

Mailing Date: APR 18 2006

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

PENNSYLVANIA STATE :
POLICE, BUREAU OF : Citation No. 05-1613
LIQUOR CONTROL ENFORCEMENT :
 : Incident No. W01-314938
 :
 v. :
 :
 5934 LEE INC :
 5934 MARKET ST : LID - 49792
 PHILADELPHIA PA 19139-3149 :
 :
 :
 PHILADELPHIA COUNTY :
 LICENSE NO. R-SS-11181 : BEFORE: JUDGE SHENKLE

APPEARANCES:

For Bureau of Enforcement: James E. Dailey, Esq.
For Licensee: John J. McCreesh, III, Esq.

ADJUDICATION

BACKGROUND:

The Bureau of Liquor Control Enforcement of the Pennsylvania State Police issued this citation on August 16, 2005. The citation alleges that on July 18, 2005, Licensee's premises "was not a bona fide restaurant in that you, by your agents, servants or employees, maintained insufficient seating, in violation of Section 102 of the Liquor Code, 47 P.S. §1-102."

A hearing was held on Tuesday, March 7, 2006, in Plymouth Meeting, Pennsylvania. The parties stipulated to the timely service of the notice letter and the citation.

FINDINGS OF FACT:

1. Liquor Enforcement Officer Brian Hendrzak inspected the licensed premises at about 1:10 p.m. on July 18, 2005. There was no seating on the first floor. Licensee's president, Peter Lee, invited the officer through a door, which Mr. Lee unlocked, which led to the second floor. Upstairs there were 30 folding chairs at tables, as well as stored food and supplies (N.T. 4-7).

2. When the Board approved the transfer of this license on July 3, 2002, the licensed areas were:

<u>BASEMENT:</u>	Storage 13' x 11'	Storage 13' x 54'	
<u>FIRST FLOOR:</u>	Storage 13' x 12'	Kitchen 10' x 16'	Kitchen 9' x 37'
	Serving 5' x 32'		
<u>SECOND FLOOR:</u>	Serving 14' x 41'		

(Exhibit B-4).

3. If a customer had entered the licensed premises on July 18, 2005, purchased a beer, and then asked for a place to sit down and drink it, he or she would have been shown to the upstairs dining room (N.T. 18).

4. This was Officer Hendrzak's only visit to the licensed premises. He never made an undercover purchase there (N.T. 24).

CONCLUSIONS OF LAW:

The evidence was insufficient to prove that Licensee's premises was not a *bona fide* restaurant on July 18, 2005.

ORDER

THEREFORE, it is hereby ORDERED that Citation No. 05-1613 is DISMISSED.

Dated this 11th day of April, 2006.

David L. Shenle, J.

jb

NOTICE: MOTIONS FOR RECONSIDERATION CANNOT BE ACTED UPON UNLESS THEY ARE IN WRITING AND RECEIVED BY THE OFFICE OF ADMINISTRATIVE LAW JUDGE WITHIN 15 DAYS AFTER THE MAILING DATE OF THIS ORDER, ACCOMPANIED BY A \$25.00 FILING FEE.