

Mailing Date: OCT 26 2006

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 06-0386
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W02-326311
v.	:	
	:	LID - 32742
ESTATE OF J. OTTO TORNVALL	:	
KEVIN NEALON, EXECUTOR	:	
T/A SILHOUETTE LOUNGE	:	
523 LINDEN STREET	:	
SCRANTON, PA 18503-1605	:	
	:	
LACKAWANNA COUNTY	:	
LICENSE NO. R-AP-SS-3683	:	

BEFORE: JUDGE FLAHERTY

APPEARANCES:

For Bureau of Enforcement
Craig Strong, Esquire

For Licensee
Rick Campbell, PRO SE

ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation that was issued on March 3, 2006, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter "Bureau") against ESTATE OF J. OTTO TORNVALL, KEVIN NEALON, EXECUTOR, License Number R-AP-SS-3683 (hereinafter "Licensee").

The citation contains three counts.

The first count charges Licensee with violation of Section 5.32(c) of the Liquor Control Board Regulations [40 Pa. Code §5.32(c)] in that on January 29, 2006, Licensee, by his servants, agents or employes, permitted entertainers to contact or associate with patrons for a lewd purpose.

The second count charges Licensee with violation of Section 5.32(c) of the Liquor Control Board Regulations [40 Pa. Code §5.32(c)] in that on January 29, 2006, Licensee, by his servants, agents or employes, failed to display a copy of the restriction prohibiting entertainers, employes, servants, agents and/or event participants from having contact with patrons for a lewd, immoral or unlawful purpose.

The third count charges Licensee with violation of Section 493(10) of the Liquor Code [47 P.S. §4-493(10)] in that on January 29, 2006, Licensee, by his servants, agents or employes, permitted lewd entertainment.

The investigation which gave rise to the citation began on January 28, 2006 and was completed on January 29, 2006; and notice of the violation was sent to Licensee by Certified Mail on February 6, 2006. The notice of violation was received by Licensee.

An evidentiary hearing was held on this matter on August 9, 2006 in the Scranton State Office Building, 100 Lackawanna Avenue, Room 318, Scranton, Pennsylvania.

ORDER

In light of the decision of the United States Third Circuit Court of Appeals in *Conchatta, Inc. v. Col. Jeffrey B. Miller, Commissioner, Pennsylvania State Police*, decided August 15, 2006, which held that Section 493(10) of the Liquor Code [47 P.S. §4-493(10)] and Section 5.32(c) of the Liquor Control Board Regulations [40 Pa. Code §5.32(c)] are unconstitutionally overbroad and therefore null and void, and since Count 2 involves a regulation presenting the same issue, IT IS HEREBY ORDERED that this Citation be **DISMISSED**.

Dated this 16th day of October, 2006.

Daniel T. Flaherty, Jr., J.

an

MOTIONS FOR RECONSIDERATION MUST BE RECEIVED WITHIN 15 DAYS OF THE MAILING DATE OF THIS ORDER IN 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.