18, 2012 at the Holiday 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 July 20, 2011 and completed it on January 29, 2012. (N.T. 4)

2. The Bureau sent a notice of the alleged violations to Licensee at the licensed premises by certified mail, return receipt requested, on February 21, 2012. The notice alleged violations as charged in the citation. (Commonwealth Exhibit No. C-1, N.T. 4)

Count No. 1

3. On September 4, 2011, an undercover Bureau Enforcement Officer entered the premises at 1:40 a.m. He requested an alcoholic beverage and was challenged as to membership. He denied membership. The Officer signed a guest book using a factious name after which he was permitted to complete a non-member purchase of an alcoholic beverage. (N.T. 9)

4. On November 2, 2011 at 7:00 p.m., two Officers entered the premises in an undercover capacity. They ordered food and beer. They both completed a non-member purchase of beer. (N.T. 9)

Count No. 2

5. On the dates charged, Licensee used funds derived from its SGOC operation to pay for licensed premises repairs. (N.T. 9-10)

Count No. 3

6. Licensee's SGOC records were deficient as Licensee did not maintain records for one game. (N.T. 11-12)

CONCLUSIONS OF LAW:

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

Count Nos. 1 through 3

2. I sustain the violations as charged.

PRIOR RECORD:

Licensee has been licensed since January 1, 1934, and has had ten prior Adjudication(s) since July 1, 1987, the date the Office of Administrative Law Judge was established.

In Re Citation No.: 88-0417. Fine \$800.00.

1. Sales to nonmembers.
2. Possessed or operated gambling devices or paraphernalia or permitted gambling or lotteries on your licensed premises.

In Re Citation No.: 95-2678. Fine \$475.00.

Possessed or operated gambling devices or paraphernalia or permitted gambling or lotteries on a licensed premises (machines) on August 26 and October 3, 1995.

In Re Citation No.: 01-0362. Fine \$200.00.

Possessed or operated gambling devices or paraphernalia or permitted gambling or lotteries, poolselling and/or bookmaking on your licensed premises (sports pool) on January 25, 2001.

In Re Citation No.: 02-1036. Fine \$1,000.00.

Possessed or operated gambling devices or paraphernalia or permitted gambling or lotteries, poolselling and/or bookmaking on your licensed premises (machines and sports pools) on October 10, 2001.

In Re Citation No.: 02-2041. Fine \$1,300.00 and 3 days suspension. Fine not paid and license suspended 1 additional day and thereafter until fine paid.

Sold alcoholic beverages after your Catering Club Liquor License expired and had not been renewed and/or validated on August 23, 2002.

In Re Citation No.: 03-1349. Fine \$1,500.00 and 2 days suspension.

1. Failed to post in a conspicuous place on the outside of the licensed premises, a Notice of Suspension on July 21 and 22, 2003.
2. Sold alcoholic beverages during a time when your Catering Club Liquor License was suspended on July 21 and 22, 2003.

In Re Citation No.: 03-1582. Fine \$1,700.00 and 3 days suspension.

1. Failed to post in a conspicuous place on the outside of the licensed premises, a Notice of Suspension on August 25, 2003.
2. Sold alcoholic beverages during a time when your Catering Club Liquor License was suspended on August 25, 2003.

In Re Citation No.: 04-1018. Fine \$500.00.

1. Offered and/or awarded more than \$5,000.00 in cash or merchandise in any 7-day period on March 27, 2004.

2. Awarded an individual prize exceeding the maximum cash value of \$500.00 for any single chance without a special permit on March 27, 2004.

In Re Citation No.: 10-0323. Fine \$250.00.

Failed to maintain complete and truthful records covering the operation of Small Games of Chance for a period of 2 years immediately preceding January 29, 2010.

In Re Citation No.: 10-1348. 18 days suspension.

Offered and/or awarded more than \$5,000.00 in cash or merchandise in a 7-day period during 10 seven-day periods from March 31 through June 8, 2010.

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.

Discretionary Component(s)

Regarding Count No. 1, by counsel, Licensee explains its leadership has changed procedures and has educated its staff.

As to Count No. 2, counsel explains that Licensee thought some of the proceeds from the Small Games of Chance operation could be used to fund improvements on the premises, upon discussions with a Bureau Enforcement Officer in 2010. Licensee now understands that legal advice must come either from counsel or by submitting a question to the Pennsylvania Liquor Control Board.

As to Count No. 3, Licensee's records were deficient with respect to just one game.

I further recognize that Licensee comes to the hearing with counsel, has accepted full responsibility, and is contrite. Accordingly, I impose:

Count No. 1 - \$150.00 fine.

Count No. 2 - \$100.00 fine.

Count No. 3 - \$50.00 fine.

ORDER:

In Re Citation No.: 12-0374; Licensee, Catholic Men's Fraternal Club;
PLCB LID No.: 2884; PLCB License No.: CC-242

Imposition of Fine

Licensee must pay a \$300.00 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.

Retaining Jurisdiction

I retain Jurisdiction to ensure compliance with this Adjudication.

Dated this 26TH day of October, 2012.



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