

Mailing Date: JUN 22 2006

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 05-2496
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W02-320074
v.	:	
	:	LID - 44932
COMET OIL CO., INC.	:	
T/A COMET FOOD MART	:	
R.R. 1, BOX 337, HWY. 93	:	
HAZLETON, PA 18201	:	
	:	
	:	
LUZERNE COUNTY	:	
LICENSE NO. E-SS-5248	:	

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
Pasco L. Schiavo, Esquire
199 North Church Street
1 Columbus Place
Hazleton, PA 18201-5874

ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation that was issued on December 12, 2005, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (Bureau) against Comet Oil Co., Inc., t/a Comet Food Mart (Licensee), License Number E-SS-5248.

This citation¹ contains two counts.

The first count charges Licensee with violations of Section 3.52(b) of the Pennsylvania Liquor Control Board Regulations [40 Pa. Code §3.52(b)]. The charge is that on October 8 and 11, 2005, Licensee's licensed premises had an inside passage or communication to or with another business conducted by the Licensee without Board approval.

The second count charges Licensee with a violation of Section 102 of the Liquor Code [47 P.S. §1-102]. The charge is that on October 11, 2005, Licensee's licensed premises was not a bona fide eating place in that Licensee, by servants, agents or employes, maintained insufficient food items.

An evidentiary hearing was conducted on May 4, 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 October 8, 2005 and completed it on October 24, 2005. (N.T. 13)

2. The Bureau sent a notice of alleged violations to Licensee at the licensed premises by certified mail-return receipt requested on November 16, 2005, as amended. The notice alleged violations as charged in the citation. (Commonwealth Exhibit No. C-1, N.T. 12)

Count No. 1:

3. On October 8, 2005, several Bureau Enforcement Officers were conducting an open inspection for minors at a licensed facility located adjacent to the subject licensed premises. The adjacent facility is that of Neil S. Blasko, Jr., t/a Blasko's Café, License No. R-AP-SS-13189. There was a door that connected the subject licensed premises to that of Neil S. Blasko, Jr. The Officer returned on October 11, 2005, again finding the same interior connection. (N.T. 12-18)

1. Commonwealth Exhibit No. C-2, N.T. 12.

Count No. 2:

4. The only food the Officer found in the inspection was two, twenty-four ounce boxes of twelve cuts of pizza. They are pre-cooked. The Officer asked Licensee's representative if there was any additional food on the premises to which the response was: "not at that time." (N.T. 26-27)

5. Licensee purchased food for the business day of October 11, 2005. He purchased four boxes of pizza, eight hoagies and a few sandwiches. He also had some packaged cakes. The pizza that Licensee sells is served cold. He had 48 slices of pizza. Licensee sold all the food prior to the Officer's arrival. Licensee did maintain a menu on the counter. (N.T. 48-51)

CONCLUSIONS OF LAW:

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

Count No. 1:

2. **Sustained** as charged.

Count No. 2:

3. The Bureau has **failed** to prove that Licensee's licensed premises was not a bona fide eating place in that Licensee, by servants, agents or employes, maintained insufficient food items.

DISCUSSION:

Interior Connection

Taking Official Notice of the Investigative Report regarding Licensee's application, I find it quite clear the Pennsylvania Liquor Control Board did not approve the license with an interior connection as found by the Officer (Judge's Exhibit No. 1).

Bona Fide Eating Place

I have yet to understand why it is that the Bureau does not avail itself of the entire array of investigative tools. More recently, I have asked, over and over, why Officers do not review records during administrative inspections. It is a very serious myopia that prevents more than a superficial investigation which wastes governmental and licensee resources. *Sheri-den*, Adjudication No. 04-1702, www.state.pa.us.

As to the substance of the charge, I commend *Stephen Pisarcik*, 30 Sel.Op. ALJ 8 and *Pub Charles, Ltd.*, Adjudication No. 00-1224, www.lcb.state.pa.us, as a template for determining whether it is appropriate to charge a retail dispenser or restaurant liquor licensee with failing to operate as a bona fide eating place or restaurant.

PRIOR RECORD:

Licensee has been licensed since October 4, 2000, and has had three prior violations:

Adjudication No. 02-0273. Fine \$150.00.

Sold malt or brewed beverages in excess of 192 fluid ounces for consumption off premises.
January 24, 2002.

Adjudication No. 02-1191. Fine \$1,850.00.

1. Sales to a minor.
April 23, 2002.
2. Minor frequenting.
April 23, 2002.
3. Sold malt or brewed beverages in excess of 192 fluid ounces for consumption off premises.
April 23, 2002.

Adjudication No. 02-1602. Fine \$1,850.00.

1. Sales to a minor.
August 4, 2002.
2. Minor frequenting.
August 4, 2002.
3. Sold malt or brewed beverages in excess of 192 fluid ounces for consumption off premises.
August 4, 2002.

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 \$50.00 or more than \$1,000.00 or both for violations of the type found in this case.

As the interior connection has been boarded up, I impose a \$50.00 fine.

ORDER:

Imposition of Fine

THEREFORE, it is hereby ordered that Licensee pay a fine of \$50.00 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

Dismissal of Count No. 2:

IT IS FURTHER ORDERED that Count No. 2 of Citation No. 05-2496 issued to Comet Oil Co., Inc., is DISMISSED.

Retaining Jurisdiction

Jurisdiction is retained to ensure compliance with this Adjudication.

Dated this 14th 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.