

Mailing Date: MAY 16 2006

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

PENNSYLVANIA STATE :
POLICE, BUREAU OF : Citation No. 05-1654
LIQUOR CONTROL ENFORCEMENT :
 : Incident No. W01-312240
 :
 v. :
 : LID - 10636
 :
 B J R MACE INC :
 1714 CHERRY ST :
 PHILADELPHIA PA 19103-2709 :
 :
 PHILADELPHIA COUNTY :
 LICENSE NO. R-AP-SS-2698 : 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 22, 2005. The citation alleges that Licensee violated §§401(a) and 406(a)(1) of the Liquor Code, 47 P.S. §§4-401(a) and 4-406(a)(1), on July 16, 2005, by selling, furnishing or giving liquor for consumption off premises.

A hearing was held on March 28, 2006, in Plymouth Meeting, Pennsylvania. The parties stipulated to the timely service of the notice letter and the citation.

FINDINGS OF FACT:

1. Two liquor enforcement officers entered the licensed premises at about 12:35 a.m. on July 16, 2005, investigating complaints of sales of liquor "to go." They ordered a mixed drink of rum and coke and a bottle of beer. At about 1:10 a.m. there was a woman seated at the bar who was smoking. One of the officers told the bartender that the smoke was bothering him, and asked if he could put the mixed drink in a plastic cup so that he could take it with him (N.T. 4-8).

2. The bartender put the drink in a plastic cup and handed it to the officer. Both officers left the bar room by the rear exit door, which leads to an outside licensed area, separated from the sidewalk by a brick wall about three feet high (N.T. 9, 11, 13, 19; Exhibits L-1, L-2 and L-3).

3. In the summertime the outside licensed area is equipped with tables seating about 24 people; a few more people can be accommodated in that area standing up. Patrons are allowed to purchase drinks inside, served in plastic cups, and take the drinks to the outside service area; they

can also order from a waitress if seated at a table outside. During a week in the summertime, the licensed premises will go through about a thousand plastic cups (N.T. 35-36).

CONCLUSIONS OF LAW:

The citation was not proven by credible evidence.

DISCUSSION:

Given the layout of the premises, the primary use of the door through which the officers left the bar room was access to the outside licensed serving area, which has spectacular views of the Benjamin Franklin Parkway and City Hall. The most likely interpretation the bartender could have given the request to put the mixed drink in a plastic cup was the patron's desire to go to the outside serving area, not his intention to leave the premises with the drink.

The Bureau's witness did not demonstrate to my satisfaction the necessary powers of observation and recollection to persuade me that his evidence was accurate. I do not believe that there were as few patrons as the officer described on a summer Friday night at this licensed premises, which is in the midst of numerous hotels, offices, and other businesses.

I find it amazing that a liquor enforcement officer could investigate complaints of selling liquor "to go" on three occasions and yet not recall as to the first two occasions whether he attempted to make an unlawful purchase.

ORDER

THEREFORE, it is hereby ORDERED that Citation No. 05-1654 is DISMISSED.

Dated this 8th day of May, 2006.

David L. Shenkle, 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.