

Mailing Date: February 26, 2008

PENNSYLVANIA LIQUOR CONTROL BOARD
HARRISBURG, PA 17124-0001

PENNSYLVANIA STATE POLICE, : Citation No. 06-1230
BUREAU OF LIQUOR CONTROL :
ENFORCEMENT :

vs. :

LA TIERRA DE CARIBE, INC. : License No. R-7472
119 East Tioga Street :
Philadelphia, PA 19134-1040 :

Counsel for Licensee: John J. McCreesh, III, ESQUIRE
McCREESH, McCREESH, McCREESH &
CANNON
7053 Terminal Square
Upper Darby, PA 19082

Counsel for Bureau: James E. Dailey, Esquire
PENNSYLVANIA STATE POLICE,
Bureau of Liquor Control Enforcement
6901 Woodland Avenue, Third Floor
Philadelphia, PA 19142

OPINION

La Tierra De Caribe, Inc. ("Licensee") appealed from the Adjudication and Order of Administrative Law Judge Tania E. Wright ("ALJ"), wherein the ALJ sustained the citation and revoked the license.

The first count of the citation charged that, on March 21 and 22, 2006, Licensee, by its servants, agents or employees, violated sections 471 and 492(31) of the Liquor Code [47 P.S. §§ 4-471, 4-493(31)], and section 780-101, et seq., of the Pennsylvania Controlled Substance, Drug, Device and Cosmetic Act [35 P.S. § 780-101], by aiding, abetting or engaging in the traffic in, or sale of, a controlled substance on the licensed premises and/or permitting the use of the licensed premises in the furtherance of the traffic in, or use of, a controlled substance.

The second count of the citation charged that, on March 21 and 22, 2006, Licensee, by its servants, agents or employees, violated sections 471 and 492(31) of the Liquor Code [47 P.S. §§ 4-471, 4-493(31)], and section 780-101, et seq., of the Pennsylvania Controlled Substance, Drug, Device and Cosmetic Act [35 P.S. § 780-101], by possessing a controlled substance on the licensed premises, or on premises contiguous or adjacent thereto or used in connection therewith.

Pursuant to section 471 of the Liquor Code [47 P.S. § 4-471], the appeal in this case must be based solely on the record before the ALJ. The Board shall only reverse the decision of the ALJ if the ALJ committed an error of law or abused his/her discretion, or if his/her decision was not based

upon substantial evidence. The Commonwealth Court defined "substantial evidence" to be such relevant evidence as a reasonable person might accept as adequate to support a conclusion. Joy Global, Inc. v. Workers' Compensation Appeal Bd. (Hogue), 876 A.2d 1098 (Pa. Cmwlth. 2005); Chapman v. Pennsylvania Bd. of Probation and Parole, 86 Pa. Cmwlth. 49, 484 A.2d 413 (1984).

Licensee avers on appeal that the ALJ's findings of fact were not supported by substantial evidence.

The parties stipulated to the facts set forth in the Pre-Hearing Memorandum of the Pennsylvania State Police, Bureau of Liquor Control Enforcement ("Bureau"). (N.T. 5; Ex. B-3). On March 21, 2006, Officer Norman, a Philadelphia police officer, entered the licensed premises and served a search warrant. (Ex. B-3). He proceeded to the second floor of the premises and observed Pedro Rondon, who is listed on Board records as an officer, director, shareholder and manager of Licensee, flee through a door into an adjoining room adjacent to the licensed premises. (Ex. B-3; Admin. Notice). Mr. Rondon was apprehended and charged with several drug-related offenses. (Ex. B-3). In the room in which Mr. Rondon was apprehended, there was a grinder with an off-white residue in it. (Ex. B-3).

A search warrant was obtained and executed at 12:45 a.m. on March 22, 2006 for this adjoining property. (Ex. B-3). Discovered during the search were four (4) clear plastic bags containing a total of two hundred seventy-five (275) grams of heroin. (Ex. B-3). The heroin, grinder and a digital scale, among other items, were seized. (Ex. B-3). In addition to Mr. Rondon, four (4) people in the licensed premises were arrested and charged with numerous drug-related offenses. (Ex. B-3).

On March 24, 2006, Bureau Officer Graham reviewed a local police report relating to the arrest of Pedro Rondon and others on drug-related charges at the licensed premises. (Ex. B-3).

The subject license was revoked pursuant to an Adjudication and Order issued for Citation No. 05-1425. (Admin. Notice).

Based upon The Controlled Substance, Drug, Device and Cosmetic Act, and under the authority of Liquor Code section 471, Licensee was charged with violating Liquor Code section 493(31), which makes it unlawful:

(i) [f]or any licensee to possess, furnish, sell, offer to sell, or purchase or receive, or aid and abet in the sale or purchase of any controlled substance or drug paraphernalia, as defined in the act of April 14, 1972 (P.L. 233, No. 64), known as 'The Controlled Substance, Drug, Device and Cosmetic Act,' on the

licensed premises unless the actions of the licensee are authorized by law.

(ii) [f]or any servants, agents or employes of the licensee to possess, furnish, sell, offer to sell, or purchase or receive, or aid and abet in the sale or purchase of any controlled substance or drug paraphernalia, as defined in 'The Controlled Substance, Drug, Device and Cosmetic Act,' on the licensed premises unless the actions of the person are authorized by law. The licensee shall only be cited for a violation of this subclause if the licensee knew or should have known of the activity and failed to take substantial affirmative steps to prevent the activity on its premises.

[47 P.S. § 4-493(31)].

It is undisputed that, on March 21 and 22, 2006, Licensee's officer, director, shareholder and manager was observed in a room adjacent to the licensed premises, with drug paraphernalia and a significant amount of heroin. Mr. Rondon and four (4) other individuals discovered in Licensee's premises were arrested based upon drug-related charges. Under the circumstances, the evidence demonstrates that Licensee aided, abetted or engaged in the traffic in, or sale of, a controlled substance on the licensed premises and/or permitted the use of the licensed premises in the furtherance of the traffic in, or use of, a controlled substance, and that a controlled substance was found

in premises contiguous with, adjacent to, or used in connection with the licensed premises.

Based upon the foregoing, the decision of the ALJ is affirmed.

ORDER

The decision of the ALJ is affirmed.

The appeal of Licensee is dismissed.

It is hereby ordered that Restaurant Liquor License No. R-7472 remains revoked as of December 21, 2007.

Licensee must adhere to all conditions set forth in the ALJ's Order issued December 21, 2007.

Board Secretary