

Mailing Date: June 25, 1998

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 97-1918
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W7-170639
v.	:	
	:	LID - 689
FRATERNAL ORDER OF EAGLES	:	
AERIE 1231	:	
238 E MAHONING ST	:	
PUNXSUTAWNEY PA 15767-2015	:	
	:	
	:	
JEFFERSON COUNTY	:	
LICENSE NO. CC-728	:	

BEFORE: JUDGE THAU

APPEARANCES:

For Bureau of Enforcement
Nadia L. Vargo, Esquire
Pennsylvania State Police
1 Parkway Ctr., Suite 100
875 Greentree Road
Pittsburgh, PA 15220-3603

For Licensee
J. Kipp Lukehart, Esquire
219 E. Union Street
P.O. Box 74
Punxsutawney, PA 15767

ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation that was issued on September 29, 1997, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (Bureau) against Fraternal Order of Eagles Aerie 1231 (Licensee), License Number CC-728.

The citation¹ charges Licensee with a violation of Sections 403(h) and 471 of the Liquor Code [47 P.S. §4-403(h) and §4-471]. The charge is that Licensee, by servants, agents or employes, supplied false information on Form PLCB-868, Notice of Change of Officers, Directors or Manager, dated October 29, 1996.

An evidentiary hearing was conducted on May 6, 1998 at Commerce Park, 5000 Sixth Avenue, Altoona, Pennsylvania.

After review of the transcript of that proceeding, the following Findings of Fact and Conclusions of Law are entered.

FINDINGS OF FACT:

1. The Bureau began and completed its investigation on August 20, 1997. (Commonwealth Exhibit No. C-1, N.T. 14)

2. The Bureau sent a notice of an alleged violation to Licensee at the licensed premises by certified mail-return receipt requested on August 28, 1997. The notice alleged a violation as charged in the citation. (Commonwealth Exhibit No. C-1, N.T. 14)

3. Licensee's renewal application dated October 29, 1996 was falsified. Question No. 7 asks: "Are any of the officers, directors, managers or stewards, officers, directors, stockholders or creditors of any other licensee." The response was: "No." In fact, Mr. M. is the President of the Italian Sons and Daughters of Italy, another club licensee, and is the lessor of the property in which that club licensee is situated. Mr. M. is also an officer of Licensee. (N.T. 5-7)

1. Commonwealth Exhibit No. C-2, N.T. 13.

CONCLUSIONS OF LAW:

1. The notice requirements of Liquor Code Section 471 [47 P.S. §4-471] have been satisfied.
2. The citation is **sustained** as charged.

DISCUSSION:

Question No. 7 of the renewal application probes into what I characterize as a horizontal interlocking business relationship between licensees. That question was answered by Licensee falsely. Clearly, the error was inadvertent as the interlocking interest was appropriately reported by the other licensee involved. Licensee interposes the case of *Egbert v. Liquor Control Bd.*, 559 A.2d 105 (Pa.Cmwlt. 1989) in which the Commonwealth Court determined that a licensee may not be charged with intentionally supplying false information when the false information was supplied inadvertently.

Egbert, supra, has yet to be cited in a subsequent case for that principle although the Commonwealth Court did sustain a charge of falsification based on a substantial evidence test. *Pa. State Police v. Boots & Bonnet*, 630 A.2d 541 (Pa.Cmwlt. 1993). The Commonwealth Court was not asked and did not address the issue of intent.

The Commonwealth Court, in *Egbert*, supra, did not consider the implications of *Pa. Liquor Control Bd. v. TLK, Inc.*, 544 A.2d 931 (Pa.1988) in which the Pennsylvania Supreme Court reaffirmed the principle of strict liability for violations of the Liquor Code. It seems the *Egbert* Court placed much emphasis on Liquor Code Section 403(h) which renders it a crime to falsify an application intentionally. From that, the Court apparently concluded the charge included the element of intent.

Although intent is ordinarily not an element in a Liquor Code charge based on strict liability, if the Bureau selects language which includes the concept of intent then the Bureau is burdened with that additional requirement. *All American Rathskeller, Inc.*, 3 Sel.Op. ALJ 236. However, and in keeping with my thinking in *All American Rathskeller, Inc.*, a statutory reference neither adds or detracts from the Bureau's burden of establishing a violation. Rather, it is the wording of the charge which controls.

Essentially, the Administrative Law Judge is engaged in a two part exercise. First, the Administrative Law Judge must determine whether the alleged conduct actually occurred. If so, then the Administrative Law Judge must then determine what provision of law has been violated.

Instantly, Licensee has been charged with supplying false information. As worded, the charge avoids the element of intent. Consequently, I must apply strict liability.

PRIOR RECORD:

Licensee has been licensed since January 1, 1934. Since July 1, 1987, the date of establishment of the Office of Administrative Law Judge, Licensee has four prior violations (Commonwealth Exhibit No. C-4, N.T. 12):

Citation No. 92-1780. Fine \$200.00.

1. Sales to nonmembers.
July 11, 1992.

Citation No. 92-2268. Fine \$100.00.

1. Possessed or operated gambling devices or paraphernalia or permitted gambling or lotteries on a licensed premises (sports pool).
October 18, 1992.

Citation No. 93-1451. Fine \$200.00.

1. Failed to report a change of manager.
February 24, 1993.
2. Cashed, received, handled or negotiated payroll checks.
On 18 dates during the period August 12, 1992 to
March 31, 1993.

Citation No. 95-0454. Fine \$600.00 and 1 day suspension.

1. Possessed or operated gambling devices or paraphernalia or permitted gambling or lotteries on a licensed premises (machines and tickets).
October 6, 1994, January 11 and 18, 1995.

PENALTY:

Section 471 of the Liquor Code [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 violations of the type found in this case.

Further, Section 471(c) of the Liquor Code [47 P.S. §4-471(c)] requires that the penalty imposed include license revocation or suspension where the violation in question is the third or subsequent violation of the Liquor Code and/or Crimes Code within a four year period. The violation in this case represents the third violation of the Liquor Code within a four year period. Therefore, license revocation or suspension must be included as part of the penalty.

I adopt the jointly recommended penalty of a one day suspension.

ORDER:

THEREFORE, it is hereby ordered that the Catering Club liquor license of Fraternal Order of Eagles Aerie 1231, License No. CC-728, be suspended for a period of one day, **BEGINNING** at 7:00 a.m., on Monday, August 24, 1998, and **ENDING** at 7:00 a.m., on Tuesday, August 25, 1998.

Licensee is directed on Monday, August 24, 1998, at 7:00 a.m., to place a 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, August 25, 1998, at 7:00 a.m., to remove the placard of suspension and return its license to its original wall location.

Dated this 16th day of June, 1998.

Felix Thau, A.L.J.

pm