

Mailing Date: MAY 18 2006

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 05-1703
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W01-315521
v.	:	
	:	LID - 39242
CLAUDE SIMMONS	:	
T/A THE MELODY LOUNGE	:	
5055 HAVERFORD AVE	:	
PHILADELPHIA PA 19139-1620	:	
	:	
	:	
PHILADELPHIA COUNTY	:	
LICENSE NO. R-13750	:	BEFORE: JUDGE SHENKLE

APPEARANCES:

For Bureau of Enforcement: James E. Dailey, Esq.

For Licensee: Claude Simmons, Licensee

**ADJUDICATION**

BACKGROUND:

The Bureau of Liquor Control Enforcement of the Pennsylvania State Police issued this citation on August 30, 2005. The citation alleges that Licensee violated §102 of the Liquor Code, 47 P.S. §1-102, on July 19, 2005, on the basis that the licensed premises was not a *bona fide* restaurant because there were insufficient food items and eating utensils.

A hearing was held on Tuesday, 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. Liquor enforcement officers inspected the licensed premises at about 3:00 p.m. on July 19, 2005 (N.T. 5, 34).

2. On that date Licensee maintained a fully-equipped kitchen and an adequate supply of food to qualify the premises as a *bona fide* restaurant (N.T. 43-48).

CONCLUSIONS OF LAW:

The evidence presented by the Bureau was less credible than the evidence presented by the Licensee.

DISCUSSION:

The liquor enforcement officers who testified did not persuade me that they had inspected the licensed premises completely, or that they were reporting the results of their inspection accurately and fully. In my opinion, the evidence of one inspection at 3:00 p.m. on one date was not sufficient to sustain this citation. Statements attributed to Licensee's bartender on that one occasion were not corroborated by a thorough and competent inspection of the premises.

Officers of the Bureau of Liquor Control Enforcement are entitled to inspect licensed premises completely at any time the establishment is open for business. When the Bureau cites a licensee for a violation, the officers must be prepared to testify to their findings thoroughly and with accuracy. Witnesses who give vague and contradictory evidence, and who fail to recall significant details, do not provide the type of proof necessary to sustain a citation.

Restaurant licensees are required to operate their licensed premises as *bona fide* restaurants, meaning that they must always maintain adequate food, any necessary utensils and the facilities required to offer meals to the public. I believe, based on his testimony, that Mr. Simmons is aware of his responsibilities in this regard, and I trust that he will continue to operate his business this way in the future.

ORDER

THEREFORE, it is hereby ORDERED that Citation No. 05-1703 is DISMISSED.

Dated this 10<sup>th</sup> day of May, 2006.

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David L. Shenke, 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.**