



8 of 10 DOCUMENTS

In re Treasure Chest Amusement Device

no. 85

COMMON PLEAS COURT OF CAMBRIA COUNTY, PENNSYLVANIA

1978 Pa. Dist. & Cnty. Dec. LEXIS 95; 9 Pa. D. & C.3d 295

September 22, 1978, Decided

DISPOSITION: [*1] Proceeding to destroy alleged gambling device.

COUNSEL: Patrick T. Kimiry and James A. Nelson, Assistant District Attorneys, for Commonwealth.

Robert Davis Gleason, for defendant.

JUDGES: CREANY, J.

OPINION BY: CREANY, J.

OPINION

[**295] Misc. 1977.

CREANY, J., September 22, 1978 -- This is an in rem proceeding in which the Commonwealth seeks to destroy two machines, identified as "Treasure Chest Amusement Device"; the machines were confiscated in the Borough of Nanty Glo, Cambria County, Pa.

The machines were set up as part of the carnival units at the Nanty Glo Firemen's fairground area. This occurred on June 28, 1977; the machines were [**296] observed in play, and were played by members of the Pennsylvania State Police; the machines were confiscated, and the owner of the machines, William Swank, and Miss Jean Ann Esseny, the person in charge at the time of the arrest, were charged with the violation of the gambling laws of the Commonwealth of Pennsylvania, specifically section 5513 of the Pennsylvania Crimes Code of December 6, 1972, P.L. 1482, 18 C.P.S.A.

Section 5513(a) provides as follows:

"(a) *Offense defined.* -- A person is guilty of a misdemeanor of the [*2] first degree if he:

"(1) intentionally or knowingly makes, assembles, sets up, maintains, sells, lends, leases, gives away, or offers for sale, loan, lease or gift, any punch board, drawing card, slot machine or any device to be used for gambling purposes, except playing cards;

"(2) allows persons to collect and assemble for the purpose of unlawful gambling at any place under his control;

"(3) solicits or invites any person to visit any unlawful gambling place for the purpose of gambling; or

"(4) being the owner, tenant, lessee or occupant of any premises, knowingly permits or suffers the same, or any part thereof, to be used for the purpose of unlawful gambling.

"(b) *Confiscation of gambling devices.* -- Any gambling device possessed or used in violation of the provisions of subsection (a) of this section shall be seized and forfeited to the Commonwealth. All provisions of law relating to the seizure, summary [**297] and judicial forfeiture, and condemnation of intoxicating liquor shall apply to seizures and forfeitures under the provisions of this section."

The Commonwealth having confiscated the machines, now seeks to destroy the same on the theory they are gambling [*3] or gaming devices to be used for gambling purposes, and are therefore subject to confiscation and destruction, as provided for by the Crimes Code.

Defendant-owner alleges that the machines were not gambling devices as defined in the Crimes Code and the confiscation was illegal, the machines should be returned to him and not destroyed.

DISCUSSION

The investigation which gave rise to the citation began on March 1, 2015 and was completed on May 26, 2015; and notice of the violation was sent to Licensee by Certified Mail on June 5, 2015. The notice of violation was received by Licensee.

An evidentiary hearing was held on this matter on December 15, 2015 at the Office of Administrative Law Judge, Brandywine Plaza, 2221 Paxton Church Road, Harrisburg, Pennsylvania.

Upon review of the transcript of this hearing, we make the following Findings of Fact and reach the following Conclusions of Law:

FINDINGS OF FACT:

COUNTS 1 AND 2

1. Licensee's hotel liquor license expired on February 28, 2015, and it was not renewed or validated on March 1, 2015 (Stipulation N.T. 5-6).
2. On March 1, 2015, an officer of the Bureau entered the licensed establishment at 3:30 p.m. The officer ordered a six-pack of Natural Light beer from the bartender. The bartender obtained a six-pack of Natural Light beer and placed it in a plastic bag and put it on the bar counter. The officer paid \$6.00 for the six-pack of beer and then left the establishment (Stipulation N.T. 6).
3. On April 8, 2015, the officer again entered the licensed premises in an undercover capacity and observed a machine called a "Quarter Pusher" machine set up for play. The machine allows the player to place quarters into the machine. The quarters then fall into a level shelf called the "Playing area." The shelf moves back and forth, pushing any quarters that rose to the level of the clearance off the initial shelf onto a lower level. The tray, as it moves back and forth, pushes quarters forward toward a drop-off point. Any quarters that drop off are then awarded to the player by coming out of the front of the machine (Stipulation N.T. 6-7).
4. The officer played the machine on April 8, 2015. In addition to the quarters that were contained on the tray, the officer observed paper currency in the amounts of \$1.00, \$5.00 and \$20.00 bills lying on top of the quarters, which could be conceivably pushed off into the reward area that the player could then win (Stipulation N.T. 7).
5. The officer played the machine and placed a total of \$2.00 in quarters into the machine, and consequently won a total of \$1.50 while playing the machine (Stipulation N.T. 7).
6. The officer seized the Quarter Pusher machine on April 9, 2015 (N.T. 7-8).
7. On April 9, 2015, the officer reviewed sales records of Licensee showing that Licensee had been open and selling alcohol on the date of March 1, 2015 while its license was expired (Stipulation N.T. 8).

CONCLUSIONS OF LAW:

Counts 1 and 2 of the citation are **sustained**.

DISCUSSION:

COUNT 1

The record establishes that the machine seized by the Bureau of Enforcement was a gambling device per se, having the elements of consideration, chance rather than skill and reward. It is therefore, a gambling device per se.

COUNT 2

The record clearly establishes that Licensee sold alcoholic beverages on March 1, 2015, while it did not have a valid liquor license.

In light of the above, I conclude that Counts 1 and 2 of the citation are sustained.

PRIOR RECORD:

Licensee has been licensed since January 5, 2012, and has had one prior violation:

IN RE:

Citation No. 13-1195. Fine \$150.00.

1. Smoked and/or permitted smoking in a public place where smoking was prohibited. September 1, November 11 and December 7, 2012.

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 Count No. 1 of this case.

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 \$1,000.00 or more than \$5,000.00 or both for violations of the type found in Count No. 2 of this case.

Under the circumstances of this case, the penalty imposed shall be as follows:

Count 1 - \$ 450.00 fine
Count 2 - \$1,400.00 fine

ORDER

THEREFORE, it is hereby ordered that Licensee MESSERSMITH ENTERPRISE, LLC, pay a fine of \$1,850.00 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 license shall be suspended or revoked.

Jurisdiction is retained.

Dated this 4TH day of March, 2016.



Daniel T. Flaherty, Jr., J.

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MOTIONS FOR RECONSIDERATION CANNOT BE ACTED UPON UNLESS THEY ARE IN WRITING AND RECEIVED BY THE OFFICE OF ADMINISTRATIVE LAW JUDGE WITHIN 15 DAYS AFTER THE MAILING DATE OF THIS ORDER, ACCOMPANIED BY A \$25.00 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 CHIEF COUNSEL'S OFFICE AT 717-783-9454.

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. 15-1111
MESSERSMITH ENTERPRISE, LLC

Credit/debit cards may be used: visit www.leb.state.pa.us scroll over LEGAL and then click on Office of ALJ for instructions. Your LID/USER NAME is **65876** and your password is **NTXH9K**.