

Mailing Date: APR 17 2007

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 05-2138
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W01-317842
v.	:	
	:	LID - 51374
L & C INC	:	
1350 WAGNER AVE	:	
PHILADELPHIA PA 19141-2932	:	
	:	
	:	
	:	
	:	
PHILADELPHIA COUNTY	:	
LICENSE NO. R-SS-11160	:	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 October 31, 2005. The citation alleges that Licensee violated §102 of the Liquor Code, 47 P.S. §1-102, on September 9, 14 and 16, 2005, on the basis that the licensed premises was not a *bona fide* restaurant because there was insufficient seating.

A hearing was held on Tuesday, September 12, 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 Justin Clark visited the licensed premises in an undercover capacity on September 9, 2005. Immediately upon entering, on the left-hand side of the first floor, he saw 14 seats at one or two tables (N.T. 4-7).
2. Officer Clark visited the premises again in the same capacity on September 14, 2005 and saw the same conditions he had seen previously (N.T. 7-8).
3. Officer Clark conducted an open inspection of the premises on September 16, 2005. Thao Chou, Licensee's manager, was present. Officer Clark saw only the fourteen chairs he had seen previously, plus four more in a storage room (N.T. 9-10).

4. On the dates of the officer's visits, there were also 25 chairs set up at tables in a small room in the licensed serving area (N.T. 20-21).

5. During routine inspections conducted on November 3, 2003, and August 22, 2006, the Bureau found that Licensee had the required amount of seating (Exhibits L-1 & L-2).

CONCLUSIONS OF LAW:

The weight of the evidence does not support the proposition that Licensee violated §102 of the Liquor Code, 47 P.S. §1-102, on September 9, 14 and 16, 2005.

DISCUSSION:

I find it likely that the language barrier between Licensee's manager and the investigating officer prevented him from understanding that there was additional seating set up in a second small room. The vagueness of the officer's description of the premises and of the licensed areas and the failure to present corroborating evidence from a second officer who was present contributed to my lack of confidence in the Bureau's evidence.

ORDER

THEREFORE, it is hereby ORDERED that Citation No. 05-2138 is DISMISSED.

Dated this 26th day of March, 2007.

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.