

Mailing Date: MAY 03 2006

[Appeal](#)

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 05-1975
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W02-312469
	:	
v.	:	LID - 36080
	:	
JOSEPH P. CORDARO	:	
T/A JOEY C'S ROADHOUSE	:	
RTE. 6, STAR RTE.	:	
SEELYVILLE	:	
HONESDALE, PA 18431	:	
	:	
WAYNE COUNTY	:	
LICENSE NO. R-AP-SS-20682	:	

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
Scott B. Bennett, Esquire
208 Tenth Street
Honesdale, PA 18431

ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation that was issued on October 11, 2005, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (Bureau) against Joseph P. Cordaro, t/a Joey C's Roadhouse (Licensee), License Number R-AP-SS-20682.

This citation¹ contains three counts.

The first count charges Licensee with violations of Section 471 of the Liquor Code [47 P.S. §4-471] and Sections 5901 and 3127 of the Crimes Code [18 Pa. C.S. §5901 and §3127]. The charge is that on June 18 and 19, 2005, Licensee, by servants, agents or employes, committed acts of public indecency and/or permitted such acts to be committed on the licensed premises.

The second count charges Licensee with violations of Section 471 of the Liquor Code [47 P.S. §4-471] and Sections 5901 and 3127 of the Crimes Code [18 Pa. C.S. §5901 and §3127]. The charge is that on June 18 and 19, 2005, Licensee, by servants, agents or employes, permitted persons to be improperly attired or engage in open lewdness on the licensed premises.

The third count charges Licensee with violations of Section 493(10) of the Liquor Code [47 P.S. §4-493(10)]. The charge is that on June 18, 19 and July 16, 2005, Licensee, by servants, agents or employes, permitted lewd entertainment.

An evidentiary hearing was conducted on March 30, 2006 at the Scranton State Office Building, PUC Hearing Room 318, 100 Lackawanna Avenue, Scranton, Pennsylvania.

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 began its investigation on June 5, 2005 and completed it on August 25, 2005. (Commonwealth Exhibit No. C-1, N.T. 5)
2. The Bureau sent a notice of alleged violations to Licensee at the licensed premises by certified mail-return receipt requested on September 7, 2005. The notice alleged violations as charged in the citation. (Commonwealth Exhibit No. C-1, N.T. 5)
3. Licensee agreed the Bureau complied with the applicable investigatory and notice requirements of the Liquor Code. (N.T. 5)

1. Commonwealth Exhibit No. C-2, N.T. 5.

Count Nos. 1, 2 and 3:

3. On June 18, 2005, two Bureau Enforcement Officers entered the premises in an undercover capacity at approximately 9:45 p.m. They entered as a couple. They paid \$40.00 to enter. There were pornographic movies playing on a big screen television located in a room to the right of the entrance to the licensed premises. The movie showed men and women having intercourse and women performing oral sex on men. Licensee was present and informed the Officers that three bedrooms were available on the second floor in an unlicensed area. Two of the three rooms were private while the third room was identified as a communal room. There were three mattresses and box springs lined up along side of each other in the communal room. One of the other bedrooms contained a bowl of mints and a bowl of condoms. In the licensed area, on the dance floor, there were two poles and a hot tub. At 11:00 p.m., sixteen patrons were present. The doors were locked. At 11:26 p.m., a male patron removed all of his clothing and got into the hot tub. A minute later, a female companion disrobed and joined him in the tub. The other twelve patrons began removing their clothing. At 11:45 p.m., everyone was naked. Behavior of this nature continued throughout the Officers stay into the early morning hours of the next day, June 19, 2005.

4. On July 16, 2005, the same two Bureau Enforcement Officers entered the premises at 10:00 p.m., in an undercover capacity. There was a \$40.00 admission fee. The large screen television was again showing pornographic movies. Three bedrooms on the second floor, the unlicensed area, were available for patron use.

CONCLUSIONS OF LAW:

1. The notice requirements of Liquor Code Section 471 [47 P.S. §4-471] have been satisfied.

Count No. 1:

2. The Bureau has **failed** to prove that Licensee, by servants, agents or employes, committed acts of public indecency and/or permitted such acts to be committed on the licensed premises, on June 18 and 19, 2005.

Count No. 2:

3. The Bureau has **failed** to prove that Licensee, by servants, agents or employes, permitted persons to be improperly attired or engage in open lewdness on the licensed premises, on June 18 and 19, 2005.

Count No. 3:

4. **Sustained** as charged.

DISCUSSION:

I dismiss Count Nos. 1 and 2 because a key element in both is that the actor must have a sense that those who are present are likely to be affronted, offended or alarmed by the actor's conduct. The activity at the licensed premises was precisely why patrons attended. Accordingly, that key element is lacking.

PRIOR RECORD:

Licensee has been licensed since June 16, 1995, and has had seven prior violations:

Adjudication No. 97-0085. Fine \$50.00.

Issued worthless checks in payment for malt or brewed beverages.

Adjudication No. 98-0933. Fine \$75.00.

Issued worthless checks in payment for malt or brewed beverages.
February 20 and 26, 1998.

Adjudication No. 01-2293. 1 day suspension.

Issued worthless checks in payment for malt or brewed beverages.
July 5 and 12, 2001.

Adjudication No. 02-0682. 1 day suspension.

Issued worthless checks in payment for malt or brewed
beverages. February 8, 2002.

Adjudication No. 02-1855. 2 days suspension.

Issued worthless checks in payment for malt or brewed
beverages. June 14, 2002.

Adjudication No. 04-0457. Fine \$800.00.

Issued worthless checks in payment for malt or brewed beverages.

December 26, 2003.

Adjudication No. 04-0809. 3 days suspension.
Issued worthless checks in payment for malt or brewed
beverages.

February 27 and March 12, 2004.

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 \$1,000.00 or more than \$5,000.00 or both for violations of the type found in Count No. 3, in this case.

I have deeply considered the seriousness of the conduct at issue. I recognize Licensee is contrite and did not dispute the charges. Accordingly, the penalty is as follows:

Count No. 3 – \$5,000.00 fine and 30 days suspension.

ORDER:

Imposition of Fine

THEREFORE, it is hereby ordered that Licensee pay a fine of \$5,000.00 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

Imposition of Suspension

IT IS FURTHER ORDERED that the Restaurant liquor license of Joseph P. Cordaro, t/a

Joey C's Roadhouse, License No. R-AP-SS-20682, be suspended for a period of thirty days, **BEGINNING** at 7:00 a.m., on Saturday, July 1, 2006, and **ENDING** at 7:00 a.m., on Monday, July 31, 2006.

Licensee is directed, on Saturday, July 1, 2006, at 7:00 a.m., to place a placard of notice of suspension (identified as Form No. PLCB-1925 and as printed with red and black ink) in a conspicuous place on the outside of the licensed premises or in a window plainly visible from outside the licensed premises and to remove said license from the wall and place it in a secure location.

Licensee is advised, if replacement placards are needed for any reason, they are available at all Pennsylvania Liquor Stores/Wine & Spirits Shoppes.

The Bureau is directed to visit and monitor the aforementioned licensed premises for compliance with this Order.

Licensee is authorized, on Monday, July 31, 2006, at 7:00 a.m., to remove the placard of suspension and return his license to its original wall location.

Dismissal of Count Nos. 1 and 2:

IT IS FURTHER ORDERED that Count Nos. 1 and 2 of Citation No. 05-1975, issued against Joseph P. Cordaro, t/a Joey C's Roadhouse, are DISMISSED.

Retaining Jurisdiction

Jurisdiction is retained to ensure compliance with this Adjudication.

Dated this 26th day of April, 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.**