Mailing Date: MAY 15 2013

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

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| PENNSYLVANIA STATE POLICE, | : | In Re Citation No.: 13-0651 |
| BUREAU OF LIQUOR CONTROL | : | |
| ENFORCEMENT (BLCE) | : | |
| | : | BLCE Incident No.: W05-449793 |
| v. | : | |
| | : | |
| SAINT PIETRO DE ROMA ITALIAN | : | PLCB LID No.: 1863 |
| MUTUAL BENEFICIAL SOCIETY | : | |
| 301 GALLITZIN RD. | : | |
| CRESSON, PA 16630-1607 | : | PLCB License No.: C-4056 |

**ADJUDICATION**

BEFORE: Felix Thau, Administrative Law Judge

FOR BLCE: Michael C. Nickles, Esquire

FOR LICENSEE: James M. Petrascu, Esquire

**BACKGROUND:**

This proceeding arises out of a citation, containing two counts, that was issued on April 3, 2013, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (Bureau) against Saint Pietro De Roma Italian Mutual Beneficial Society (Licensee).

The first count charges Licensee with a violation of Section 493(12) of the Liquor Code [47 P.S. §4-493(12)] and Sections 5.71 and 5.74 of the Liquor Control Board Regulations [40 Pa. Code §§5.71 and 5.74]. The charge is that Licensee, by your servants, agents, or employees, failed to maintain records in conformity with the provisions of the Liquor Code and Title 40 of the Pennsylvania Code, during the period February 4, 2012 through February 4, 2013.

The second count charges Licensee with a violation of Section 5.81 of the Liquor Control Board Regulations [40 Pa. Code §5.81]. The charge is that Licensee, by your servants, agents, or employees, failed to adhere to by-laws, on February 4, 2013.

Licensee has executed a Statement of Waiver, Admission and Authorization in which Licensee: admits to the violations charged in the citation and that the Bureau complied with the applicable investigatory and notice requirements of the Liquor Code, authorizes the Administrative Law Judge to enter an Adjudication without a hearing based on a summary of facts as provided by the Bureau and prior Adjudication history, and waives the right to appeal this Adjudication.

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

**FINDINGS OF FACT:**

Count No. 1

1. On February 4, 2013, a Bureau Enforcement Officer conducted an administrative inspection of the licensed premises at a time when it was open and in operation selling alcoholic beverages. For the period January 1, 2011 to February 4, 2013, Licensee's Minute Book did not contain the dates of application or admission of members. The Minute Book also did not indicate whether ballots were taken.

Count No. 2

2. The Officer reviewed Licensee's by-laws. One of the positions required in the by-laws, "Corresponding Secretary," was no longer a position Licensee filled.

3. The by-laws did not provide for membership classes. Licensee nevertheless maintained two classes, active and social. In order to be an active member, one must be a male of Italian descent. All others are social members.

**CONCLUSION(S) OF LAW:**

Count Nos. 1 and 2

I sustain the violations as charged.

**DISCUSSION:**

On April 30, 2013, I convened a telephone conference call in which Bureau counsel and Licensee's President, Mr. LeComte participated. It was my goal to address Licensee's lengthy Adjudication history and to determine the accuracy of some troubling information regarding Licensee's membership criteria. Mr. LeComte confirmed Licensee's practice which was to maintain two membership classes, active and social. Mr. LeComte further confirmed that one had to be a male of Italian descent to be an active member.

The active member requirement raised a mental alarm. Licensee may be engaging in unlawful discrimination, I thought. Bureau counsel directed me to Attorney General Official Opinion No. 55 (1974 Op. Atty. Gen. Pa. 216), issued November 12, 1974. Opinion No. 55 concludes that a licensee may be penalized through this administrative process if the licensee discriminates based on race, color, religious creed, sex, or national origin when providing facilities, accommodations, or services. However, so long as a club licensee is distinctly private, no sanctions may be imposed. A club licensee bears a heavy burden of proving it is distinctly private.

Mr. LeComte advised that Licensee's membership rolls contain approximately eighty active members and 400 to 500 social members. Social members pay a fee after which they enjoy the use of Licensee's facilities.

In **Appeal of Elan v. PLCB** (439 A.2d 905, Pa.Cmwlth.), a restaurant liquor licensee was charged with failing to be open to the public, a fundamental requirement for such a licensee. The license charged an annual membership fee. The Commonwealth Court reasoned the licensee was open to the public despite the practice. Licensee's social member admission practice is identical to that in **Appeal of Elan**. Licensee is operating a public facility. Licensee's active member standards constitute unlawful discrimination.

Licensee also violated the Nonprofit Corporation Law of 1988, specifically 18 Pa. C.S.A. §1501, relating to classes and qualifications of membership. According to the referenced provision, a nonprofit may permit multiple membership classes so long as the by-laws so specify. If a nonprofit's by-laws say nothing about multiple member classes, the nonprofit is limited to one membership class. Instantly, Licensee had no by-law provision authorizing multiple membership classifications. Therefore, the two tiered system Licensee employed violates the Nonprofit Corporation Law of 1988.

During the conference call, a second question arose. To what extent may a club licensee allow for non-voting member classifications which permit those members to drink alcoholic beverages without voting rights? The Liquor Code does not directly address this question.

The Liquor Code does define a club [47 P.S. §1-101], as, among other requirements, a group associated, not for profit but for legitimate purposes of mutual benefit, entertainment, fellowship, or lawful convenience having a primary interest or activity to which the sale of alcoholic beverages is secondary. A ***bona fide*** club is not to be a business or a drinking place. This definition is in accord with Liquor Code Section 104 [47 P.S. §1-104], which instructs us to interpret the entire Liquor Code in favor of the public interest to prohibit forever the open saloon.

With these Liquor Code provisions in mind, I reason there comes a point where a club is nothing more than a place to drink when the number of voting members is far outdistanced by the number of social members. There can be no definitive ratio. Moreover, and unless the ratio is exceedingly large, other indicia of a club's ***bona fides*** must be factored into the analysis.

In **Irish-American Running Club, Inc.**, In Re Citation No.: 90-1773, licensee's legitimacy as a club came into question. Rather than repeat the factors which led me to conclude the licensee was not a legitimate club, I append pages eight through twenty-three[1] as illustrative.

In this matter and assuming Licensee has created by-laws to allow for two membership classes, the social member to active member ratio is 400÷80 or 500÷80, or anywhere from 4÷1 to 6.25÷1. I am not prepared to say these values, standing alone, are sufficient to establish Licensee's illegitimacy even though this record provides additional evidence in the form of inadequate record keeping.

As I have remarked in any number of Adjudications, club record keeping requirements are not the real goal. Record keeping ensures a paper trail to evaluate a club's legitimacy. A club enjoys special privileges. A club may remain open until 3:00 a.m. A club need not provide food. The ***quid pro quo*** for these privileges is the club's legitimacy.[2]

Licensee has been charged with record keeping violations and no more. I will assess a penalty commensurate with the charges. Nevertheless, the relevance of the above discussion lies in the possibility that further, in-depth investigation will either affirm or erase any suspicion regarding Licensee's ***bona fides***.

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[1] Appendix A.

[2] The plethora of record keeping requirements, including state, federal, and local tax returns, in my experience, remains largely an untapped source of readily accessible information.

**PRIOR RECORD:**

Licensee has been licensed since November 26, 1942, and has had nine prior Adjudications since July 1, 1987, the date the Office of Administrative Law Judge was established.

In Re Citation No.: 90-0581. Fine $400.00.
Sales to nonmembers.

In Re Citation No.: 92-0076. Fine $450.00.
Sales to nonmembers on November 9, 1991.

In Re Citation No.: 96-1965. Fine $1,075.00.

1. Sales to nonmembers on May 12 and 23, 1996.
2. Possessed or operated gambling devices or paraphernalia or permitted gambling or lotteries on a licensed premises (machines) on June 30 and August 5, 1996.

In Re Citation No.: 97-1521. Fine $250.00.
Possessed or operated gambling devices or paraphernalia or permitted gambling or lotteries, poolselling and/or bookmaking on the licensed premises (machines) on May 19, 1997.

In Re Citation No.: 97-2277. Fine $1,700.00.

1. Refused Enforcement Officers the right to inspect completely the entire licensed premises at a time during which the premises was open for the transaction of business on September 11, 1997.
2. Interfered with a Liquor Control Enforcement Officer in the performance of his duties on September 11, 1997.
3. Failed to maintain complete and truthful records covering the operation of the licensed business for a period of 2 years immediately preceding September 11 and 17, 1997.
4. Failed to keep records on the licensed premises on September 11, 1997.
5. Failed to clean coils at least once every seven days on September 11, 1997.
6. Failed to maintain coil cleaning records on September 11, 1997.

7. Falsified records covering the operation of the licensed business between September 11, 1997 and September 17, 1997.
8. Failed to maintain records in conformity with Title 40 of the Pennsylvania Code during the period November 1, 1996 through August 31, 1997.

In Re Citation No.: 98-0103. Fine $800.00 and 3 days suspension.
Sales to nonmembers on November 23, 1997.

In Re Citation No.: 98-1404. Fine $1,000.00 and 7 days suspension.
Possessed or operated gambling devices or paraphernalia or permitted gambling or lotteries, poolselling and/or bookmaking on your licensed premises (machines) on June 7, 1998 and divers other occasions in the past year.

In Re Citation No.: 06-2404. Fine $500.00.
Sales to nonmembers on September 10 and 30, 2006.

In Re Citation No.: 10-0155. Fine $1,250.00 and RAMP training mandated.
Sales to a visibly intoxicated person on August 15, 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.

***Discretionary Component(s)***

On May 3, 2013, counsel of record entered his appearance. He requested an extension of time for Licensee to rectify the conditions which caused the citation to issue. Because correcting the failings addressed in this Adjudication will take some time and there being no objection from Bureau counsel, Licensee has until the close of business, Friday, June 28, 2013 to certify that Licensee is operating in a lawful manner. Should Licensee need more time, I expect counsel to make a formal request, as soon as practicable, to include the reasons therefore and a new completion date.

As to Count No. 1, Licensee must certify that every member has completed an application, been investigated, and voted upon. Since Licensee has not been keeping current in this requirement, Licensee will have to verify the status of every current member to evaluate whether the process is complete.

As to Count No. 2, Licensee may either modify its by-laws or conform its practice to the current by-laws. To the extent the current by-laws are silent on a point, Licensee must conform its practice to the mandates of the Nonprofit Corporation Law of 1988.

With respect to membership classes, Licensee may adopt restrictions so long as Licensee maintains a strictly private character. If Licensee chooses to allow for a membership class that is open to the public, then Licensee may not restrict other member classes to those identified in Attorney General Official Opinion No. 55.

Based upon counsel's assurance that Licensee will comply within the given time frame, there is no need to issue a suspension. However, if Licensee fails to comply, I will then reconsider the penalty I herein impose.

I impose:

Count No. 1 - $350.00 fine.

Count No. 2 - $350.00 fine.

**ORDER:**

In Re Citation No.: 13-0651; Licensee, Saint Pietro De Roma Italian Mutual Beneficial Society; PLCB LID No.: 1863; PLCB License No.: C-4056

***Imposition of Fine***

Licensee must pay a $700.00 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, more specifically that Licensee complies with the certification requirements as described in the Discretionary Components of the Penalty Assessment Criteria.

Dated this 8TH day of May, 2013.

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.

**Detach Here and Return Stub with Payment**

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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

Saint Pietro De Roma Italian Mutual Beneficial Society
In Re Citation No.: 13-0651