

Mailing Date: JUN 15 2006

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 05-2491
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W02-316951
v.	:	
	:	LID - 53620
SAILTAE, INC.	:	
290 S. PENNSYLVANIA BLVD	:	
STE. 242	:	
WILKES-BARRE, PA 18702-4413	:	
	:	
LUZERNE COUNTY	:	
LICENSE NO. R-AP-SS-15183	:	

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
Ex-parte

ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation that was issued on December 7, 2005, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (Bureau) against Sailtae, Inc. (Licensee), License Number R-AP-SS-15183.

The citation¹ charges Licensee with a violation of Section 13.102(a)(2) of the Pennsylvania Liquor Control Board Regulations [40 Pa. Code §13.102(a)(2)]. The charge is that on November 3, 2005, Licensee, by servants, agents or employees, sold and/or served an increased volume of one drink without a corresponding and proportionate increase in the price of the drink, in that 16 oz. cups and 24 oz. pitchers of Long Island Ice Tea were both sold for \$2.00.

An evidentiary hearing was conducted on May 3, 2006 at the Scranton State Office Building, PUC Hearing Room 318, 100 Lackawanna Avenue, Scranton, Pennsylvania. Licensee did not appear personally or by representation.

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 August 19, 2005 and completed it on October 3, 2005. (N.T. 5)
2. The Bureau sent a notice of an alleged violation to Licensee at the licensed premises by certified mail-return receipt requested on November 8, 2005. The notice alleged violations as charged in the citation. (Commonwealth Exhibit No. C-2, N.T. 6)
3. On November 3, 2005, a Bureau Enforcement Officer entered the premises in an undercover capacity after paying a \$5.00 cover charge. There was a price listed on a board for a twenty-four ounce pitcher of a mixed alcoholic beverage for \$2.00. The Officer ordered the drink. The bartender gave the Officer a sixteen ounce container of a mixed alcoholic beverage after paying \$2.00. The Officer advised the bartender that he wanted the twenty-four ounce special. The bartender indicated there were no more pitchers available. (N.T. 8-10)

1. Commonwealth Exhibit No. C-2, N.T. 6.

CONCLUSIONS OF LAW:

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

2. The Bureau has failed to prove that Licensee, by servants, agents or employes, sold and/or served an increased volume of one drink without a corresponding and proportionate increase in the price of the drink, in that 16 oz. cups and 24 oz. pitchers of Long Island Ice Tea were both sold for \$2.00.

DISCUSSION:

Licensee originally submitted an Admission, Waiver and Authorization (Waiver). Because the facts as presented to me in the Bureau's Pre-Hearing Memorandum did not support the charge, I chose to process the matter via ex-parte hearing.

The Bureau has brought a baseless charge. The concept of discounting is relative. Accordingly, one must first establish a base price. The next step is to compare the "discounted" price to the base. Licensee offered a price of \$2.00 for a twenty-four ounce unit of an alcoholic beverage. That is the "zero line" from which we are to determine whether a discount occurred.

The Officer received sixteen ounces of the alcoholic beverage for \$2.00. Consequently, the Officer received only two-thirds of the volume offered. If anything, Licensee failed to provide that which was offered.

ORDER:

NOW THEREFORE, it is ordered that Citation No. 05-2491 issued to Sailtae, Inc., is DISMISSED.

Dated this 7th day of June, 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.