

Mailing Date: JAN 31 2007

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 06-1077
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W02-327792
v.	:	
	:	LID - 49052
PZF SOUTH MAIN STREET,	:	
W.B.-1, INC.	:	
T/A PIZZA FELLAS	:	
395 S. MAIN ST.	:	
WILKES-BARRE, PA 18701-2202	:	
	:	
LUZERNE COUNTY	:	
LICENSE NO. R-SS-EHF-15423	:	

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
Sal Cognito, Jr., Esquire
700 Scranton Electric Bldg.
507 Linden Street
Scranton, PA 18503-1666

ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation that was issued on May 17, 2006, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (Bureau) against PZF South Main Street, W.B.-1, Inc., t/a Pizza Fellas (Licensee), License Number R-SS-EHF-15423.

The citation¹ charges Licensee with violations of Sections 401(a) and 407(a) of the Liquor Code [47 P.S. §4-401(a) and §4-407(a)]. The charge is that on February 17 and 18, 2006, Licensee, by servants, agents or employees, sold malt or brewed beverages in excess of 192 fluid ounces in a single sale to one person for consumption off premises.

An evidentiary hearing was conducted on December 14, 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 February 17, 2006 and completed it on April 4, 2006. (N.T. 8-9)

2. The Bureau sent a notice of alleged violations to Licensee at the licensed premises by certified mail-return receipt requested on April 11, 2006. The notice alleged violations as charged in the citation. (Commonwealth Exhibit No. C-1, N.T. 6)

3. On February 17 and 18, 2006, representing a series of purchases extending both before and after midnight, a customer went to the premises and purchased a series of twelve packs of beer. After the first purchase, she advised the seller she would be back. It was after the second or third purchase of a twelve pack of beer that she left her driver's license on the counter for the employe to verify her age. She also left \$60.00 on the counter to cover the sale of all the beer she did and intended to purchase. She took one twelve pack of beer out at a time, purchasing a total of ten, twelve packs of beer. (N.T. 31-32)

4. The employe on duty knew she was not permitted to sell more than 192 fluid ounces of beer for off premises consumption in a single sale. It was a Friday night and it was very busy. The employe remembers the customer came back to buy the second twelve pack of beer. The employe did not notice the customer's license on the counter. She did notice the customer leave money on the counter but didn't know why. She told the customer to take the money but the customer did not. The employe had no idea how much beer the customer intended to buy when she first entered. The employe never had an understanding with the customer to purchase more than a twelve pack at a time. (N.T. 45-54)

1. Commonwealth Exhibit No. C-2, N.T. 6.

CONCLUSIONS OF LAW:

1. The notice requirements of Liquor Code Section 471 [47 P.S. §4-471] have been satisfied.
2. The Bureau has **failed** to prove that Licensee, by servants, agents or employes, sold malt or brewed beverages in excess of 192 fluid ounces in a single sale to one person for consumption off premises on February 17 and 18, 2006.

DISCUSSION:

Everyone understood the principal at issue the analysis of which has been consistent since the very beginning of the Administrative Law Judge System. *Thomas E. D'Andrea*, V Sel.Op. ALJ 168. Other Adjudications have refined the essential point.

Whether a sale of beer for off-premises consumption occurs is a matter of contract law. The intent of the parties necessarily controls. The record is quite clear the buyer had every intention of purchasing a quantity of beer well in excess of the 192 fluid ounce limit. Indeed, the customer expressed that intent early on in her series of purchases.

Having heard the testimony of the seller, whose credibility I find to be unblemished, I cannot conclude she was of the same state of mind as the buyer. The employe admitted she was busy that evening and had not a clear understanding of the buyer's intentions.

As I remember from Law School, an essential ingredient to a contract is the mutual assent and meeting of the minds of the parties. That agreement is simply not present here.

Order:

NOW THEREFORE, it is ordered that Citation No. 06-1077, issued against PZF South Main Street, W.B.-1, Inc., is DISMISSED.

Dated this 24th day of January, 2007.

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.