

Mailing Date: FEB 09 2007

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

PENNSYLVANIA STATE :
POLICE, BUREAU OF : Citation No. 06-0758
LIQUOR CONTROL ENFORCEMENT :
 : Incident No. W01-325971
 :
 v. :
 : LID - 30106
 :
BAZUKA INC :
T/A SCAMPI :
2310-12 GARRETT RD :
DREXEL HILL PA 19026 :
 :
 :
DELAWARE COUNTY :
LICENSE NO. R-7519 : BEFORE: JUDGE SHENKLE

APPEARANCES:

For Bureau of Enforcement: James Dailey, Esq.
For Licensee: no appearance

ADJUDICATION

BACKGROUND:

The Bureau of Liquor Control Enforcement of the Pennsylvania State Police issued this citation on April 11, 2006. There are two counts in the citation.

The first count alleges that Licensee violated §13.102(a)(3) of the Liquor Control Board Regulations, 40 Pa. Code §13.102(a)(3), on February 18, 2006, by selling and/or serving an unlimited or indefinite amount of alcoholic beverages for a fixed price, in that unlimited domestic beer and well drinks were served for the set price of \$25.00.

The second count alleges that Licensee violated §§491(1), 492(2) and 493(16) of the Liquor Code, 47 P.S. §§4-491(1), 4-492(2) and 4-493(16), on February 18, 2006, by selling alcoholic beverages after its Restaurant Liquor License expired on November 30, 2005, and had not been renewed and/or validated.

At the hearing scheduled for November 16, 2006, in Plymouth Meeting, Pennsylvania, there was no appearance for the Licensee; therefore, the case was heard *ex parte*.

FINDINGS OF FACT:

1. The Bureau investigated Licensee during the period January 25 through February 23, 2006, and sent written notice of the results of its investigation to the licensed premises by certified mail on March 3, 2006 (N.T. 10, Exhibit B-1).

2. A copy of this citation was mailed to the licensed establishment by certified mail on April 11, 2006 (N.T. 10, Exhibit B-2).

3. A Notice of Hearing was mailed to Licensee by the Office of Administrative Law Judge, Harrisburg, PA, by certified and first class mail on September 28, 2006.

4. Liquor Enforcement Officer Edward Mullen entered the licensed premises at about 10:20 p.m. on February 18, 2006, and sat at the bar. There were about 25 other patrons being served by two bartenders. Three patrons came in and addressed one of the bartenders by name, asking for "the special" (N.T. 4-6).

5. The bartender told these patrons that the special was "all you can drink, well drinks and domestic." The three patrons paid a total of \$75, and on at least three occasions were served beer without further charge (N.T. 7-8).

6. Officer Muller ordered two bottles of Miller Lite beer for himself and his companion, and paid \$5.50 for the two. He repeated this purchase about 45 minutes later. Other patrons, apart from the ones who had purchased the "special," were also drinking alcohol (N.T. 8-9).

7. Licensee did not have PLCB authority to operate on February 18, 2006 (Exhibit B-3).

CONCLUSIONS OF LAW:

Sustained as charged.

PRIOR RECORD:

Licensee has been licensed since January 28, 1993, and has had six prior violations:

Citation No. 01-0328. \$500.00 fine. Fine not paid and license suspended for 1 day. Fine not paid after 20 days and license revoked. OALJ reconsidered revocation and reinstated fine and suspension.

1. Sales after liquor license expired. January 25, 2001.

Citation No. 01-0864. \$300.00 fine. Fine not paid and license suspended for 1 additional day and thereafter until paid. Suspension vacated.

1. Sales after liquor license expired. March 1, 10 and 16, 2001.

Citation No. 02-0372. \$1,000.00 fine and 2 days suspension.

1. Sales after liquor license expired. January 10, 2002.

Citation No. 04-1405. \$1,000.00 fine and 2 days suspension.

1. Sales while liquor license suspended. July 22, 2004.

Citation No. 04-2018. \$150.00 fine.

1. Bad checks for malt or brewed beverages. September 2, 2004.

Citation No. 05-0023. \$1,500.00 fine and 3 days suspension. Fine not paid and license suspended for 1 additional day and thereafter until paid. Suspension vacated.

1. Sold unlimited or indefinite amount of alcoholic beverages for a fixed price.

December 5 and 19, 2004.

2. Sunday sales after 2:00 a.m. December 5 and 19, 2004.

PENALTY:

Section 471 of the Liquor Code, 47 P.S. §4-471, prescribes a penalty of license suspension or revocation or a fine, or both, for violations of the type found in this case. For violations of the type found in Count No. 1, any fine must be in the \$50.00 to \$1,000.00 range. For violations of the type found in Count No. 2, any fine must be in the \$1,000.00 to \$5,000.00 range. Since this is Licensee's third violation, in a four-year period, of a provision specified in 47 P.S. §4-471(b), the law requires that the penalty include license suspension or revocation.

Penalties are assessed as follows:

Count No. 1 – a fine of \$1,000.00.

Count No. 2 – a fine of \$2,000.00 plus suspension of license for 4 days.

ORDER

THEREFORE, it is hereby ORDERED that Licensee, Bazuka, Inc., t/a Scampi, License No. R-7519, shall pay a fine of three thousand dollars (\$3,000.00) within 20 days of the mailing date of this order. In the event the fine is not paid within 20 days, Licensee's license will be suspended or revoked. Jurisdiction is retained.

IT IS FURTHER ORDERED that the Restaurant Liquor License of Licensee, Bazuka, Inc., t/a Scampi, License No. R-7519, shall be suspended for a period of four (4) days on a date to be set by further order in the event this license is renewed.

The Bureau of Licensing is directed to notify this Office of the reactivation of the license, so that an order fixing the dates of the suspension may be entered.

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 PA 17110-9661

Dated this 2nd day of February, 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.