

Mailing Date: MAR 28 2007

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 06-1085
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W09-327876
v.	:	
	:	LID - 39981
3025 NJS INC	:	
3025 NEW RODGERS RD	:	
BRISTOL PA 19007-1607	:	
	:	
	:	
	:	
	:	
BUCKS COUNTY	:	
LICENSE NO. R-AP-SS-EHF-19124	:	BEFORE: JUDGE SHENKLE

APPEARANCES:

For Bureau of Enforcement: Roy Harkavy, Esq.
For Licensee: John J. McCreesh, III, Esq.

ADJUDICATION

The Bureau of Liquor Control Enforcement of the Pennsylvania State Police issued this citation on May 8, 2006. There are two counts in the citation.

The first count alleges that Licensee violated §493(10) of the Liquor Code, 47 P.S. §4-493(10), on February 16 and March 1, 2006, by permitting lewd entertainment.

The second count alleges that Licensee violated §5.32(c) of the Liquor Control Board Regulations, 40 Pa. Code §5.32(c), on February 16 and March 1, 2006, by permitting entertainers to contact or associate with patrons for a lewd purpose.

A hearing was scheduled for Thursday, December 14, 2006, in Plymouth Meeting, Pennsylvania. At the time set for hearing the Bureau renewed its request, previously refused, for a continuance on the basis that the government intended to file a petition for certiorari in the Supreme Court of the United States.

The petition, being filed by an attorney who was not present at the hearing, would request relief from the decision of the United States Court of Appeals for the Third Circuit in *Conchatta, Inc., et. al. v. Miller*, No. 05-1803. The Third Circuit had declared 47 P.S. §4-493(10) unconstitutional as an abridgement of rights under the first amendment.

The request for continuance was refused on the basis that I believed there was very little chance that the Supreme Court would accept the case, and I did not believe it was fair to Licensee to allow the matter to remain pending. As a consequence, the Bureau did not present any evidence.

On February 20, 2007, the Court denied the petition at No. 06-844.

THEREFORE, it is hereby ORDERED that Citation No. 06-1085 is DISMISSED.

Dated this 19th 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.