

Mailing Date: MAR 23 2015

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	In Re: Citation No. 14-1715
LIQUOR CONTROL ENFORCEMENT	:	
	:	
v.	:	BLCE Incident No. W01-481923
	:	
PONTIAC ROAD INC.	:	
1062 PONTIAC ROAD	:	PLCB LID - 57439
DREXEL HILL PA 19026-4817	:	
	:	
	:	PLCB License No. R-AP-SS-EHF-18512
	:	
DELAWARE COUNTY	:	

APPEARANCES:

FOR THE BUREAU OF ENFORCEMENT:

ERIK S. SHMUKLER, ESQ.

FOR THE LICENSEE:

JOHN J. McCREESH, III, ESQ.

BEFORE: JUDGE WRIGHT

ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation that was issued on September 2, 2014, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter "Bureau") against Pontiac Road, Inc., License Number R-AP-SS-EHF-18512 (hereinafter "Licensee").

An Administrative hearing was held on Thursday, January 29, 2015, pursuant to requisite and appropriate hearing notice. The parties stipulated to the service and receipt of the notice letter and the citation.

The citation charges Licensee with violation of Section 471 of the Liquor Code, 47 P.S. §4-471, and Section 5513 of the Crimes Code, 18 Pa. C.S. §5513, in that on July 14 and 22, 2014, Licensee, by its servants, agents or employes, possessed or operated gambling devices or paraphernalia or permitted gambling or lotteries, poolselling and/or bookmaking on the licensed premises.

FINDINGS OF FACT:

1. Officer C.R. from the Bureau of Enforcement conducted an investigation of the licensed premises relative to complaints of gambling. The officer visited the licensed premises on July 14, 2014 arriving at approximately 7:25 p.m. He was accompanied by another officer, C.V., also from the Bureau of Enforcement. Both officers remained undercover during their visit to the premises (N.T. 6-8).

2. The officer noted that there were two bartenders on duty, one of whom he identified as Gary McConville (N.T. 8-9).

3. Officer C.R. noted a Dodge City video poker machine located directly behind him under a set of stairs. The machine was on and set up for play. The officer went to the machine and looked at the display screen, which indicated that it was a Dodge City poker machine. He also observed a large sticker on the side of the machine which stated that the machine is owned and operated by the licensed premises and that it is used strictly for amusement. The sign wanted patrons not to ask any representative for a payout and if so, the patron would be asked to leave the premises (N.T. 10).

4. Shortly after the officers arrived at the premises, a supervisor from the Bureau, M.R., arrived at the premises (N.T. 10).

5. C.R. ordered three shots of fireball whiskey in an attempt to spark some conversation with the bartender. He was charged five dollars for each of the drinks, which he purchased for himself and the two other Enforcement officers (N.T. 11).

6. Shortly thereafter, Officer C.R. asked the bartender for change for twenty dollars because he wanted to play the Dodge City poker machine. He was advised that the machine accepted only one dollar bills. The bartender advised him that he would give him twenty, one dollar bills. After receiving change from the bartender, he approached the Dodge City poker machine that was located directly behind the officers (N.T. 12).

7. The officer determined that for each dollar bill he got four credits. The officer determined that the machine is a quarter device and that each play credit was worth twenty-five cents. The officer indicated that he played approximately ten dollars in the machine, until he had accumulated a total of eighty credits for the equivalent of twenty U.S. dollars. Once he accumulated the credits, he called the bartender over and asked to receive his payout on the poker machine. At that point, the bartender looked at the machine to verify that there were points accumulated and walked over towards a person, later identified as the shift manager, Lawrence Shiffler, who was located on the opposite end of the bar (N.T. 13-14).

8. The bartender and Mr. Shiffler conversed and then the bartender approached Officer C.R. and stated that the machine did not payout and has not paid out in years. Officer C.R. then asked if he could not get the money in currency, if he could get twenty dollars' worth of drinks. The officer requested three shots of fireball totaling fifteen dollars and told the bartender he could retain the five dollars as a tip (N.T. 14).

9. At that point, he asked officer C.R. to play the accumulated points down to zero. As the bartender played the points, officer C.R. played the points down to zero. Once he verified that it had been played down to zero, the bartender thanked the officer (N.T. 16).

10. Officer C.R. did not see Mr. McConville, the bartender, retain any of the money (N.T. 15).

11. Officer C.R. put an identifying mark on the machine and left the premises at approximately 9:10 p.m. (N.T. 16).

12. On Tuesday, July 22, 2014 at approximately 7:00 p.m., Officer C.R. and a few other officers from the Bureau entered the premises and approached the bartender and identified themselves. They requested to speak to the manager. The bartender contacted the Board approved manager, Mr. McCormick, who arrived at the premises a short time later. The officer explained to him that an undercover officer was at the premises and received a payout. The officers then questioned him with regard to the machine (N.T. 17-18).

13. Mr. McCormick stated that the premises does not pay out on the machines. The poker machine was seized as a result of the investigation. The officers also seized a second machine on a different floor. A property record was given documenting what items were received. Officer C.V. did the inspection of the machine. Officer C.R. indicated that when they opened the machine, they noted numerous compartments inside the machine like dip switches and different buttons that configured the electronics. Money was seized, but there were no dip switches or devices which knocked off the points. A Dodge City poker machine does not have a knockoff device, other than playing the machine down to zero (N.T. 19 and 23-24).

14. The machine was determined not to be a gambling device *per se* (N.T. 19-20).

15. Mr. McCormick indicated that the proceeds from the machine were split fifty-fifty with the vendor. He received approximately sixty dollars bi-weekly, thirty dollars a week from the machine (N.T. 24-25).

16. Officer M.R. is employed as the district supervisor for the Bureau of Enforcement and was part of the investigation of the licensed premises on July 14, 2014. He arrived a little bit after Officer C.R. and C.V. He noted that Officer C.R. attempted to put the twenty dollar bill into the machine, but then asked the bartender for change when it wouldn't accept it. He remained at the bar while the officer was playing the machine. He observed Officer C.R. playing the machine (N.T. 29-31).

17. M.R. also observed Officer C.R. talking with the bartender but could not hear the total conversation. Eventually, Officers C.R., C.V. and M.R. were each served shots of liquor. Officer M.R. saw the bartender go to the cash register and remove five dollars and put it in his pocket. Officer C.R. eventually played the eighty credits off the machine (N.T. 32-33).

18. M.R. returned to the premises with Officer C.R. on July 22, 2014, when the machines were seized (N.T. 33-34).

19. Officer C.V. is also employed by the Bureau of Enforcement and was part of the detail that conducted an investigation of the licensed premises. He visited the premises on July 14, 2014, along with Officer C.R. and Officer M.R. The officer indicated that during that visit, Officer C.R. asked for change to play the machine and that the officer did play the machine and accumulated twenty credits. As for payout, the bartender, Mr. McConville, talked to the shift manager, Mr. Shiffler, who told him that he couldn't pay out on the machine. Officer C.V. believed that Mr. McConville went back to the officer after Officer C.R. requested that he be paid in drinks. Officer C.V.'s understanding was that fifteen dollars was used for the drinks and five dollars would be kept as a tip. The bartender poured the three drinks. The officer indicated that five dollars was taken out of the register, but he did not recall whether he put it in his pocket or placed it in a separate jar. The officers received the shots of liquor at approximately 8:30 p.m. and departed the premises at approximately 9:10 p.m. Officer C.V. was not a part of the detail that seized the machines on July 22, 2014 (N.T. 36).

20. Gary McConville works at the licensed premises and has worked there for approximately nine years. He worked for the previous owner. He indicated that the poker machine has been there for approximately more than nine years and there is a machine on the second floor. He indicates that he does not pay out on the machine (N.T. 38-40)

21. Mr. McConville indicated there is a sign which indicates that the machine does not pay out and also states not to ask any representative of the establishment for a payout on the machine (N.T. 40-41).

22. Mr. McConville indicated that the officer did play the machine for some time and accumulated credits on the machine and did request a payout. He told him he would not payout on the machine, but when he asked a second time, he then told him he would speak to the manager. The manager also indicated that it does not pay out, but said that he would allow them to have three shots of fireball because he did not want anyone complaining or making a scene (N.T. 40-43).

23. The officer did play the points down off the machine (N.T. 43-44).

24. Lawrence Shiffler is employed at the licensed premises and has been employed at that location for eleven years. He also was employed with the prior owners. He also indicated the machines do not pay out, but he did authorize the bartender to give them drinks for the accumulated credits (N.T. 45-47).

CONCLUSIONS OF LAW:

On July 14 and 22, 2014, Licensee, by its servants, agents or employes, possessed or operated gambling devices or paraphernalia or permitted gambling or lotteries, poolselling and/or bookmaking on the licensed premises, in violation of Section 471 of the Liquor Code, 47 P.S. §4-471, and Section 5513 of the Crimes Code, 18 Pa. C.S. §5513.

PRIOR RECORD:

Licensee has been licensed since January 11, 2007, and has a record of prior violations as follows:

In Re:

Citation No. 11-1242X. \$100.00 fine.

1. Issued worthless checks in payment for malt or brewed beverages.
May 26, 2011.

Citation No. 11-1558X. \$200.00 fine.

1. Issued worthless checks in payment for malt or brewed beverages.
June 30, 2011.

Citation No. 11-2118. \$300.00 fine.

1. Issued worthless checks in payment for malt or brewed beverages.
October 20, 2011.

Citation No. 13-0924C. \$1,250.00 fine and R.A.M.P. Certification mandated.

1. Sales to a minor.
March 11, 2013.

Citation No. 14-0232. \$200.00 fine.

1. Failed to comply with the Order of the Administrative Law Judge mandating RAMP training.
November 20, 2013 through January 14, 2014.

DISCUSSION:

The Licensee's employees were very insistent that they do not pay out on the gambling machine. The bartender clearly indicated to the officer that he would not pay out on the machine and the shift manager also indicated the same. But when pressed, but not forced to do so, the bartender, with the consent of the shift manager, did in fact pay the officer in drinks. The shift manager claims that he did not want him complaining. However, the machine was clearly marked and indicated that there would be no payouts made on the machine.

Whatever the motivation of the bartender and manager, whether based on suspicion of the officers/customers or trying to appease the customers, they should not have accommodated their requests. The giving of drinks was the equivalent of the payout.

Under the circumstances, a very moderate penalty shall be imposed. The Licensee is advised that any future violations will result in considerably higher fines or suspension of the license.

PENALTY:

Section 471 of the Liquor Code, 47 P.S. Section 4-471, prescribes a penalty of suspension or revocation of license or imposition of 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.

Accordingly, we issue the following

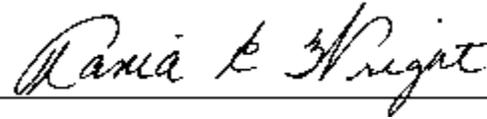
ORDER:

THEREFORE, it is hereby Ordered that Licensee, Pontiac Road, Inc., License Number R-AP-SS-EHF-18512, pay a fine of Two Hundred Fifty Dollars (\$250.00) within twenty (20) days of the mailing date of this Order. In the event the aforementioned fine is not paid within twenty (20) days from the mailing date of this Order, licensee's license shall be suspended or revoked.

Pontiac Road, Inc.
In Re: Citation No. 14-1715

Jurisdiction of this matter is retained.

Dated this 12TH day of MARCH, 2015.



Tania E. Wright, J.

NOTE: MOTIONS FOR RECONSIDERATION MUST BE RECEIVED WITHIN 15 DAYS OF THE MAILING DATE OF THIS ORDER TO 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 the Office of the Chief Counsel of the Pennsylvania Liquor Control Board at 717-783-9454.

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

The fine must be paid by Treasurer's Check, Cashier's Check, Money Order or a check drawn on the account of an attorney, who must be licensed in Pennsylvania. **Personal and business checks are NOT acceptable unless they are certified by your bank.** If you are paying by guaranteed check, please make it payable to the Commonwealth of Pennsylvania and mail, along with any required documentation, to:

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

In Re: Citation No. 14-1715
Pontiac Road, Inc.