

Mailing Date: APR 28 2006

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 05-0922
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W09-303802
v.	:	
	:	LID - 48708
JOHN A. NOVACK, INC.	:	
T/A UPTOWN TAVERN	:	
6 E. MAIN ST.	:	
SCHUYLKILL HAVEN, PA 17972-1604	:	
	:	
	:	
SCHUYLKILL COUNTY	:	
LICENSE NO. R-AP-11220	:	

**BEFORE:** JUDGE THAU

APPEARANCES:

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

For Licensee  
John A. Novack  
Pro Se

**ADJUDICATION**

BACKGROUND:

This proceeding arises out of a citation that was issued on May 13, 2005, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (Bureau) against John A. Novack, Inc., t/a Uptown Tavern (Licensee), License Number R-AP-11220.

The citation<sup>1</sup> charges Licensee with a violation of Section 493(10) of the Liquor Code [47 P.S. §4-493(10)]. The charge is that on February 12, 2005, Licensee, by servants, agents or employes, permitted lewd entertainment.

An evidentiary hearing was conducted on March 17, 2006 at the U.S. Courthouse & Federal Building, Courtroom 4-A, 504 West Hamilton Street, Allentown, Pennsylvania. Licensee appeared at the hearing without an attorney.

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 January 7, 2005 and completed it on February 12, 2005. (N.T. 13)
2. The Bureau sent a notice of an alleged violation to Licensee at the licensed premises by certified mail-return receipt requested on February 15, 2005. The notice alleged a violation as charged in the citation. (Commonwealth Exhibit No. C-1, N.T. 15)
3. A Bureau Enforcement Officer visited the premises in an undercover capacity on February 12, 2005. She entered at approximately 12:35 a.m. There were three television monitors above the bar. The one to the left was playing what the Officer described as a “pornographic” movie. She observed three females engaged in fondling and licking each others bare breasts. The three began performing what appeared to be oral sex. (N.T. 17-19)
4. The Officer’s visit lasted approximately 40 minutes during which the monitor in question was never turned off. The portion which the Officer concluded was offensive lasted approximately ten to fifteen minutes. (N.T. 20-21)
5. Licensee subscribes to “basic cable.” This package does not include any “adult” channels. (N.T. 54-55)

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1. Commonwealth Exhibit No. C-2, N.T. 15.

CONCLUSIONS OF LAW:

1. The notice requirements of Liquor Code Section 471 [47 P.S. §4-471] have been satisfied.
2. The Bureau has **failed** to prove that Licensee, by servants, agents or employes, permitted lewd entertainment, on February 12, 2005.

DISCUSSION:

While I believe the Officer was truthful I will not accord her testimony any significant weight. First, the Officer testified that she saw "what appeared to be" oral sex. That testimony is insufficient for me to conclude any lewd conduct occurred.

ORDER:

NOW THEREFORE, it is ordered that Citation No. 05-0922 issued to John A. Novack, Inc., t/a Uptown Tavern, is DISMISSED.

Dated this 18<sup>th</sup> day of April, 2006.

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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.**