

Mailing Date: MAY 09 2006

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 05-1518
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W02-312910
v.	:	
	:	LID - 6332
CYRENUES J. BATCHLER	:	
BEVERLY H. BATCHLER	:	
T/A STROUD MANOR	:	
ANALOMINK, PA 18320	:	
	:	
	:	
MONROE COUNTY	:	
LICENSE NO. H-AP-1619	:	

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

Cyrenues J. Batchler and
Beverly H. Batchler
Pro-Se

ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation that was issued on August 1, 2005, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (Bureau) against Cyrenues J. Batchler & Beverly H. Batchler, t/a Stroud Manor (Licensee), License Number H-AP-1619.

The citation¹ charges Licensee with a violation of Sections 102 and 461(c) of the Liquor Code [47 P.S. §1-102 and §4-461(c)]. The charge is that on July 6, 2005, Licensee's licensed premises was not a bona fide hotel in that there were insufficient bedrooms maintained for the use of guests.

An evidentiary hearing was conducted on March 30, 2006 at the Scranton State Office Building, PUC Hearing Room 318, 100 Lackawanna Avenue, Scranton, Pennsylvania. Licensee represented themselves. I advised Licensee of their right to counsel, to cross-examine witnesses and to present testimony. Licensee acknowledged that they understood those rights and that they were prepared to go forward 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 sent a notice of an alleged violation to Licensee at the licensed premises by certified mail-return receipt requested on July 12, 2005. The notice alleged a violation as charged in the citation. (Commonwealth Exhibit No. C-2, N.T. 28)

CONCLUSIONS OF LAW:

2. As the Bureau has **failed** to establish a Notice of Violation was sent within thirty days of investigation completion, the citation must be dismissed.

1. Commonwealth Exhibit No. C-3, N.T. 28.

DISCUSSION:

This Adjudication is bereft of any substantive Findings of Fact and of several critical procedural Findings. The last sentence of Liquor Code Section 471(b) [47 P.S. §4-471(b)], and interpretative case law provides that a citation must be dismissed if the Bureau fails to notify the licensee of the nature of any violation within thirty days of the completion of the investigation.

The Bureau Enforcement Officer testified the investigation began on June 13, 2005 and was completed on July 7, 2005. When asked how the investigation began on June 13, 2005, thankfully, the Officer was candid. She responded by indicating that she could not provide testimony as to why the investigation was opened on June 13, 2005 (N.T. 12).

I therefore will not accord any significant weight to the Officer's testimony that the investigation ended on July 7, 2005. Accordingly, the Bureau has failed to establish that it sent a notice of violation within thirty days of completing the investigation and the citation must be dismissed.

ORDER:

NOW THEREFORE, it is ordered that Citation No. 05-1518, issued against Cyrenues J. Batchler & Beverly H. Batchler, t/a Stroud Manor, is DISMISSED.

Dated this 25th day of April, 2006.

Felix Thau, A.L.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.