

Mailing Date: JUN 12 2014

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	IN RE Citation No.: 14-0571
LIQUOR CONTROL ENFORCEMENT	:	
	:	BLCE Incident No.: W04-461945
v.	:	
	:	
	:	PLCB LID No.: 12037
ELAINE G. YANKURA	:	
T/A RYE'S BAR & RESTAURANT	:	PLCB License No.: R-AP-SS-5909
248 OLD NATIONAL PIKE	:	
CALIFORNIA	:	
BROWNSVILLE, PA 15417-9334	:	
	:	
	:	

**BEFORE:** JUDGE RICHARD O'NEILL EARLEY  
**BLCE COUNSEL:** MICHAEL NICKLES, ESQUIRE  
**LICENSEE COUNSEL:** PRO SE

**ADJUDICATION**

BACKGROUND:

This proceeding arises out of a citation that was issued on March 31, 2014, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter Bureau) against Elaine G. Yankura, t/a Rye's Bar & Restaurant, License Number R-AP-SS-5909, (hereinafter Licensee).

The citation charges Licensee with violation of the Liquor Code at 47 P.S. §4-471 and the Crimes Code at 18 Pa. C.S. §5513, alleging that on May 28, June 7, 19, July 13, August 6, 20, September 16 and 17, 2013, Licensee, by its servants, agents or employees, possessed or operated gambling devices or paraphernalia or permitted gambling or lotteries, poolselling and/or bookmaking on its licensed premises.

Licensee has executed a Statement of Admission, Waiver and Authorization in which Licensee: admits to the violation(s) charged in the citation, agrees 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

ELAINE G. YANKURA  
T/A RYE'S BAR & RESTAURANT  
IN RE CITATION NO. 14-0571

facts as provided by the Bureau and prior citation history, and waives the right to appeal this Adjudication.

Based upon the admission(s) of Licensee and the summary of facts provided by the Bureau, I make the following Findings of Fact and reach the following Conclusions of Law:

FINDINGS OF FACT:

1. On May 28, 2013, a Liquor Enforcement Officers entered Licensee's premises and found two video gaming devices set up for play. The Officer watched a patron insert cash into one of the video slot machines and receive 100 credits. After accumulating 1,006 credits, the patron told the bartender he had "hit" on the machine. The bartender touched the cabinet with her keys, clearing the credits. She then handed the patron an undetermined amount of money. The Officer observed a mark on the machine which the Officer used for future identification.
2. On June 7, 19, July 13, August 6, 20 and September 16, 2013, the Officer returned to the premises and saw that the machine containing the identifying mark was set up for play, along with an additional video gaming machine.
3. On September 17, 2013, Officers served a search warrant for illegal gambling devices. The Board-approved manager stated that payouts were made for the video gambling machines. Officers learned that credits were cleared by connecting two bolt heads. The machines and a total of \$316.00 found inside the machines were entered into evidence.
4. On a later date, an Officer inspected the machines. Machines 1 and 2 are video slot machines. The machines contain electronic accounting which tracks coins in and credits cleared, a double-up feature and a power-interrupt circuit, and require no skill to play.
5. I find the machines to be gambling devices per se.

CONCLUSION OF LAW:

Sustained as charged.

PRIOR RECORD:

Licensee has been licensed since June 11, 1986, and has had fourteen prior violations since July 1, 1987, the date of establishment of the Office of Administrative Law Judge:

ELAINE G. YANKURA  
T/A RYE'S BAR & RESTAURANT  
IN RE CITATION NO. 14-0571

IN RE:

Citation No. 87-1065. Fine \$150.00.

1. Used loudspeakers or devices whereby music could be heard outside.

Citation No. 87-2683. 3 days suspension and fine \$50.00.

1. Sunday sales between 2:00 a.m. and 11:00 a.m.
2. Permitted dancing during prohibited hours.

Citation No. 87-3570. Fine \$1,700.00 and 5 days suspension. Licensee's appeal to Board dismissed.

1. Minors frequenting.
2. Sales to a minor.
3. Possessed or operated gambling devices or paraphernalia or permitted gambling or lotteries on a licensed premises.
4. Sales between 2:00 a.m. and 7:00 a.m.
5. Sales to a visibly intoxicated person.

Citation No. 88-1731. Fine \$250.00 and 3 days suspension.

1. Sold liquor and/or malt or brewed beverages without a license during a period when the issuance of your renewal license was being withheld because of late filing.

Citation No. 88-1783. 6 days suspension.

1. Failed to post in a conspicuous place, a notice of suspension.
2. Notices on the licensed premises stated or indicated that the licensed establishment was closed for a reason other than the suspension of the license.

Citation No. 88-2677. 7 days suspension and fine \$50.00.

1. Sales to minors.
2. Used loudspeakers or devices where music could be heard outside.

Citation No. 90-1158. Fine \$50.00 and 1 day suspension. Fine not paid and an additional 3 day suspension with thereafter conditions imposed. Additional penalty modified to a 1 day suspension.

1. Purchased malt or brewed beverages on credit.

Citation No. 92-0570. 2 days suspension.

1. Sales to visibly intoxicated persons.

Citation No. 92-1944. Fine \$300.00 and 1 day suspension.

1. Issued worthless checks in payment for malt or brewed beverages.
2. Purchased malt or brewed beverages on credit.
3. Paid for purchases of malt or brewed beverages with other than cash or licensee's checks.

ELAINE G. YANKURA  
T/A RYE'S BAR & RESTAURANT  
IN RE CITATION NO. 14-0571

Citation No. 96-1867. Fine \$500.00.

1. Possessed or operated gambling devices or paraphernalia or permitted gambling or lotteries on a licensed premises (machines).

Citation No. 97-2151. Fine \$900.00.

1. Possessed or operated gambling devices or permitted gambling on your licensed premises (machines).

Citation No. 09-1896. Fine \$300.00.

1. Permitted smoking in a public place where smoking was prohibited.  
June 28 and July 22, 2009.
2. Failed to post signage required by the Clean Indoor Air Act.  
June 28 and July 22, 2009.

Citation No. 09-2454. Fine \$350.00.

1. Smoked and/or permitted smoking in a public place where smoking was prohibited.  
September 7, 2009.

Citation No. 13-0931. Fine \$250.00.

1. Failed to maintain complete and truthful records covering the operation of the licensed business for a period of 2 years.  
February 26, 2013.

PENALTY:

The Liquor Code 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 (47 P.S. §4-471).

I am permitted by the Liquor Code to consider a licensee's prior record when imposing a penalty. 47 P.S. §4-471. When considering a licensee's prior history, I am most interested in prior violations identical to the one adjudicated. All things being equal, repeated violations result in more severe penalties. Some consideration may be given to the passage of time from the last violation or violations. Thus an older violation may not count against a licensee as much as a more recent violation. For example, violations that can be triggered by forgetting to do something (such as cleaning taps), or by a third-party's actions (such as a minor attempting to trick a server to get alcohol), tend to weigh less in a repeat violation if the passage of time is significant.

However, some charges, such as operating gambling machines, do not justify automatic "discounting" of prior violations simply because of the passage of time. Unlike violations arising from a licensee's mistake, in a gambling machine case, someone must make a conscious choice to install a machine. Therefore, when a licensee is found in violation of 18 Pa. C.S. §5513, it is an indication the licensee has chosen to violate statutory obligations under the Liquor

ELAINE G. YANKURA  
T/A RYE'S BAR & RESTAURANT  
IN RE CITATION NO. 14-0571

Code and the Crimes Code. When the choice is made on multiple occasions, it cannot be explained simply by the passage of time, like some statistical inevitability. Rather, it begins to look like a licensee who does not respect the law.

This is my concern in the present case. Licensee has been found in violation of §5513 on three previous occasions: Citations 87-3570, 96-1867 and 97-2151. Given this record of violations, licensee cannot easily be viewed as an "accidental offender." Rather, licensee had every reason to know that bringing gambling machines into the premises again was a violation of the law, but made the choice anyway. This is a troubling pattern of behavior that I hope to address with the penalty, below.

In mitigation, some consideration shall be given to the fact that Licensee has admitted to the violation(s) as charged in this citation, and has waived the right to a hearing and appeal.

For the foregoing reasons, a penalty of \$1,000.00 and a one day suspension shall be imposed.

ORDER:

THEREFORE, it is hereby ordered that Elaine G. Yankura, t/a Rye's Bar & Restaurant, License Number R-AP-SS-5909, pay a fine of \$1,000.00 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.

IT IS HEREBY ORDERED that the restaurant liquor license of Elaine G. Yankura, t/a Rye's Bar & Restaurant, (including all permits and Licensee Discount Card), License No. R-AP-SS-5909, be suspended for a period of one day **BEGINNING** at 7:00 a.m. on Monday, July 28, 2014, and **ENDING** at 7:00 a.m. on Tuesday, July 29, 2014.

Licensee is directed on Monday, July 28, 2014, at 7:00 a.m., to place the enclosed placard of notice of suspension (identified as Form No. PLCB-1925 and as printed with red and black ink) in a conspicuous place on the outside of the licensed premises or in a window plainly visible from outside the licensed premises and to remove said license from the wall and place it in a secure location.

Licensee is advised if replacement placards are needed for any reason they are available at all Pennsylvania Liquor Stores/Wine & Spirits Shoppes.

The Bureau is directed to visit and monitor the aforementioned licensed premises for compliance with this Order.

Licensee is authorized on Tuesday, July 29, 2014, at 7:00 a.m., to remove the placard of suspension and return the license to its original wall location.

ELAINE G. YANKURA  
T/A RYE'S BAR & RESTAURANT  
IN RE CITATION NO. 14-0571

Jurisdiction is retained.

Dated this 5<sup>TH</sup> day of JUNE, 2014.



Richard O'Neill Earley, J.

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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.

**Detach Here and Return Stub with Payment – Note Citation Number on Check**

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The fine must be paid by cashier's check, money order, or a check drawn on the business or trust account of an attorney licensed 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](http://www.lcb.state.pa.us) scroll over LEGAL and then click on Office of ALJ for instructions..

In Re Citation No. 14-0571  
Elaine G. Yankura  
t/a Rye's Bar & Restaurant