ALL THAT CERTAIN following described real estate, together with the improvements thereon erected, lying and being situate in Greene Township, Franklin County, Pennsylvania, bounded and limited as follows:

BEGINNING at an iron pin at the Southeast corner of the intersection of Kenny Avenue and Johnson Drive in the subdivision of Lee L. Johnson and wife; thence along said Johnson Drive, north 79 degrees 2 minutes east, 150 feet to an iron pin at the corner of lands of M.F. Gibbons; thence along said lands of J.F. Gibbons, south 24 degrees 3 minutes east, 82 feet to an iron pin at the corner of Lot No. 3, Section A, Lee L. Johnson Subdivision; thence along said Lot No. 3, Section A of said subdivision, south 75 degrees 23 minutes west 150.5 feet to an iron pin along the eastern edge of said Kenny Avenue; thence along said Kenny Avenue north 23 degrees 50 minutes west 81.7 feet to an iron pin, the place of beginning. Being Lot No. 4, Section A of a subdivision laid out for Lee L. and C. Mae Johnson by William L. Arrowood R.E., dated November 23, 1961, and recorded in the office of the recorder of Deeds of Franklin County in Plan Drawer 8.

BEING the same premises which Floyd E. Swanger and Delores J. Swanger, formerly husband and wife, dated May 23, 1983 and recorded May 25, 1983, in the Recorder's Office, Franklin County In Record Book 880, Page 367, granted and conveyed unto Billy R. Kirby and Donna O. Kirby.

KNOWN as 2683 Johnson Drive, Chambersburg, PA.

BEING sold as the property of Billy R. Kirby and Donna O. Kirby, Writ No. AD 1986-322.

TERMS

As soon as the property is knocked down to a purchaser, 10% of the purchase price plus 2% Transfer Tax, or 10% of all costs, whichever may be the higher, shall be delivered to the Sheriff. If the 10% payment is not made as requested, the Sheriff will direct the auctioneer to resell the property.

The balance due shall be paid to the Sheriff by NOT LATER THAN Monday, May 4, 1987 at 4:00 P.M., E.S.T. Otherwise all money previously paid will be forfeited and the property will be resold on Friday, May 8, 1987 at 1:00 P.M., E.S.T. In the Franklin County Courthouse, 3rd Floor, Jury Assembly Room, Chambersburg, Franklin County, Pennsylvania, at which time the full purchase price or all costs, whichever may be higher, shall be paid in full.

RAYMOND Z. HUSSACK, SHERIFF
Franklin County, Chambersburg, PA

"If appellant did not know how it 'otherwise failed to use due care and caution under the circumstances', it could have filed a preliminary objection in the nature of a request for a more specific pleading or it could have moved to strike that portion of appellant's complaint.

PENNSYLVANIA LIQUOR CONTROL BOARD v. FULTON OVERSEAS VETERANS ASSOCIATION, INC., C.P. Fulton County Branch, No. 1 of 1985-MCP

Liquor License - Private Club - Suspension of License

1. A proceeding to suspend or revoke a liquor license under the liquor laws is civil and administrative in nature and not criminal.

2. Proof of a liquor licensee's intent to violate the Liquor Code is not required to justify a sanction for the violation.

3. Where the licensee has an automatic locking mechanism on the door to prevent unauthorized entry but the door is left open, the licensee cannot blaim an expectation of privacy requiring a liquor control board agent to secure a search warrant.

Walter A. Criste, Esquire, Attorney for Pennsylvania Liquor Control Board
Gary D. Wilt, Esquire, Attorney for Appellant

OPINION AND ORDER

KELLER, P.J., September 11, 1986:

The appellant is a non-profit corporation which holds license number CC-5010, issued by the Pennsylvania Liquor Control Board (hereinafter the Board). On May 9, 1984, the Board issued a citation to show cause why the license should not be revoked and the bond forfeited. A hearing was held on September 13, 1984, before a Board examiner. On March 6, 1985, the Board filed an Opinion and Order containing the following finding of fact:

A. The licensed organization, by its servants, agents or employees sold liquor and/or malt or brewed beverages on the licensed premises to a non-member without prior arrangement for such services on March 23, 1984.

B. The licensed organization by its servants, agents or employees permitted gambling, gambling devices, paraphernalia and/or lotteries on the licensed premises on March 23 and April 9, 1984.

Accordingly, the Board suspended the appellant's license for 20 days commending April 8, 1985. The appellant appealed the Board's order on the grounds that the evidence presented was insufficient to support its findings and justify the suspension. No evidence was presented at the de novo hearing scheduled for November 26, 1985. Instead, by stipulation of counsel, it was ordered that the matter would be resolved on the Board hearing record and briefs of counsel. On July 24, 1986, the appellant's counsel filed his brief along with an apology for its lateness. [1] The Commonwealth's brief was submitted shortly thereafter.

The only testimony presented was the testimony of Robert Yonick, an Enforcement Officer with the Board. He testified:

(1) On Friday, March 23, 1984, at approximately 8:20 p.m., he watched a group walking ahead of him enter the club. About thirty seconds later he followed them into the club by passing through two sets of doors at the main entrance. The interior doors were equipped with a key card locking system; however, the door was ajar and unlocked.

(2) Moving to the bar, the agent ordered a Stroh's beer from one of the bartenders. He was served without question.

(3) While seated at the bar, the agent observed other patrons, also seated at the bar, playing tip seals. A patron to his left purchased ten tip seals and was paid for a winning ticket. The agent observed boards and tip seals throughout the bar area.

(4) At 8:35 p.m., the agent was asked for identification, and when he produced none, was told to finish his beer and leave.

(5) On April 9, 1984 at 3:05 p.m. the agent reeturned to the club accompanied by Trooper McGinnis of the Pennsylvania State Police. He identified himself immediately as a Board agent.

(6) The agent observed tip seals, a board, fish bowls, and a cigar box labelled "Tip Boards" with thirteen one dollar bills inside. Additional tip seals were discovered throughout the premises.

[1] The appellant's brief was due in the judge's chambers within 45 days of November 27, 1985.

(7) Several tip seals and the board were taken as evidence.

(8) On the evening of March 23, 1984, the club catered an affair for the Penn Rod Hunting Club.

(9) Citations have previously been issued to the club for sales to non-members on January 3, 1981, for gambling and gambling devices on February 18, 1981, and for gambling devices on July 8, 1983.

First, we consider whether the evidence presented was sufficient to support the conclusion that on March 23, 1984 the licensed organization sold an alcoholic beverage on the licensed premises to a non-member without prior arrangement for such services. The Liquor Code, 47 P.s. § 4-406 (a) (1) provides in part

"... No club licensee nor its officers, servants, agents or employees, other than one holding a catering license, shall sell any liquor or malt or brewed beverages to any person except a member of the club . . ."

The Board regulations on catering, 40 P.C. § 5.83 state that:

(a) Catering, for purposes of this section, means the furnishing of liquor or malt or brewed beverages, or both, to be served with food, . . . for the accommodation of groups of nonmembers who are using the facilities of the club by prior arrangement.

Upon learning of a violation of the Liquor Code or of rules promulgated by the Board, the Board may after a hearing suspend or revoke the license. 47 P.S. § 5-514.

A proceeding to suspend or revoke a liquor license under the liquor laws is civil and administrative in nature and not criminal. *In re Petty,* 216 Pa. Super. 55, 258 A.2d 874 (1969). Thus, the Commonwealth has the burden of proving by a fair preponderance of the evidence that a violation of the law has occurred. *Pennsylvania Liquor Control Board v. American Legion Home Ass'n. of Cresson,* 81 Pa. Cmwlth. 503, 474 A.2d 68 (1984). Proof of a liquor licensee's intent to violate the Liquor Code is not required to justify a sanction for the violation. *Pennsylvania Liquor Control Board v. 1212 Corp.,* 85 Pa. Cmwlth. 35, 480 A.2d 390 (1984). "It has been flatly ruled that a sale by a club licensee to a non-member is a violation of the Code." *35th Ward Democratic Club, Liquor License Case,* 213 Pa. Super. 13, 15, 245 A.2d 713, (1968). In *Pennsylvania Liquor Control*

Board v. Westmoreland Republican Club, 65 Pa. Cmwlth. 506, 442 a.2d 1217 (1982), the sale of liquor to one who merely applied for membership was held to be a violation of the Code as a sale to a non-member.

> The subjective and even good faith belief of the Club or its officers that Officer Bunting was, as of December 1, 1978, a club member is completely irrelevant. First, a liquor sale by a club licensee to a non-member constitutes a violation regardless of intent. Second, club licensees cannot be allowed, in effect, to adjudicate whether they have violated the Liquor Code by alleging that they felt that they were complying with the law. 65 Pa. Cmwlth at 513.

In the present case, the appellant was catering the Penn Rod Hunting Club on the evening that the agent was served. Under *Petty* and *Westmoreland,* the appellant's argument that they lacked a "criminal *mens rea*" is irrelevant. Furthermore, the fact that the club made prior arrangements for sales to non-members does not permit them to generally make sales to any non-member coming on the premises on the date involved. It only authorizes the sale to non-members on the club's premises, on the date arranged, providing the non-members are in fact part of the group for which prior arrangements were made. *In re Revocation of License of North Harrisburg War Veterans Home Ass'n,* 88 Dauph. 359 (1968). The hearing record clearly establishes that on March 23, 1984 at 8:20 p.m. the agent entered the club through the main entrance and that a bartender sold him a 12 oz. bottle of Stroh's beer. The officer was neither a member of the club nor a member of the group being entertained on that particular evening. Since intent is not required, we are satisfied that the uncontroverted evidence was sufficient to sustain the Board's conclusion that on March 23, 1984, the licensee by its employee sold a brewed beverage on the premises to a non-member without prior arrangement for such services.

We must also consider whether the evidence was sufficient to sustain the Board's conclusion that the licensed orgainization by its servants, agents or employees permitted gambling, gambling devices, paraphernalia and/or lotteries on the licensed premises on March 23, and April 9, 1984. The hearing record shows that on March 23 the agent observed the club's patrons playing tip seals at the bar and observed one customer being paid for a winning ticket. On April 9 the agent observed tip seals, boards, and fish bowls throughout the licensed premises. In *Commonwealth v. Forry,* 201 Pa. Super. 431, 193 A.2d 761 (1963), the evidence consisting

of punchboards, fish bowl tickets and slot machines found in the defendant's basement was sufficient to sustain his conviction of possessing and maintaining gambling devices. Similarly, in this case the agent's testimony and the possession of bags of tip seals and a board were sufficient to support the Board's findings.

In his brief appellant's counsel argues that the agent's entrance to the club was gained surreptitiously so that the evidence of gambling should be suppressed. His theory is that the unannounced entry into a private club without a search or arrest warrant constituted a constitutionally improper infringement of the defendant's right to privacy.

> In order for this constitutional protection to attach, however, the individual must harbor a reasonable and justifiable expectation of privacy within the area in question. See Terry v. Ohio, 393 U.S. 1, 88 S. Ct. 1868, 20 L.Ed. 2d889 (1968); Commonwealth v. Swanger, 453 Pa. 107, 307 A.2d 875 (1973). The reasonableness of one's expectations will necessarily turn on the facts in the individual case evidencing the strength of that belief and the measures taken to ensure privacy. One cannot envelope one's self with a cloak of Fourth Amendment protection while leaving gaping holes in the fabric.

Commonwealth v. Weimer, 262 Pa. Super. 69 at 74-5, 396 A.2d 649 (1978). In *Weimer* the Superior Court held that:

> Although the buzzer system and one-way mirror militate in favor of an expectation of privacy, the actions of the club negate any such assumption. In neither the May 21st nor June 17th entry was the mirror used to identify the entrance. Indeed, the buzzer system appears to have been a precaution with no substance, since the troopers were admitted on the first occasion without any showing of membership. It would have been a simple matter to position a doorman at the outer door and to check the potential entrant and his identification through the mirror. This lax enforcement of purported security measures indicates that appellees' expectation of privacy was hardly reasonable or justifiable. 262 Pa. Super. at 75-76.

In our judgment, the case at bar is analogous to *Weimer.* The reliance of the club upon the automatic locking mechanism in the door and its members and employees to prevent unauthorized entries was unwarranted because the door was ajar and no club member or employee made any effort to determine the agent's membership status until he was imbibing his drink. The failure of

the Veterans to require an employee to scrutinize every individual seeking entry through the main door and the failure to check the agnet's membership deprived the club of any reasonable expectation of privacy.

Before the trial court may modify or set aside a penalty imposed by the Board for a violation of the Code, it must make findings of fact on the material issues different from those made by the Board. *1212 Corp.,* supra. In the present case, our findings do not differ significantly from those made by the Board. The imposed penalty is fixed.

ORDER OF COURT

NOW, this 11th day of September, 1986, the Fulton Overseas Veterans Association's appeal from the Pennsylvania Liquor Control Board's order of March 6, 1985 is dismissed.

FRANKLIN COUNTY SPECIAL EDUCATION CENTER JOINT AUTHORITY V. W. R. GRACE & COMPANY, ET AL., C.P. Franklin County Branch, A.D. 1985-301

Strict Liablity - Economic Losses

1. A plaintiff who alleges that a latent defect in defendant's products has caused a risk of injury to people or to plaintiffs other property may bring a claim in product liability.

2. One who sues for purely economic loss must sue in contract rather than tort.

3. Where plaintiff pleads damage to rugs, walls and ceilings as a result of a latent defect in defendant's roof, they allege the requisite elements for a strict liability cause of action.

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John J. Sylvanus, Esquire, Counsel for Defendant, W.R. Grace & Company, Inc.
Edward C. German, Esquire, Counsel for Defendants, Vernon R. Shields and Donald G. Williams, t/d/b/a etc., now E.I. Group
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