

Mailing Date: OCT 22 2014

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

PENNSYLVANIA STATE POLICE,	:	In Re Citation No.: 13-1458
BUREAU OF LIQUOR CONTROL	:	
ENFORCEMENT (BLCE)	:	
	:	BLCE Incident No.: W02-455425
v.	:	
	:	
LANSFORD AMVETS HOME ASSN., INC.	:	PLCB LID No.: 3763
201-203 W. RIDGE ST.	:	
LANSFORD, PA 18232-1113	:	
	:	PLCB License No.: CC-4855
CARBON COUNTY	:	

ADJUDICATION

BEFORE: Felix Thau, Administrative Law Judge

FOR BLCE: Craig A. Strong, Esquire

LICENSEE: Ex Parte

BACKGROUND:

This proceeding arises out of a citation, containing two counts, that was issued on July 19, 2013, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (Bureau) against Lansford Amvets Home Assn., Inc. (Licensee).

The first count charges Licensee with a violation 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 January 16, 2013.

The second count charges Licensee with a violation of Sections 104(c), 401(a) and 406(a)(1) of the Liquor Code [47 P.S. §§1-104(c), 4-401(a) and 4-406(a)(1)]. The charge is that Licensee, by your servants, agents, or employees, offered and/or gave liquor and/or malt or brewed beverages as a prize, on March 22, 2013.

I presided at an evidentiary hearing on September 16, 2014 at 100 Lackawanna Avenue, Scranton, Pennsylvania.

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

FINDINGS OF FACT:

1. The Office of Administrative Law Judge sent a notice of hearing on July 29, 2014, by certified mail, return receipt requested and first class mail. The certified mail notice was returned unclaimed. The first class notice was not returned. (N.T. 8)

2. The Bureau began its investigation on January 8, 2013 and completed it on May 7, 2013. (N.T. 10-11)¹

3. The Bureau sent a notice of the alleged violations to Licensee at the licensed premises by certified mail, return receipt requested, on May 29, 2013. The notice alleged violations as charged in the citation. (Commonwealth Exhibit No. C-1, N.T. 10-11)

Count No. 1

4. On January 16, 2013, an undercover Bureau Enforcement Officer was admitted into the licensed premises. The Officer asked the bartender how the Officer could become a member. After paying \$13.00 and completing an application form, the bartender handed the Officer a receipt. The bartender advised the Officer that the receipt permitted the Officer to receive alcoholic beverage service which occurred immediately thereafter. (N.T. 12-15)

Count No. 2

5. After receiving a membership card on February 7, 2013, the Officer made a third undercover visit to the licensed premises on March 22, 2013. The Officer rolled four dice at once arriving at four of a kind. The Officer received a free drink. (N.T. 15-22)

¹ The transcript, at N.T. 10, indicates the corresponding dates are January 7, 2013 and May 7, 2013. The transcript is inaccurate.

CONCLUSION(S) OF LAW:

I sustain the violations as charged.

PRIOR ADJUDICATION HISTORY:

Licensee has been licensed since April 28, 1948, and has had ten prior Adjudications since July 1, 1987, the date the Office of Administrative Law Judge was established.

In Re Citation No.: 88-0869. Fine \$500.00.

1. Sales to nonmembers without prior arrangement.
2. Possessed or operated gambling devices or paraphernalia or permitted gambling or lotteries on the licensed premises (machine and tickets).

In Re Citation No.: 90-2177. Fine \$1,400.00.

1. Sales to nonmembers without prior arrangement on August 8, 1990.
2. Possessed or operated gambling devices or paraphernalia or permitted gambling or lotteries on the licensed premises (machine) on September 11 and 12, 1990.

In Re Citation No.: 93-1100. Fine \$200.00.

Sales to nonmembers without prior arrangement on April 30, 1993.

In Re Citation No.: 95-1087. 2 days suspension. Bureau's request for reconsideration vacated 2 days suspension and a \$250.00 fine was imposed.

Sales to nonmembers without prior arrangement on April 21, 1995.

In Re Citation No.: 00-0764. Fine \$650.00.

1. Possessed or operated gambling devices or paraphernalia or permitted gambling or lotteries, poolselling and/or bookmaking on the licensed premises (tickets and machines) on April 2, 2000.
2. Offered and/or gave alcoholic beverages as a prize on April 2, 2000.

In Re Citation No.: 03-1363. Fine \$400.00.

Possessed or operated gambling devices or paraphernalia or permitted gambling or lotteries, poolselling and/or bookmaking on the licensed premises (sports pools) on July 24, 2003.

In Re Citation No.: 06-1041. Fine \$800.00.

Possessed or operated gambling devices or permitted gambling on the licensed premises (machine) on March 23, 2006.

In Re Citation No.: 10-1682. Fine \$550.00.

Possessed or operated gambling devices or permitted gambling on the licensed premises (machine) on June 13, 2010.

In Re Citation No.: 12-1494. Fine \$1,250.00.

Sales after the license expired and had not been renewed and/or validated on September 5, 2012.

In Re Citation No.: 12-1674X. Fine \$200.00.

Issued worthless checks in payment for malt or brewed beverages dated August 31, 2012.

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)

The dice game which Licensee provided constitutes unlawful gambling because the consideration is the member-club relationship if not the \$.50 the Officer paid to sign in.

Further, since the Officer adopted a fictitious name when completing the member application form and was nevertheless provided a membership card it is reasonable to conclude that Licensee did no applicant investigation as required by the Liquor Code.

While Licensee was not charged with these illegalities, I am free to consider them as exacerbating factors.

I impose:

Count No. 1 - \$500.00 fine.

Count No. 2 - \$500.00 fine.

ORDER:

Imposition of Fine

Licensee must pay a \$1,000.00 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.

Retaining Jurisdiction

I retain Jurisdiction to ensure compliance with this Adjudication.

Dated this 9TH day of October, 2014.

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. If you have not already done so, it may be prudent for you 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 – Note Citation Number on Check

The fine must be paid by cashier's check, money order, or an attorney's check who is licensed to practice law in Pennsylvania. **Personal and business checks are NOT acceptable unless bank certified.** Please make your guaranteed check payable to the Commonwealth of Pennsylvania and mail it, along with any required documentation to:

PLCB – Office of Administrative Law Judge
Brandywine Plaza
2221 Paxton Church Road
Harrisburg, PA 17110-9661

Credit/debit cards may be used: visit www.lcb.state.pa.us scroll over LEGAL and then click on Office of ALJ for instructions.