

Mailing Date: APR 28 2014

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	IN RE: Citation No.: 13-2031
LIQUOR CONTROL ENFORCEMENT	:	
	:	
v.	:	BLCE Incident No.: W07-461820
	:	
LOYAL ORDER OF MOOSE	:	
LODGE NO 670	:	PLCB LID No.: 924
6 <sup>TH</sup> & ADAMS STS.	:	PLCB License No.: C-1383
P O BOX 245	:	
CLYMER, PA 15728-0245	:	
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	:	
	:	

**BEFORE:** JUDGE RODERICK FRISK

APPEARANCES:

**BLCE COUNSEL:** Emily L. Gustave, Esquire

**LICENSEE COUNSEL:** No appearance

**ADJUDICATION**

BACKGROUND:

This proceeding arises out of a citation that was issued on October 7, 2013, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter Bureau) against Loyal Order of Moose, Lodge No. 670, License Number C-1383 (hereinafter Licensee).

The citation charges Licensee with a violation of Section 493(12) of the Liquor Code, [47 P.S. §4-493(12)] and Sections 5.52(a), 5.71 and 574 of the Liquor Control Board Regulations, [40 Pa. Code §§5.52(a), 5.71 and 5.74] in that on July 23, 2013, 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.

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An administrative hearing was conducted on March 19, 2013 at 11:00 a.m., at 2 Parkway Center, Pittsburgh, PA. The Bureau was represented by Emily L. Gustave, Esquire. The hearing was held ex-parte.

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 May 22, 2013, and completed its investigation on August 26, 2013. (N. T. p. 7, Exhibit C-1)
2. The Bureau notified Licensee of the nature of the alleged violation(s) disclosed by its investigation in a letter dated September 10, 2013, which was sent by certified mail and was returned unclaimed and unable to be forwarded. (N. T. pp. 7-8, Exhibit C-1, C-2)
3. This citation was issued on October 7, 2013, was sent by certified mail and was received on October 15, 2013. (N. T. pp. 8-9, Exhibits C-4)
4. The notice relative to the date, time and place of the evidentiary hearing was mailed to Licensee's premises on February 11, 2014 by first class mail as well as certified mail. (Official Notice) The aforementioned mailing of the notice of hearing was sent by first class mail and was not returned. (Official Notice)
5. On July 23, 2013 at 1:35 p.m., a Liquor Enforcement Officer conducted a routine inspection of Licensee's premises in the presence of Licensee's Manager, Carry Myers. At this time, a female bartender was observed rendering service of alcoholic beverages to two patrons. (N. T. pp. 9-10)
6. A review of Licensee's records revealed that its malt or brewed beverage cleaning records did not list the method of cleaning. (N. T. pp. 10-11)
7. The examination of Licensee's records further revealed that a treasurer's/financial report was not included with its minutes. (N. T. pp. 11-12)

DISCUSSION:

Upon thorough review of the testimony and evidence presented, this court is of the opinion that the Bureau has established the violation as charged 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).

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CONCLUSIONS OF LAW:

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

2. On July 23, 2013, 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 Sections 5.52(a), 5.71 and 5.74 of the Liquor Control Board Regulations, [40 Pa. Code §§5.52(a), 5.71 and 5.74].

PRIOR RECORD:

Licensee has been licensed since January 11, 1934, and has had 11 prior violations since July 1, 1987, the date of establishment of the Office of Administrative Law Judge, to wit:

IN RE:

Citation No. 92-0118. Fine \$75.00.

1. Failed to notify the Board within 15 days of a change of officers.

Citation No. 92-2625. Fine \$75.00.

1. Sales to nonmembers.

Citation No. 94-2043. Fine \$600.00.

1. Illegal gambling (machines and wheel).

Citation No. 00-1160. Fine \$100.00. Fine not paid and license suspended for one day and thereafter until fine paid.

1. Purchased malt or brewed beverages on credit.

Citation No. 02-1674. Fine \$350.00.

1. Sales after club liquor license expired and had not been renewed and/or validated.

2. Illegal gambling.

Citation No. 03-1232. Fine \$50.00.

1. Failed to constantly and conspicuously expose club liquor license under a transparent substance on the licensed premises.

Citation No. 03-2029. Fine \$450.00.

1. Failed to maintain complete and truthful records covering the operation of the licensed business for a period of two years.

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2. Failed to maintain complete and truthful records covering the operation of the licensed business for a period of two years concerning the local Small Games of Chance Act.

Citation No. 04-0830. Fine \$700.00.

1. Funds derived from the operation of games of chance were used for purposes other than those authorized by law.
2. Failed to adhere to by-laws.

Citation No. 08-0160. Fine \$400.00.

1. Failed to maintain records in conformity with Title 40 of the Pennsylvania Code.  
January 2 and 10, 2008.
2. Failed to maintain complete and truthful records covering the operation of the licensed business for a period of two years concerning the local option Small Games of Chance Act.  
January 10, 2008.

Citation No. 11-1100. Fine \$450.00.

1. Failed to operate Small Games of Chance in conformity with Title 61 of the Pennsylvania Code.  
May 9, 2011.

Citation No. 13-1343. Fine \$1,250.00 and R.A.M.P. training mandated.

1. Sales to a visibly intoxicated person.  
May 4, 2013.

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 type found in this case.

Licensee's failure to submit a Pre-Hearing Memorandum as well as its failure to appear at the Administrative hearing held in this matter demonstrates a clear lack of interest in this club liquor license.

For the foregoing reasons, a penalty shall be imposed in the amount of \$600.00.

ORDER:

THEREFORE, it is hereby ordered that Loyal Order of Moose, Lodge No. 670, License Number C-1383, pay a fine of \$600.00 within 20 days of the mailing date of this Order. In the event the aforementioned fine is not paid within 20 days from the mailing date of this Order, Licensee's license shall be suspended or revoked.

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Jurisdiction is retained to ensure compliance with this Order.

Dated this 15<sup>TH</sup> day of APRIL, 2014.



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

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The fine must be paid by a check drawn on the business or trust account of your attorney, who must be licensed in this Commonwealth, a treasurer's check, cashier's check, or money order. **Personal and business checks are not acceptable unless they are certified by your bank.** Please make your guaranteed check payable to the Commonwealth of Pennsylvania and mail, along with any required documentation (please use the Return Stub when mailing payment or write your citation number on the check).

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

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Lodge No. 670