

Mailing Date: SEP 12 2016

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	IN RE Citation No.: 16-0512
LIQUOR CONTROL ENFORCEMENT	:	
	:	BLCE Incident No.: W08-507353
v.	:	
	:	
FORESTERS BENEFICIAL ASSN. OF	:	PLCB LID No.: 766
ERIE PENNA.	:	
1309-11 PARADE ST.	:	PLCB License No.: C-939
ERIE, PA 16503-1125	:	
	:	SGOC License No.: 20155592
ERIE COUNTY	:	(Expired: 5/9/16)
	:	
	:	

BEFORE: JUDGE RICHARD O'NEILL EARLEY
BLCE COUNSEL: MICHAEL NICKLES, ESQUIRE
LICENSEE: FRED TONTY, FINANCIAL SECRETARY

ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation that was issued on April 27, 2016, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (Bureau) against Foresters Beneficial Assn. of Erie Penna., License Number C-939, SGOC Number 20155592, (Licensee).

The citation contains two counts.

Count one of the citation charges Licensee with violation of the Local Option Small Games of Chance Act (SGOC Act) at 10 P.S. §328.307(d.1), alleging that during the period January 1, 2014 through February 22, 2016, Licensee, by its servants, agents or employees, failed to maintain proceeds from games of chance in a bank account separate from all other funds.

Count two of the citation charges Licensee with violation of the SGOC Act at 10 P.S. §328.502(a), and the Department of Revenue Regulations at 61 Pa. Code §901, alleging that on December 31, 2015, 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.

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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.

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. This investigation was initiated as a routine inspection. In preparation for the inspection, a Liquor Enforcement Officer reviewed the annual Games of Chance Club Licensee Reports, submitted by Licensee to the Pennsylvania Department of Revenue for the 2014 and 2015 calendar years.
2. On February 12, 2016, the Officer entered Licensee's premises to begin the routine inspection. He met with the club vice president who contacted the Board-approved manager via telephone. The Officer and the manager discussed the reports. The manager confirmed that the 2014 and 2015 reports were accurate. The manager stated that the club used gaming revenue to pay the bills. The Officer advised him that he needed to review the club's small games of chance bank account to determine what the 60% of designated public monies were spent on. The manager acknowledged that the SGOC funds were not kept in a separate bank account. The monies were commingled into one general bank account. The Officer then provided the manager with a records request and departed the premises.
3. On February 22, 2016, the Officer returned to the club and met with the club's manager and financial secretary. The financial secretary stated that he would open a separate bank account for SGOC proceeds as soon as possible. The financial secretary provided the Officer with a written statement regarding the general account and the use of SGOC proceeds for 2014 and 2015.
4. In 2014, Licensee generated over \$81,000 from gaming revenue. Of this, it distributed approximately \$3,000 to public interest groups by December 31, 2015. Licensee spent the rest on club expenses.
5. In 2015, Licensee generated approximately \$79,000 from gaming revenue. Of this, Licensee distributed approximately \$4,000 to public interest groups and spent the rest on club expenses. By February 22, 2016, no gaming proceeds from 2015 remained.

CONCLUSION OF LAW:

Counts one and two: Sustained as charged.

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DISCUSSION:

Pennsylvania has found that there is a public interest in permitting “the playing of games of chance for the purpose of raising funds, by certain nonprofit associations, for the promotion of charitable or civic purposes... In some cases, the proceeds from games of chance may be utilized to support certain operating expenses of certain organizations.” 10 P.S. §328.102 of the SGOC (emphasis added). In the case of club licensees, such as this Licensee, the SGOC requires clubs to maintain a separate bank account for gaming activities (Id. at §328.307(d.1)), and submit records annually that tally the amount of revenue earned from games of chance in the preceding year. Id. at §328.503. Club licensees are permitted to keep 40% of those revenues for club expenses. Id. at §328.502(b). The remaining 60% must be distributed to “public interest groups” as defined in the SGOC, but which are generally charitable organizations. Id. at §328.502(a). In addition, clubs are required to make distributions to public interest groups within one year of the reporting year. Id. Thus, gaming revenue acquired in 2014 must be distributed by December 31, 2015. Revenue acquired in 2015 must be distributed by December 31, 2016.

In this case, even though Licensee theoretically has until the end of this year to distribute funds to public interest organizations, the reality is that Licensee has already spent all the gaming revenue from 2015 on its operations. Further, it is impossible for Licensee to divert a portion of 2016 gaming revenues to make up 2015’s shortfall because 2016 revenues must be used to calculate Licensee’s public interest obligations due by the end of 2017. It may be possible for Licensee to make up the difference through other sources of revenue, but the SGOC does not give this court authority to order club licensees to do so.

Instead, the SGOC permits this court to impose a maximum fine of \$2,000.00 for a third violation and suspend/revoke an SGOC license, but specifically precludes taking any action against a club licensee’s liquor license until the third SGOC violation. Id. at §§328.706, 328.702(g). Most significantly, I am not aware of any device in the SGOC to enforce club licensees’ statutory obligation to distribute funds to public interest organizations.

As a result, club licensees are faced with a tempting dilemma. Most comply with the SGOC’s obligations and voluntarily make public interest distributions of gaming revenue. But some keep the money and, in most cases, pay fines that are often a small percentage of the money kept. For example, in this case Licensee used almost \$90,000 that was meant for public interest groups. I can fine Licensee up to \$1,000.00 for this violation. Licensee still benefits from the misuse of \$89,000 and public interest groups suffer the loss of \$90,000.

Obviously, most clubs want to follow the rules. But, when economic pressures build, there is no meaningful disincentive in the SGOC to encourage struggling clubs to continue doing the right thing.

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PRIOR RECORD:

Licensee has been licensed since May 31, 1940, and has had three prior violations since July 1, 1987, the date of establishment of the Office of Administrative Law Judge:

IN RE:

Citation No. 96-2781. Fine \$400.00.

1. Failed to require patrons to vacate the premises not later than one-half after the required time.
2. Permitted patrons to possess and/or remove alcoholic beverages after 3:30 a.m.

Citation No. 97-1734. Fine \$300.00 and 1 day suspension and thereafter until conditions corrected. Suspension vacated.

1. Improper admission of members.
2. Failed to notify the Board within 15 days of a change of Officers.

Citation No. 03-0613. Fine \$600.00.

1. Possessed or operated gambling devices or permitted gambling on the licensed premises (sports bets, NASCAR pools, and sports pools).
2. Conducted drawings other than those authorized by law.

PENALTY:

The record discloses that count one of this citation represents Licensee's first violation of the SGOC Act. Section 328.702(d) prescribes a penalty of SGOC 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, and count two is eligible for a fine up to \$1,000.00.

The Bureau and Licensee recommend to this court that a fine in the amount of \$600.00 be imposed as an appropriate penalty in this case. I rejected the recommendation because of the large amount of money Licensee used for its purposes, and failed to distribute to public interest groups. Accordingly, I impose a penalty of \$300.00 for count one, and \$900.00 for count two. Some consideration was given to Licensee's cooperation in the case. In addition, I am not revoking Licensee's SGOC license or suspending it because Licensee contends it will force the immediate closure of the club. Because there is no evidence that Licensee used gaming funds for personal or frivolous expenditures, but only on expenses necessary to keep its business open, I see no compelling reason to endanger Licensee's existence.

ORDER:

THEREFORE, it is hereby ordered that Foresters Beneficial Assn. of Erie Penna., License Number, C-939, SGOC License No. 20155592, pay a fine of \$1,200.00 within 20 days

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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 SGOC license shall be suspended or revoked.

Jurisdiction is retained.

Dated this 6TH day of September, 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

Credit/Debit Cards may be used: If you have already registered with PLCB+ you should be able to pay by Credit/Debit card; if you have not registered with PLCB+ you may obtain the information on how to register by sending an email message to: RA-LBLICENSINGMOD@pa.gov.

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