

Mailing Date: JAN 17 2006

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 05-1268
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W02-311080
v.	:	
	:	LID - 53620
SAILTAE, INC.	:	
290 S. PENNSYLVANIA BLVD.	:	
STE. 242	:	
WILKES-BARRE, PA 18702-4413	:	
	:	
	:	
LUZERNE COUNTY	:	
LICENSE NO. R-AP-SS-15183	:	

BEFORE: JUDGE THAU

APPEARANCES:

For Bureau of Enforcement
Craig A. Strong, Esquire
Pennsylvania State Police
8320 Schantz Road, Second Floor
Breinigsville, PA 18031

For Licensee
Ex-Parte

ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation that was issued on June 28, 2005, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (Bureau) against Sailtae, Inc. (Licensee), License Number R-AP-SS-15183.

The citation¹ charges Licensee with violations of Section 498(e)(3) of the Liquor Code [47 P.S. §4-498(e)(3)]. The charge is that on May 23 and 27, 2005, Licensee, by servants, agents or employes, advertised, or permitted to be advertised, in print, alcoholic beverages within three hundred (300) feet of a church, school or public playground.

An evidentiary hearing was conducted on December 7, 2005 at the Scranton State Office Building, PUC Hearing Room 318, 100 Lackawanna Avenue, Scranton, Pennsylvania. No one appeared at the hearing on behalf of Licensee.

After review of the transcript of that proceeding, the following Findings of Fact and Conclusions of Law are entered.

FINDINGS OF FACT:

1. A citation hearing notice was mailed by the Office of Administrative Law Judge on October 21, 2005, to Licensee by both certified receipt-return mail and first-class mail to the licensed premises. The notice notified Licensee of the date, time and place of the hearing. The Notice, sent by certified mail, was returned as being marked unclaimed. On October 24, 2005, I issued a Pre-Hearing Order to Licensee by first-class mail to the licensed premises. The Order reiterated the date, time and place of hearing. (N.T. 4)
2. The Bureau began its investigation on May 10, 2005 and completed it on June 2, 2005. (N.T. 7)
3. The Bureau sent a notice of alleged violations to Licensee at the licensed premises by certified mail-return receipt requested on June 6, 2005. The notice alleged violations as charged in the citation. (Commonwealth Exhibit No. C-1, N.T. 9)
4. I take official notice of the records of the Pennsylvania Liquor Control Board that the licensed premises is located within 300 feet of a church.
5. On the dates charged, Licensee had signs displayed on its facility which advertised beer. (Commonwealth Exhibit Nos. C-3 and C-4)

1. Commonwealth Exhibit No. C-2, N.T. 9.

CONCLUSIONS OF LAW:

1. The notice requirements of Liquor Code Section 471 [47 P.S. §4-471] have been satisfied.
2. The citation is **sustained** as charged.

DISCUSSION:

I advised Bureau counsel that the measurements taken by the Enforcement Officer are actually inaccurate because they are unofficial. The Pennsylvania Liquor Control Board has promulgated regulations which describe the measuring methods. The records of the Pennsylvania Liquor Control Board already established the distance in question.

PRIOR RECORD:

Licensee has been licensed since September 16, 2004, and has had two prior violation(s) (Commonwealth Exhibit No. C-8, N.T. 16):

Adjudication No. 05-0172. Fine \$1,250.00.
Sales to a visibly intoxicated person.
January 9, 2005.

Adjudication No. 05-0571. Fine \$550.00.
Possessed or operated gambling devices or
paraphernalia or permitted gambling or lotteries,
poolselling and/or bookmaking on your licensed
premises (machines).
February 6, 2005.

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.

I impose a \$350.00 fine.

ORDER:

Imposition of Fine

THEREFORE, it is hereby ordered that Licensee pay a fine of \$350.00 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, Licensee's 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:

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

Retaining Jurisdiction

Jurisdiction is retained to ensure compliance with this Adjudication.

Dated this 9th day of January, 2006.

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.