

Mailing Date: NOV 15 2005

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 05-0825
LIQUOR CONTROL ENFORCEMENT	:	
	:	
v.	:	Incident No. W04-305992
	:	
SCHWARTZ-GOULD INC	:	
833 ISLAND AVE	:	LID-45433
MCKEES ROCKS PA 15136-2615	:	
	:	
	:	
	:	
ALLEGHENY COUNTY	:	
LICENSE NO. R-AP-9681	:	

BEFORE: JUDGE ROBERT F. SKWARYK

APPEARANCES:

For Bureau of Enforcement
Richard G. Parker, Esquire

For Licensee
Jennifer McGouldrick, Pro se

ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation that was issued on May 4, 2005, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter Bureau) against Schwartz-Gould, Inc., License Number R-AP-9681 (hereinafter Licensee).

The citation charges Licensee with violation of Section 102 of the Liquor Code [47 P.S. §1-102], in that on March 16, 2005, Licensee was not a bona fide restaurant in that Licensee, by its servants, agents or employees, maintained insufficient food items.

The investigation which gave rise to the citation began on February 14, 2005 and was completed on March 16, 2005. The notice of violation letter was mailed to Licensee on April 8, 2005.

An evidentiary hearing was held on this matter on September 27, 2005, in Pittsburgh, Pennsylvania.

Upon review of the transcript of the hearing and the Pre-Hearing Memorandum, we make the following Findings of Fact and reach the following Conclusions of Law:

FINDINGS OF FACT:

1. Licensee is a corporation located in Allegheny County, Pennsylvania, and holds Restaurant Liquor License Number R-AP-9681. (N.T. 4)
2. On Wednesday, March 16, 2005, at approximately 9:00 p.m., two enforcement officers visited the licensed premises for a routine inspection and found a bartender and the corporate president, Jennifer M. McGouldrick, present. (N. T. 7-8, 11)
3. The officers determined that Licensee did not maintain food on the premises other than bags of potato chips. (N. T. 8)
4. At 9:55 p.m., the officers departed the licensed premises. (N.T. 11)

CONCLUSION OF LAW:

Sustained as charged.

DISCUSSION:

At the hearing held on the matter, the enforcement officer testified as to his inspection of the licensed premises in which he found only potato chips available for service to patrons.

Licensee's president appeared and testified that she does not visit the establishment much, is in the process of trying to sell it, and has since corrected the food problems serving hot dogs, soup, stew, soft pretzels and menus for other establishments. (N.T. 13-14)

Section 102 of the Liquor Code provides, in part, that a restaurant shall be habitually and principally used for the purpose of providing food for the public.

I find the testimony of the officer and Licensee to be credible. As such, the citation is sustained.

PRIOR RECORD:

Licensee has been licensed since February 9, 2000, and has three (3) prior violations, to wit:

SCHWARTZ-GOULD, INC.

Citation No. 05-0825

Citation No. 01-1127. Fine \$200.00.

1. Not a bona fide restaurant in that food items, dishes, eating utensils and chairs at tables were insufficient.
May 4, 2001
2. Failed to constantly and conspicuously expose restaurant liquor license under a transparent substance on the licensed premises.
May 4, 2001.

Citation No. 03-0949. Fine \$300.00. Waiver of hearing.

1. Not a bona fide restaurant in that food items were insufficient.
March 12, 2003.

Citation No. 03-1049. Fine \$1,000.00. Waiver of hearing.

1. Possessed or operated gambling devices or paraphernalia or permitted gambling or lotteries, poolselling and/or bookmaking on your licensed premises (machines and nascar pool).
March 14, April 10, 30 and May 1, 2003.
2. Not a bona fide restaurant in that you by your servants, agents or employees maintained insufficient food items and or failed to provide food upon request.
April 10 and May 1, 2003.

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.

Licensee shall be treated as a repeat offender.

After due consideration of the circumstances giving rise to the citation and Licensee's citation history, a fine of \$400.00 will be imposed as the penalty in this case.

ORDER:

THEREFORE, it is hereby ordered that Schwartz-Gould, Inc., License Number R-AP-9681 pay a fine of \$400.00 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, Licensees' license shall be suspended or revoked.

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 to:

SCHWARTZ-GOULD, INC.
Citation No. 05-0825

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

JURISDICTION IS RETAINED UNTIL CASE IS CLOSED.

Dated this 8th day of November, 2005.

Robert F. Skwaryk, J.

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.