

Mailing Date: JUN 22 2006

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 05-0808
LIQUOR CONTROL ENFORCEMENT	:	
	:	
v.	:	Incident No. W01-308263
	:	
THORNE CORPORATION	:	
1315-17 BAINBRIDGE ST.	:	LID - 50859
PHILADELPHIA PA 19147-1809	:	
	:	
	:	
PHILADELPHIA COUNTY	:	
LICENSE NO. R-SS-1364	:	

APPEARANCES:

FOR THE BUREAU OF ENFORCEMENT:

JAMES E. DAILEY, ESQ.

FOR THE LICENSEE:

JOHN J. McCREESH, III, ESQ.

BEFORE: JUDGE WRIGHT

ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation that was issued on May 3, 2005, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter "Bureau") against Thorne Corporation, License Number R-SS-1364 (hereinafter "Licensee").

An Administrative hearing was held on Tuesday, August 30, 2005, pursuant to requisite and appropriate hearing notice. The parties stipulated to the service and receipt of the notice letter and the citation.

The citation charges Licensee with violation of Section 102 of the Liquor Code, 47 P.S. Section 1-102, in that on March 23, 2005, the licensed premises was not a bona fide restaurant in that Licensee, by its servants, agents or employees, maintained insufficient seating.

FINDINGS OF FACT:

1. Michael Nicholson is employed as an Enforcement officer by the Bureau of Enforcement. On March 23, 2005, he investigated the licensed premises arriving at approximately 3:45 p.m. He was accompanied by Officer Viola (N.T. 5-6).

2. When Officer Nicholson arrived at the premises, the premises was open and operating. The officer purchased a sixteen ounce bottle of Miller Lite beer, while in his undercover capacity (N.T. 8).

3. The officer walked up to the counter and an Asian female clerk appeared. The officer requested a sixteen ounce can of Miller Lite beer. She removed the beer from a standup cooler located behind her. She served the beer and requested \$1.50. The officer paid her the \$1.50 (N.T. 8).

4. The sales clerk was behind a bullet resistant glass (N.T. 8).

5. Certified records of the Pennsylvania Liquor Control Board indicate that the licensed area consists of a serving area which is 13' x 27', a second serving area 18' x 28', a kitchen 10' x 40' and a storage area 9' x 19' (N.T. 9-11 and Exhibit B-3 and B-4).

6. The officer attempted to sit down and drink the beer, however, the clerk indicated to him that he could not sit anywhere and that he would have to leave (N.T. 11).

7. The officer identified himself to the clerk and asked to speak to the person in charge. The officer spoke with Mr. Thorne who identified himself as the Licensee (N.T. 12).

8. The officer conducted a routine inspection of the premises. There was a locked door that led to the 13' x 27' area indicated on the records of the Liquor Control Board (N.T. 13 and Exhibit B-4).

9. The door had a padlock on it and opened with a key. Mr. Thorne unlocked the door and they went into the next room. There were booths in the back which would have contributed sufficient seating. The officer saw no other seating on the premises (N.T. 14).

10. Officer Viola was present during the inspection (N.T. 14).

11. The officer did not ask to sit down and eat but did ask to sit down and drink his beer (N.T. 17).

12. Officer Tammy Viola accompanied Officer Nicholson to the licensed premises on March 23, 2005. She indicated that the door going into the second serving area was locked (N.T. 18).

13. Officer Viola was present when he spoke with the employee who served him the beer. She heard the employee tell him that he could not stay and drink the beer (N.T. 18).

14. Patrick Thorne indicated that there was a glass and through it you could see into the seating area (N.T. 20).

15. Mr. Thorne indicated that he serves lunch everyday and he serves from fifteen to twenty people. Those people eat their lunches in the seating area (N.T. 20).

16. Mr. Thorne also indicates that he serves dinner between 5:00 and 7:00 and that people eat their dinner in that area (N.T. 20).

17. Mr. Thorne indicates that if a customer requests to sit down and eat, then the person is taken to the seating area (N.T. 21).

18. Mr. Thorne indicated that in preparation for dinner, he uses the serving room. He does not allow people to sit who come in to drink, but who order no food. He states, "they may be bothering me all day" (N.T. 21-22).

19. Mr. Thorne indicates that he uses the room only for seating and not for storage (N.T. 23).

20. The officer indicated that when Mr. Thorne unlocked the door, there were a number of boxes sitting on the tables and seats and about the floor. In order to actually gain entry to the area, they had to move the boxes. The officer indicated in his report that they appeared to be supplies for the business, such as paper goods (N.T. 24-25).

CONCLUSIONS OF LAW:

On March 23, 2005, the licensed premises was not a bona fide restaurant in that Licensee, by its servants, agents or employes, maintained insufficient seating, in violation of Section 102 of the Liquor Code, 47 P.S. Section 1-102.

PRIOR RECORD:

Licensee has been licensed since September 25, 2003, and has a record of prior violations as follows:

Citation No. 05-2754. \$100.00 fine.

1. Sold malt or brewed beverages for consumption off premises.
November 5, 2005.

DISCUSSION:

Mr. Thorne indicated that when he is cooking, he throws empty boxes by the door in the serving area, but denied that he uses the room for storage. The Court does not find Mr. Thorne's explanation credible. The door was padlocked and the room contained numerous boxes. It is not likely that these were simply boxes from dinner preparation. Clearly, the clerk told the undercover officer that he had to leave the premises and that there was nowhere to sit. This is not an acceptable practice in a restaurant.

The Licensee cannot solely maintain take out service. There must be seating. The seating must be such that someone could access it, other than by extraordinary means. A restaurant's purpose is to serve food and drinks to the public. Seating is an intricate part of the process.

Clearly while the Court understands why the Licensee may not want people loitering, there are other ways to accomplish that goal. While Licensee does not want people loitering in his restaurant, neither do the people in the neighborhood want them to congregate outside to enjoy their beer. If the Licensee is going to sell beer, then the Licensee must provide an appropriate place for the public to be able to sit and drink the alcoholic beverages, as well as to eat their food. It does not appear that Licensee is doing that.

Under the circumstances, the Court finds that this was not a bona fide restaurant. In that this is Licensee's second violation, a \$350.00 penalty shall be imposed.

NOTICE OF ASSESSMENT OF POINTS PURSUANT TO ACT 239, 2004

Section 479 of the Liquor Code, 47 P.S. Section 4-479 establishes a numerical system for use in cities of the first class. Every restaurant and eating place licensee in cities of the first class who have been cited for a violation of Section 471 of the Liquor Code, 47 P.S. Section 4-471, on or after February 6, 2005, shall have points assessed as of the date of the final Adjudication. Points are in addition to other provisions of this Act for license transfer and renewal. Points shall be assigned in addition to the imposition of a monetary penalty and/or suspension and/or revocation of the license by the Administrative Law Judge.

An enhanced penalty violation requires that the Administrative Law Judge assign five to ten points, depending upon the circumstances surrounding the violation, to a license record for each and every enhanced penalty violation. The Board has, by regulation, established a point system ranging from one to five points for other violations of the Liquor Code and Regulations not specifically set forth in Section 479.

Section 481(a), 47 P.S. Section 4-481(a) provides that when any license accumulates ten points or more, the Administrative Law Judge shall require the license holder to become compliant with and remain compliant with the provisions of Section 471.1, 47 P.S. Section 4-471.1 relating to the Responsible Alcohol Management Program (R.A.M.P.). Failure to comply with such an Order within ninety days shall result in two additional points being assessed against the license record.

Section 481(b), 47 P.S. Section 4-481(b) provides that when any license accumulates fifteen points or more, the Administrative Law Judge shall place the license in safekeeping. The license can only be removed from safekeeping upon approval by the board of a transfer to a disinterested third party. Upon completion of the transfer, the points assigned to it will be reduced to ten. If, within ninety days of the transfer the new owner voluntarily becomes compliant with and remains compliant with the responsible alcohol management provisions of section 471.1, two additional points shall be removed from the license record.

Notwithstanding other provisions of this Act, Section 481(c), 47 P.S. Section 4-481(c), provides that when any license accumulates twenty or more points in more than one citation, the Administrative Law Judge shall revoke the license.

POINTS ASSESSED:

Accordingly, you are hereby notified that two points have been assigned to your record.

PENALTY:

Section 471 of the Liquor Code, 47 P.S. Section 4-471, prescribes a penalty of suspension or revocation of license or imposition of 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.

Accordingly, we issue the following

ORDER:

THEREFORE, it is hereby Ordered that Licensee, Thorne Corporation, License Number R-SS-1364, pay a fine of Three Hundred Fifty Dollars (\$350.00) within twenty (20) days of the mailing date of this Order. In the event the aforementioned fine is not paid within twenty (20) days from the mailing date of this Order, licensee's license shall be suspended or revoked.

Thorne Corporation
Citation No. 05-0808

IT IS FURTHER ORDERED that two (2) points are hereby assessed against the record of Licensee, Thorne Corporation, License Number R-SS-1364, as required by 47 P.S. Section 4-479(d)(9).

In order to insure compliance with this Order, jurisdiction of this matter is retained.

The fine must be paid by Treasurer's Check, Cashier's Check, Certified Check or Money Order. **Personal Checks, which include business-use personal checks, are not acceptable.** Please make your guaranteed check payable to the Commonwealth of Pennsylvania and mail, along with any required documentation, to:

PLCB - Office of Administrative Law Judge
Brandywine Plaza
2221 Paxton Church Road
Harrisburg, PA 17110-9661

Dated this 13th day of June, 2006.

Tania E. Wright, J.

NOTE: 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.

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