

Mailing Date: MAR 20 2007

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation Nos. 05-2561
LIQUOR CONTROL ENFORCEMENT	:	
	:	
	:	Incident Nos. W01-320742
v.	:	
	:	
	:	LID - 52681
C & C MUSIC INDUSTRIES LLC	:	
T/A GSP MUSIC COMPLEX	:	
4100 MAIN ST	:	
PHILADELPHIA PA 19127-1618	:	
	:	
	:	
PHILADELPHIA COUNTY	:	
LICENSE NO. R-AP-SS-1708	:	BEFORE: JUDGE SHENKLE

APPEARANCES:

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

For Licensee: Edward B. McHugh, Esq.

ADJUDICATION

BACKGROUND:

The Bureau of Liquor Control Enforcement of the Pennsylvania State Police issued this citation on December 13, 2005. The citation alleges that Licensee violated §13.102(a)(3) of the Liquor Control Board Regulations, 40 Pa. Code §13.102(a)(3), on October 20, 2005, by selling and/or serving an unlimited or indefinite amount of alcoholic beverages for a fixed price, in that unlimited bottled beers were served for the set price of \$6.00.

A hearing was held on Tuesday, July 18, 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 Erick Gall arrived at the licensed premises at about 7:00 p.m. on October 20, 2005. He entered the premises at the main entrance facing the parking lot, where there were three men checking identifications and one woman seated at a stool next to a cash register (N.T. 4-7).

2. The officer asked if there were “any specials tonight” and the doormen were not sure. The woman at the cash register said that for six dollars it was open bar from 7:00 to 8:00 p.m. He asked what alcoholic beverages were included, and the woman said she was not sure. He paid the woman six dollars and entered the premises (N.T. 7, 14).

3. Past the entrance, the officer turned left into a room which had a bar on the left-hand side. There was an area on the right which was elevated a step and surrounded by a velvet rope, and there were about six people seated in that area. The officer sat at the bar. There were about ten people there and in another seating area with some small tables (N.T. 8-9, Exhibit L-1).

4. A bartender approached the officer, who asked him what the special was for tonight. The bartender said it was an open bar from 7:00 to 8:00. The officer asked what that included, and the bartender said "pretty much everything." The officer asked for a 12-ounce bottle of Miller Lite beer, which was given to him for no charge (N.T. 9).

5. At about 7:25 p.m. the officer asked for another beer, and it was given to him without charge. The officer asked the bartender what the price for that would be after eight o'clock, and the bartender said that the price for Miller Lite 12-ounce bottles would be one dollar (N.T. 10).

6. The only indication that a special event was going on was some signs about applications for the television show "Survivor." A waitress was taking food orders, but the officer did not see any type of buffet or chafing dishes (N.T. 11-12).

7. The officer had seen an advertisement indicating that there would be Eagles cheerleaders present, but he did not see them or any other celebrities (N.T. 15).

8. The officer did not receive a receipt or a ticket or hand stamp or other evidence that he had paid to get in. He had the impression that if he had not paid the six dollars, he would not have been allowed in (N.T. 18-19).

9. On October 20, 2005, Licensee held a special event with a company called Greer Lang/Philly Mode, a modeling and entertainment company. The event featured three celebrities as well as three people who had signed up by e-mail to potentially have a date with a celebrity. The admission charges collected were given to Philabundance, a charity (N.T. 20-21).

10. An invoice dated October 21, 2005, presented to Greer Lang/Philly Mode by Licensee, charges \$1,000.00 for "Event Production / Room Rental" and a bar tab of \$1,218.00 plus gratuity of \$282.00, for a total payment of \$2,500.00. This invoice indicates that payment of \$1,000.00 was made by check on October 1, 2005, and payment of \$1,500.00 was made by credit card on October 21, 2005 (Exhibit L-2).

11. A newspaper article published about the event states that "A 'Celebrity Dating Game' took place at The Grape Street Pub on Thurs., Oct. 20. Eagles cheerleaders, guests from Survivor and The Apprentice, as well as members from Philly Souls appeared in the game. All proceeds were raised to benefit Philabundance. Philabundance works to end hunger and malnutrition in the Delaware Valley by rescuing surplus food and distributing it to local organizations serving people in need. Joe Cahill, president and director of operations at Grape Street planned the event." (N.T. 23, Exhibit L-3).

12. Licensee provided "butlered hors d'oeuvres" for the event, which had been planned months in advance. The member reception involved two setups, one in the lower part of the room for aspiring actors and models, and one in the elevated area for celebrities such as Gervase from Survivor, a couple of Phillies players, and David Gunning, a news person from NBC-TV, Channel 10 (N.T. 21-24).

13. The bar tab of \$1,218 was based on records kept by the bartender; this is the amount Licensee would have expected to realize from service of the same drinks which were provided to attendees of the event (N.T. 24).

CONCLUSIONS OF LAW:

Licensee's sale and service of an unlimited or indefinite amount of alcoholic beverages for a fixed price on October 20, 2005, was not subject to the restriction of 40 Pa. Code §13.102(a)(3), because the event qualified as an exception under 40 Pa. Code §13.102(b)(1).

DISCUSSION:

In *PSP, BLCE v. American Serbian Club of Pittsburgh*, 750 A.2d 405 (Pa. Cmwlth. Ct. 2000), Commonwealth Court held that there was nothing in the Liquor Code or the PLCB Regulations which prohibited ticket sales at the door to nonmembers attending a catered event. It was therefore permissible for the Serbian National Federation to sell tickets to its dinner dance to individuals unaffiliated with that group, provided only that the event was paid for by the federation and that arrangements had been made at least 24 hours in advance.

I am satisfied, based on the evidence presented, that the "Celebrity Dating Game" held at the premises on October 20, 2005, had been arranged more than 24 hours in advance by Greer Lang/Philly Mode. I believe the event constituted a "catered event" within the meaning of the regulation. Under the rule of *American Serbian Club*, the officer's payment of six dollars at the door made him a part of the event, even though he was not aware of it at the time.

ORDER

THEREFORE, it is hereby ORDERED that Citation No. 05-2561 is DISMISSED.

Dated this 13th 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.