

Mailing Date: APR 26 2016

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

PENNSYLVANIA STATE :
POLICE, BUREAU OF : IN RE Citation No.: 15-1546
LIQUOR CONTROL ENFORCEMENT :
 : BLCE Incident No.: W08-497347
v. :
 :
THE MEADVILLE CLUB : PLCB LID No.: 1454
953 MARKET STREET :
MEADVILLE, PA 16335-3364 : PLCB License No.: C-2951
 :
CRAWFORD COUNTY : SGOC License No.: 20150054
 : (Expires 4/21/16)
 :
 :

BEFORE: JUDGE RICHARD O'NEILL EARLEY
BLCE COUNSEL: NADIA VARGO, ESQUIRE
LICENSEE: GARY MCGINNITY, BOARD OF GOVERNORS

ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation that was issued on August 31, 2015, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (Bureau) against The Meadville Club, License Number C-2951, SGOC License Number 20150054, (Licensee).

The citation charges Licensee with violation of the Local Option Small Games of Chance Act at 10 P.S. §328.502(a), and the Department of Revenue Regulations at 61 Pa. Code §901, alleging that on December 31, 2014, Licensee, by its servants, agents or employees, used funds derived from the operation of games of chance for purposes other than those authorized by law.

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

THE MEADVILLE CLUB
IN RE CITATION NO. 15-1546

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 July 28, 2015, a Liquor Enforcement Officer conducted a routine inspection of Licensee's premises in the presence of the Board-approved manager. The Officer reviewed the club's small games of chance records. When asked, the manager stated that Licensee placed all small games of chance proceeds from 2014 into the general club account. The Officer examined bank statements for the account held by the club for proceeds from small games of chance. The Officer observed there was only \$344.47 in this account. The manager stated that this balance was left over from previous years and did not include any proceeds for 2014. The manager then supplied the Officer with a copy of the small games of chance report which Licensee filed with the Pennsylvania Department of Revenue. The report reflected net small games of chance proceeds in the amount of \$60,232.25, which matched the club's records.
2. From that amount, \$36,139.35 should have been used for a public interest purchase, and only \$24,092.90 retained for use by the club. Section 328.501(a)(2)(iv) of the LOSGCA requires clubs to report whether and where public interest distributions are made.
3. The Officer asked the manager where Licensee kept the 60% proceeds. The manager stated that all the money was used for club expenses, except for \$25.00, which Licensee donated to a charity. The Officer verified that the small games of chance report did reflect that Licensee donated \$25.00 to the Pennsylvania Special Olympics on June 17, 2014. Further, the annual report indicated that there were no expenditures from any set-aside amount for public interest purchases or projects. The Officer again asked where Licensee recorded 60% of the proceeds. The manager stated that Licensee deposited the entire amount in the general account for club expenses. The manager then indicated that he did not wish to provide a written statement.

CONCLUSION OF LAW:

Sustained as charged.

DISCUSSION:

The General Assembly made a deal with clubs in Pennsylvania: although gambling is generally illegal in the Commonwealth, clubs would be permitted to offer certain types of games of chance provided that a portion of gambling revenues is distributed to Pennsylvania charities. This bargain was an attempt to balance the clubs' interest in supplementing sources of revenue, the regulation of gambling, and supporting Pennsylvania charities.

THE MEADVILLE CLUB
IN RE CITATION NO. 15-1546

Licensee broke that bargain by keeping all proceeds from its small games of chance. In this case, \$36,114.35 was improperly withheld from Pennsylvania charities and used by Licensee for its own purposes.

To its credit, Licensee wishes to make good on its obligation. This is welcome news for many reasons, not the least of which is that this court lacks any statutory authority under the LOSGCA to recoup Licensees' unmade payments to charities.¹ In this case, Licensee hoped to funnel its payments to charities through the sale of its real estate holdings. However, no buyer has committed yet, and this case does not benefit from an indefinite delay. Therefore, I must conclude this citation without the benefit of Licensee fulfilling its charitable obligations. Fortunately, Licensee has changed its leadership and I am convinced that the club intends to correct its error.

PRIOR RECORD:

Licensee has been licensed since July 29, 1936, and has had two prior violations since July 1, 1987, the date of establishment of the Office of Administrative Law Judge:

IN RE:

Citation No. 02-1520. Fine \$50.00.

1. 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.

Citation No. 04-0289. Fine \$300.00.

1. Possessed or operated gambling devices or permitted gambling on the licensed premises (football pools).

PENALTY:

The record discloses that count one of this citation represents Licensee's first violation of the Local Option Small Games of Chance (LOGSOC) Act. Section 328.702(d) prescribes a penalty of LOGSOC license revocation or any combination of a suspension or fine in accordance with §328.706(b). In this case, count one is eligible for a penalty up to \$800.00. In mitigation, some consideration shall be given to the fact that Licensee has admitted to the violations as charged in this citation, and has waived the right to a hearing and appeal.

For the foregoing reasons, a fine of \$800.00 shall be imposed as an appropriate penalty in this case.

¹ That role appears to fall to local prosecutors. (§328.702(e) of the LOSGCA)

THE MEADVILLE CLUB
IN RE CITATION NO. 15-1546

ORDER:

THEREFORE, it is hereby ordered that The Meadville Club, License Number, C-2951, pay a fine of \$800.00 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 liquor license and small games of chance licenses shall be suspended or revoked.

Jurisdiction is retained.

Dated this 20TH day of APRIL, 2016.



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

The fine must be paid by cashier's check, money order, or a check drawn on the 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

In Re Citation No. 15-1546
The Meadville Club