

Mailing Date: AUG 30 2007

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 06-0999
LIQUOR CONTROL ENFORCEMENT	:	
	:	
v.	:	Incident No. W01-322579
	:	
SEVEN MOUNTAINTOP INC.	:	
720-724 ARCH ST.	:	LID - 52811
PHILADELPHIA PA 19106-1512	:	
	:	
	:	
PHILADELPHIA COUNTY	:	
LICENSE NO. R-AP-SS-EHF-4609	:	

APPEARANCES:

FOR THE BUREAU OF ENFORCEMENT:

**ERIK SHMUKLER, ESQ.**

FOR THE LICENSEE:

**EDWARD A. TARASKUS, ESQ.**

**BEFORE: JUDGE WRIGHT**

ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation that was issued on May 2, 2006, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter "Bureau") against Seven Mountaintop, Inc., License Number R-AP-SS-EHF-4609 (hereinafter "Licensee").

An Administrative hearing was held on Monday, November 20, 2006, pursuant to requisite and appropriate hearing notice. The parties stipulated to the service and receipt of the notice letter and the citation.

The citation contains four counts.

The first count charges Licensee with violation of Sections 406(a)(2) and 493(16) of the Liquor Code, 47 P.S. Sections 4-406(a)(2) and 4-493(16), in that on February 11, 2006, Licensee, by its servants, agents or employes, sold, furnished and/or gave alcoholic beverages between 2:00 a.m. and 7:00 a.m.

The second count charges Licensee with violation of Section 499(a) of the Liquor Code, 47 P.S. Section 4-499(a), in that on February 11, 2006, Licensee, by its servants, agents or employes, failed to require patrons to vacate that part of the premises habitually used for the service of alcoholic beverages not later than one-half hour after the required time for the cessation of the service of alcoholic beverages.

The third count charges Licensee with violation of Section 102 of the Liquor Code, 47 P.S. Section 1-102, in that on February 11 and March 10, 2006, the licensed premises was not a bona fide restaurant in that Licensee, by its servants, agents or employes, maintained insufficient food items, and/or failed to provide food upon request.

The fourth count charges Licensee with violation of Section 5.32(a) of the Liquor Control Board Regulations, 40 Pa. Code Section 5.32(a), in that on December 3, 2005 and February 11, 2006, Licensee, by its servants, agents or employes, used, or permitted to be used on the inside of the licensed premises, a loudspeaker or similar device whereby the sound of music or other entertainment, or the advertisement thereof, could be heard outside.

COUNT NOS. 1, 2, 3 AND 4

FINDINGS OF FACT:

1. David Snyder is employed by the Bureau of Enforcement and has been so employed since January, 2005. On Saturday, February 11, 2006, he was working in an undercover capacity and visited the licensed premises (N.T. 9).

2. The officer arrived at the premises at approximately 12:45 a.m., paid a cover charge and went to the upper bar. He noted that there was an upper level and a bar down a set of steps on a lower level (N.T. 10).

3. At 2:00 a.m., the officer noted that in the lower level, the bartenders were clearing cash out of the registers and cleaning off the bar area. He left the area without being served any drinks. The officer was standing at the upper bar between 2:00 a.m. and 2:15 a.m. and observed three Heineken bottles, one Guinness bottle and five mixed drinks being served and money being exchanged for those drinks (N.T. 10-11).

4. The officer was keeping time by this watch. The officer did not compare the time to any other clock, however, on his visit of December 3, 2005, when his watch read 2:00 a.m., both bars were cleared out at the same time (N.T. 11-13).

5. He did not note any alcohol on the premises. The officer attempted to purchase a drink between 2:00 a.m. and 2:15 a.m., however, it was very crowded and he was not successful (N.T. 11).

6. At 2:15 a.m., the personnel cleared out the cash register and cleaned the bar and departed the area. Nothing was served after 2:15 a.m. (N.T. 11).

7. The Licensee does have an Extended Food Permit (N.T. 11-12).

8. Between 2:00 a.m. and 2:15 a.m., there were approximately fifty people at the bar on the second floor (N.T. 12).

9. Michael Clark is the president of the licensed corporation and owns the licensed premises and held that position on February 11, 2006. He was on the premises on that evening. He denied that any sales are permitted after 2:00 a.m. in the licensed establishment. Mr. Clark indicated that last call is made at 1:45 a.m. and that at 1:55 a.m., all sales should discontinue. They have a floor manager who enforces the time (N.T. 15).

10. Mr. Clark generally patrols the area to make certain that everyone is doing their job (N.T. 16).

11. On December 3, 2005 at approximately 1:15 a.m., a male officer arrived at the licensed premises and approached the front door. He heard hip-hop style music emanating from the premises. He was greeted by a female who charged him a five-dollar cover charge. He paid the cover charge and entered the premises. The officer noted there were approximately 300 patrons and three bartenders. Entertainment was provided by a male disc jockey playing music that was electronically amplified by several loudspeakers rounded throughout the area. The music that the officer heard inside was the same that he had heard outside prior to entering the premises. The officer departed the premises at approximately 2:50 a.m. Upon departure, the music was still being played by the disc jockey. The officer paced off approximately seventy-five paces directly across the street from the premises. From this distance, the sound of music could be heard emanating from the premises. The area surrounding the areas is approximately 75% commercial and 25% residential. The officer departed the area at approximately 3:00 a.m (N.T. 17-18 and Exhibit B-3).

12. On December 11, 2005 at approximately 12:45 a.m., the officer arrived in the vicinity of the licensed premises. He approached the front door heard the sound of music emanating from the premises. He paid a fifteen-dollar cover charge and entered the premises. The officer saw one hundred patrons and three bartenders. Entertainment was provided by a male disc jockey playing music. The music was electronically amplified by several loudspeakers mounted throughout the bar area. The music was the same that the officer had heard upon entering the premises (Exhibit B-3).

13. At approximately 1:00 a.m., the officer approached the bar. The officer ordered a twelve-ounce bottle of Corona beer. The officer asked the bartender if he could see a menu and asked if there was anything to eat. The bartender stated there was nothing to eat. The officer asked if she had potato chips or peanuts or anything of that nature. Again, the bartender stated, "no." The officer moved to the lower level of the bar and asked the male bartender to see a menu and asked if there was anything to eat. He also replied that no food was available and in response to inquiry about the potato chips, peanuts or anything of that nature, the bartender placed two cherries, one lemon slice and one lime slice into a napkin and handed it to the officer and asked, "Will this help?" (Exhibit B-3).

14. At 1:50 a.m., the officer approached the lower level bar and asked another bartender what there was to eat. She replied that there was no food (Exhibit B-3).

15. As the officer departed the premises, music was still being played by the disc jockey. The officer paced off approximately sixty paces directly across the street from the premises. From this distance, the officer could hear the sound of music emanating from the premises. The officer departed the area at approximately 3:15 a.m. The premises does have an Extended Hours Food License, however, during the visit of February 11, 2006, no food was observed or provided to the officer upon request (Exhibit B-3).

16. Mr. Clark indicated that the licensed premises was renovating the kitchen at the time of the officer's visit to the premises (N.T. 17-18).

17. Mr. Clark stated that the kitchen is now in full operation (N.T. 18).

18. Mr. Clark also indicated that he now monitors the music and they have installed a limiter to control the level of the music (N.T. 18-19).

19. Bernadette Webster is employed by the Licensee as an administrative manager. She as so employed on February 11, 2006. She indicated that at 2:00 a.m., she ushers the bartenders from behind the bar and cashes out the registers (N.T. 22).

20. She did not witness any sales of alcoholic beverages after 2:00 a.m. (N.T. 23).

CONCLUSIONS OF LAW:

Count No. 1 - On February 11, 2006, Licensee, by its servants, agents or employes, sold, furnished and/or gave alcoholic beverages between 2:00 a.m. and 7:00 a.m., in violation of Sections 406(a)(2) and 493(16) of the Liquor Code, 47 P.S. Sections 4-406(a)(2) and 4-493(16).

Count No. 2 - On February 11, 2006, Licensee, by its servants, agents or employes, failed to require patrons to vacate that part of the premises habitually used for the service of alcoholic beverages not later than one-half hour after the required time for the cessation of the service of alcoholic beverages, in violation of Section 499(a) of the Liquor Code, 47 P.S. Section 4-499(a).

Count No. 3 - On February 11 and March 10, 2006, the licensed premises was not a bona fide restaurant in that Licensee, by its servants, agents or employes, maintained insufficient food items, and/or failed to provide food upon request, in violation of Section 102 of the Liquor Code, 47 P.S. Section 1-102.

Count No. 4 - On December 3, 2005 and February 11, 2006, Licensee, by its servants, agents or employes, used, or permitted to be used on the inside of the licensed premises, a loudspeaker or similar device whereby the sound of music or other entertainment, or the advertisement thereof, could be heard outside, in violation of Section 5.32(a) of the Liquor Control Board Regulations, 40 Pa. Code Section 5.32(a).

PRIOR RECORD:

Licensee has been licensed since December 15, 2004, and has no record of prior violations.

DISCUSSION:

The officer was very credible in his testimony that he witnessed sales of alcoholic beverages between 2:00 a.m. and 2:15 a.m. He was very candid and testified that on a prior visit to the premises, both bars closed at approximately 2:00 a.m. He verified the time by his watch and was standing at a vantage point where he could see the first bar being closed promptly and where a short time later, the second bar was also closed.

On February 11 and March 10, 2006, the licensed premises was not a bona fide restaurant in that it did not maintain sufficient food items. However, the Licensee testified that the kitchen was under renovation, but there is now full service.

On December 3, 2005 and February 11, 2006, there was music coming from premises played through loudspeakers which could be heard on the outside of the premises. Licensee indicates that that situation has been corrected. There is now a limiter on the equipment and the sound is regularly monitored.

Seven Mountaintop, Inc.  
Citation No. 06-0999

It is noted that the Licensee has no prior history, therefore, monetary penalties shall be imposed.

PENALTY:

Section 471 of the Liquor Code, 47 P.S. Section 4-471, prescribes a penalty of suspension or revocation of license or imposition of a fine of not less than \$50.00 or more than \$1,000.00, or both, for violations of the type found in Count Nos. 2, 3 and 4 of this case.

Section 471 of the Liquor Code, 47 P.S. Section 4-471, prescribes a penalty of suspension or revocation of license or imposition of a fine of not less than \$1,000.00 or more than \$5,000.00, or both, for violations of the type found in Count No. 1 of this case.

Therefore, penalties shall be assessed as follows:

Count Nos. 1 and 2 (as merged) - \$1,000.00.  
Count No. 3 - \$350.00.  
Count No. 4 - \$250.00.

Accordingly, we issue the following

ORDER:

THEREFORE, it is hereby Ordered that Licensee, Seven Mountaintop, Inc., License Number R-AP-SS-EHF-4609, pay a fine of One Thousand Six Hundred Dollars (\$1,600.00) within twenty (20) days of the mailing date of this Order. In the event the aforementioned fine is not paid within twenty (20) days from the mailing date of this Order, licensee's license shall be suspended or revoked.

**In order to insure compliance with this Order, jurisdiction of this matter is retained.**

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, along with any required documentation, to:

PLCB - Office of Administrative Law Judge  
Brandywine Plaza  
2221 Paxton Church Road  
Harrisburg, PA 17110-9661

Dated this 22nd day of August, 2007.

---

Tania E. Wright, J.

Seven Mountaintop, Inc.  
Citation No. 06-0999

**NOTE:** 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.

mm