

Mailing Date: NOV 05 2015

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

PENNSYLVANIA STATE POLICE,	:	In Re Citation No.: 15-0577
BUREAU OF LIQUOR CONTROL	:	
ENFORCEMENT (BLCE)	:	
	:	BLCE Incident No.: W03-487208
v.	:	
	:	
LOYAL ORDER OF MOOSE LODGE 842	:	PLCB LID No.: 2424
1100 SHELLER AVE.	:	
CHAMBERSBURG, PA 17201-2940	:	
	:	PLCB License No.: C-5246
FRANKLIN COUNTY	:	

ADJUDICATION

BEFORE: Felix Thau, Administrative Law Judge

FOR BLCE: John H. Pietrzak, Esquire

LICENSEE COUNSEL: James M. Petrascu, Esquire

BACKGROUND:

This proceeding arises out of a citation, containing one count, that was issued on April 2, 2015, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (Bureau) against Loyal Order of Moose Lodge 842 (Licensee).

The citation charges Licensee with violations of Section 493(34) of the Liquor Code [47 P.S. §4-493(34)]. The charge is that Licensee, by your servants, agents, or employees, used, or permitted to be used on the inside of your licensed premises, a loudspeaker or similar device whereby the sound of music or other entertainment, or the advertisement thereof, could be heard beyond the licensee's property line, on September 13 and November 1, 2014.

I presided at an evidentiary hearing on October 1, 2015 at 2221 Paxton Church Road, Harrisburg, Pennsylvania.

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

FINDINGS OF FACT:

1. The Bureau began its investigation on November 3, 2014 and completed it on March 12, 2015. (N.T. 12)
2. The Bureau sent a notice of the alleged violations to Licensee at the licensed premises by certified mail, return receipt requested, on March 20, 2015. The notice alleged the violations as charged in the citation. (Commonwealth Exhibit No. C-1, N.T. 9)
3. A complainant, who lives in a housing development near the licensed premises, was disturbed in his home by amplified sound, predominantly base, escaping the licensed premises. The disturbance began about 9:45 p.m., September 13, 2014, lasting about 45 minutes. (N.T. 48-63)
4. The complainant was similarly disturbed in his home on the evening of November 1, 2014. (N.T. 31-39; 67-70)

CONCLUSION(S) OF LAW:

1. The notice requirements of Liquor Code Section 471 [47 P.S. §4-471] have been satisfied.
2. I sustain the violations as charged.

PRIOR ADJUDICATION HISTORY:

Licensee has been licensed since December 7, 1951, and has had 12 prior Adjudications since July 1, 1987, the date the Office of Administrative Law Judge was established.

In Re Citation No.: 87-3203. Fine \$350.00 and ten days suspension.

Possessed or operated gambling devices or paraphernalia or permitted gambling or lotteries on a licensed premises (tickets, punchboards and machines).

In Re Citation No.: 87-3556. Fine \$700.00 and 20 days suspension.

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

In Re Citation No.: 89-0049. Fine \$1,000.00 and 35 days suspension.

Possessed or operated gambling devices or paraphernalia or permitted gambling or lotteries on a licensed premises (machine, tickets and punchboards).

In Re Citation No.: 97-1804. Fine \$250.00.

Employed a minor under 16 years of age on July 18, 1997.

In Re Citation No.: 03-1971. Fine \$400.00.

1. Failed to maintain complete and truthful records for a period of two years concerning the Local Option Small Games of Chance Act on October 3, 2003.
2. Offered and/or awarded more than \$5,000.00 in cash or merchandise in any seven-day period during the period September 5, 2003.

In Re Citation No.: 04-0971. Fine \$500.00.

Offered and/or awarded more than \$5,000.00 in cash or merchandise in any seven-day period during the period April 25, 2004 through May 1, 2004.

In Re Citation No.: 05-0631. Fine \$450.00.

Possessed or operated gambling devices or paraphernalia or permitted gambling or lotteries, poolselling and/or bookmaking on the licensed premises (horse races) on January 14, 2005.

In Re Citation No.: 06-1698. Fine \$1,300.00 and five days suspension.

1. Offered and/or awarded more than \$5,000.00 in cash or merchandise in any seven-day period during the period May 21 through May 27, 2006.
2. Failed to maintain records in conformity with Title 40 of the Pennsylvania Code on June 9, 2006 and divers occasions within the past year.

In Re Citation No.: 07-1164. Fine \$1,600.00 and 15 days suspension.

1. Failed to maintain complete and truthful records covering the operation of small games of chance for a period of two years immediately preceding April 11, 2007.
2. Offered and/or awarded more than \$5,000.00 in cash or merchandise in any seven-day period during the periods September 3 - 9, 2006, October 8 - 14, 2006, November 19 - 25, 2006, December 10 - 16, 2006, January 21 - 27, 2007, February 18 - 24, 2007 and March 25 - 31, 2007.
3. Failed to maintain records in conformity with Title 40 of the Pennsylvania Code on January 18 and April 11, 2007, and divers other occasions within the past year.

In Re Citation No.: 07-2409. Fine \$3,000.00 and 45 days suspension.

1. Possessed or operated gambling devices or permitted gambling on the licensed premises (tickets) during the period June 11 through July 28, 2007.
2. Failed to maintain complete and truthful records covering the operation of small games of chance for a period of two years immediately preceding July 30, 2007.
3. Offered and/or awarded more than \$5,000.00 in cash or merchandise in any seven-day period during the periods May 6 - 12, May 13 - 19, May 20 - 26 and May 27 - June 2, 2007.

In Re Citation No.: 13-0760. Fine \$350.00.

Used loudspeakers or devices whereby the sound of music could be heard beyond the licensee's property line on March 31, April 7, 14, October 27 and December 22, 2012.

In Re Citation No.: 15-0115. Fine \$750.00 and 10 days suspension of Small Games of Chance license.

Small Games of Chance Act

1. Failed to maintain complete and truthful records covering the operation of small games of chance for a period of two years immediately preceding March 21, 2014.

Liquor Code

2. Failed to maintain records in conformity with the Liquor Code and Title 40 of the Pennsylvania Code on February 12, 2014.

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)

While the record includes testimony of years of disturbances, Licensee is charged with only two violation dates of relatively short duration. Further, Licensee is committed to maintaining good relationships with its neighbors. Accordingly, I impose a \$300.00 fine.

ORDER:

Imposition of Fine

Licensee must pay a \$300.00 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 21ST day of October, 2015.



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