

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 02-1001
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W2-253343
	:	
v.	:	LID - 8895
	:	
PREATE WINERY, INC.	:	
T/A ROBERT J. CAVALIERI	:	
VINEYARDS	:	
R859 S. MAIN ST. &	:	
149 MILWAUKEE AVE.	:	
OLD FORGE, PA 18518-1453	:	
	:	
LACKAWANNA COUNTY	:	
LICENSE NO. LK-75	:	

BEFORE: JUDGE THAU

APPEARANCES:

For Bureau of Enforcement
Roy Harkavy, Esquire
Pennsylvania State Police
8320 Schantz Road, Second Floor
Breinigsville, PA 18031

For Licensee
Ernest D. Preate, Jr., Esquire
507 Linden Street
Scranton, PA 18503

ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation that was issued on May 28, 2002, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (Bureau) against Preate Winery, Inc., t/a Robert J. Cavalieri Vineyards (Licensee), License Number LK-75.

The citation charges Licensee with a violation Sections 404 and 471 of the Liquor Code [47 P.S. §4-404 and §4-471]. The charge is that on March 14, 2002, at No. 01 CR2133, in the Criminal Courts of the County of Lackawanna, Pennsylvania, Licensee's vice president, director, manager and stockholder, Gregory Preate, having pled guilty to the charge of possession of cocaine, a Schedule II Controlled Substance (in violation of Section 13 (A)(16) of the Controlled Substance, Drug, Device and Cosmetic Act, an Act of April 14, 1972, P.L. 233, No. 64) was sentenced to twenty-eight (28) days to one (1) year imprisonment and fines and costs of \$1,066.50.

An evidentiary hearing was conducted on November 21, 2002 at the Scranton State Office Building, 100 Lackawanna Avenue, Scranton, 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 its investigation on April 24, 2002 and completed it on May 13, 2002. (N.T. 5)
2. The Bureau sent a notice of alleged violations to Licensee at the licensed premises by certified mail-return receipt requested on May 16, 2002. The notice alleged violations as charged in the citation. (Commonwealth Exhibit No. C-1, N.T. 5)¹
3. On March 14, 2002, Licensee's Vice President, Director, Manager and Stockholder, Gregory Preate pled guilty to the charge of possession of cocaine, a Schedule II Controlled Substance of the Controlled Substance, Drug, Device and Cosmetic Act and sentenced to twenty-eight days to one year imprisonment and fines and costs of \$1,066.50. (N.T. 6)
4. The conduct giving rise to the conviction did not occur on the licensed premises. (N.T. 6)
5. At all relevant times, Licensee's Corporate Officers were: Robert Preate, Madeline Preate and Gregory Preate. (N.T. 7)

1. This notice is required for Article IV licensees. There is no similar provision related to Article V licensees.

CONCLUSIONS OF LAW:

1. The notice requirements of Liquor Code Section 471 [47 P.S. §4-471] have been satisfied.
2. The charge does not describe unlawful conduct.

DISCUSSION:

This matter was initially submitted to me by way of Waiver, Admission and Authorization with a recommendation that I impose a fine. As this case involves an Article V licensee, I am not authorized to impose a fine.

Liquor Code Section 514(a) [47 P.S. §5-514(a)] authorizes an Administrative Law Judge to impose either a suspension or license revocation. Liquor Code Section 516 [47 P.S. §5-516] indicates that an Administrative Law Judge **may** accept an Offer in Compromise as a penalty in lieu of a suspension. In a case of a Limited Winery, the statutory rate for such Offers is \$50.00 for each day of suspension.

The Bureau filed a Motion to Amend the Citation requesting that the statutory references to Liquor Code Sections 404 and 471, both of which are pertinent only to Article IV licensees, be changed to the appropriate references in Article V. Consistent with my view expressed in *All American Rathskeller, Inc.*, 3 Sel.Op. ALJ 236, I did not address the Motion because it would elevate a statutory reference to an unwarranted level of importance.

Nonetheless, this matter must be dismissed on two distinct bases. First, charges such as these brought against Article IV licensees are grounded primarily in Liquor Code Section 404 regarding the reputation of a licensee. There is no such parallel provision in Article V.

Secondly, while developed in the Article IV licensee arena, the message in the Trilogy of *Commonwealth v. Price Bar, Incorporated*, 201 A.2d 221 (Pa.1964); *Primo's Bar, Inc. v. Com., Pa. Liquor Control Bd.*, 409 A.2d 1369 (Pa.Cmwlth. 1979); *Com., Pa. Liquor Control Bd. v. Pollock*, 484 A.2d 206 (Pa.Cmwlth. 1984), is readily transferable to Article V licensees. Instantly, the conduct occurred away from the licensed premises. There are two innocent parties, i.e., corporate officers Robert Preate and Madeline Preate. Independent of any other legal issues, the Trilogy requires me to dismiss this matter.

ORDER:

NOW THEREFORE, it is ordered that Citation No. 02-1001, issued against Preate Winery, Inc., t/a Robert J. Cavalieri Vineyards, is DISMISSED.

Dated this 31st day of December, 2002.

Felix Thau, A.L.J.

Pm

MOTIONS FOR RECONSIDERATION MUST BE RECEIVED WITHIN 15 DAYS OF THE MAILING DATE OF THIS ORDER TO 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.