

Mailing Date: NOV 21 2008

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 06-1518
LIQUOR CONTROL ENFORCEMENT	:	
	:	
v.	:	Incident No. W01-328745
	:	
JAKE'S LOUNGE INC.	:	
4002 W. GIRARD AVE.	:	LID - 9853
PHILADELPHIA PA 19104-1032	:	
	:	
	:	
PHILADELPHIA COUNTY	:	
LICENSE NO. R-AP-SS-OPS-1225	:	

APPEARANCES:

FOR THE BUREAU OF ENFORCEMENT:

JAMES E. DAILEY, ESQ.

FOR THE LICENSEE:

EDWARD B. McHUGH, ESQ.

BEFORE: JUDGE WRIGHT

ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation that was issued on June 26, 2006, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter "Bureau") against Jake's Lounge, Inc., License Number R-AP-SS-OPS-1225 (hereinafter "Licensee").

An Administrative hearing was held on Thursday, May 10, 2007, pursuant to requisite and appropriate hearing notice. The parties stipulated to the service and receipt of the notice letter and the citation, and a stipulation to the facts which included a video presentation.

The citation contains two counts.

The first count charges Licensee with violation of Section 471 of the Liquor Code, 47 P.S. Section 4-471, in that on February 2, March 11 and May 7, 2006, the licensed establishment was operated in a noisy and/or disorderly manner.

The citation charges Licensee with violation of Section 471 and 493(31) of the Liquor Code, 47 P.S. Section 4-471 and 4-493(31) and Section 780-101, et seq, of the Pennsylvania Controlled Substance, Drug, Device and Cosmetic Act, 35 P.S. Section 780-101, in that on February 2 and March 11, 2006, Licensee, by its servants, agents or employes, 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.

COUNT NOS. 1 AND 2

FINDINGS OF FACT:

1. Enforcement Officer H. Ringgold reviewed the local police reports relating to drug related arrests made at the licensed premises on February 2, 2006 and March 11, 2006 (Exhibit B-3).

2. On February 2, 2006 at 11:30 p.m., Philadelphia Police Officer K. Bell and other local police officers entered the licensed premises. At that time, he could smell a heavy aroma of marijuana. During his visit, five persons were arrested for drug-related charges. Also recovered were 76 packets of marijuana, 46 packets of crack cocaine, one 9mm semi-automatic handgun, one .38 cal. Revolver and a video camera and video tape. The female bartender had full view of the patrons brandishing weapons and smoking the marijuana, as the patrons were seated at the bar (Exhibit B-3).

3. On March 11, 2006, Enforcement Officers Ringgold and Harris, along with Philadelphia Police Department officers, including Police Officer B. Schneider, and members of other local agencies, conducted an open inspection of the premises. They observed a female bartender, later identified as Debra Smith, rendering service to approximately forty patrons. At least one person was arrested for drug and weapons related charges. Thirty-six packets of marijuana and a semi-automatic handgun were seized during the inspection (Exhibit B-3).

4. On April 3, 2006, Officer Ringgold viewed a video tape of events which occurred at the licensed premises on February 2, 2006. This video tape was made by a patron at the establishment using a hand-held camcorder. The tape shows several patrons smoking what appears to be marijuana and a patron pointing a handgun at the camera (Exhibit B-3).

5. On April 3 and April 17, 2006, Officer Ringgold attempted to contact Philadelphia Police Officer K. Bell (Exhibit B-3).

6. On April 19, 2006, Officer Ringgold spoke with Officer Bell concerning the events of February 2, 2006 (Exhibit B-3).

7. On April 27, 2006, State Police Sergeant Steven P. Davis contacted the Mayor's officer concerning this investigation (Exhibit B-3).

8. On May 15, 2006, Enforcement Officer D. Harris received and reviewed a police report relating to a shooting which occurred at the licensed premises on May 7, 2006. Philadelphia Police Officer Weiss, who was at that time with the 16th Police District, also responded to this call. This police report shows that when police arrived at 12:50 a.m., they found a patron unconscious in the men's room of the establishment. This patron had suffered three gunshot wounds. The patron was pronounced dead as a result of the wounds at 1:11 a.m. (N.T. 6 and Exhibit B-3).

9. On June 7, 2006, Officer Ringgold sent, or caused to be sent, a notice of violation letter, under the signature of Sergeant Steven P. Davis, to the Licensee (Exhibit B-3).

CONCLUSIONS OF LAW:

Count No. 1- On February 2, March 11 and May 7, 2006, the licensed establishment was operated in a noisy and/or disorderly manner, in violation of Section 471 of the Liquor Code, 47 P.S. Section 4-471.

Count No. 2 - On February 2 and March 11, 2006, Licensee, by its servants, agents or employes, 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, in violation of Section 471 and 493(31) of the Liquor Code, 47 P.S. Section 4-471 and 4-493(31) and Section 780-101, et seq, of the Pennsylvania Controlled Substance, Drug, Device and Cosmetic Act, 35 P.S. Section 780-101.

PRIOR RECORD:

Licensee has been licensed since July 30, 1975, and since July 1, 1987, the date of establishment of the Office of Administrative Law Judge, has no record of prior violations.

DISCUSSION:

When a licensee is charged under Section 471 of the Liquor Code for the unlawful acts of its employees or patrons, the Pennsylvania Supreme Court has held that the strict liability standard is inapplicable. In order to jeopardize the license, guilty knowledge, i.e., some element of scienter on the part of the licensee is required if the underlying conduct violates the Crimes Code, rather than some specific prohibition of the Liquor Code or regulations. *PLCB v. TLK, Inc.*, 518 Pa. 500, 544 A.2d 931 (1988).

Guilty Knowledge

Guilty knowledge is determined by examining whether a licensee knew or should have known of illegal activities by an employee or patron. If guilty knowledge is established, a licensee may defend himself by demonstrating that he took substantial affirmative steps to guard against a known pattern of illegal activities. 544 A.2d at 933.

The citation in *TLK* was sustained on the basis of a single drug sale initiated in the licensed premises. However, the requisite scienter was established by a six-month investigation at the premises by an undercover narcotics agent who testified that he was able to purchase drugs from a patron of the establishment, and that he observed drug sales between patrons, sales of stolen goods, the use of drugs in the bathroom, and a drug sale take place in the presence of the bartender. Due to the pervasive nature of this illicit activity, it may be said that the Licensee should have known of the misconduct of his employee. 544 A.2d at 944.

Here, the Licensee is charged with violation of Section 471 of the Liquor Code, relative to Count No. 1 (noisy and disorderly conduct) and Count No. 2 (permitting drug trafficking).

In the present matter, local police made drug related arrests at the licensed premises on February 2, 2006. The police officers smelled a heavy aroma of marijuana when they entered the premises. Five individuals were arrested for drug related charges. The police recovered 76 packets of marijuana, 46 packets of crack cocaine, one 9mm semi-automatic handgun and a .38 caliber revolver. A patron captured the night's activities on tape. The tape revealed a patron brandishing weapons and smoking marijuana - all in full view of the female bartender. At that point, if not before, Licensee was acutely aware that there was drug activity on the premises and that the patrons were clearly disorderly and out of control. Nothing was done at that time to deter drug and firearm possession on the premises. When the officers inspected the premises on March 11, 2006, they arrested at least one individual in possession of a .40 caliber weapon and 36 packets of marijuana. Finally on May 7, 2006 a patron was found unconscious in the men's room of the establishment, having suffered several gunshot wounds and died as a result of his injuries.

Substantial Affirmative Steps

Jake Chisolm testified that he is the owner/president/board approved manager of the licensed premise and that he has been the owner since 1974. Mr. Chisolm indicated that the premises is open from 7:00 a.m. until 2:00 a.m. Mr. Chisolm is on the premises seven days a week from 7:00 a.m. to 7:00 p.m. and then goes home to care for his sick wife. Mr. Chisolm identified photographs of the interior and exterior of the licensed premises. Mr. Chisolm identified a corner in the bar where the illegal drug activities and the brandishing of a firearm took place. He stated that the premises maintains a kitchen, which is operated by an employee named Beverly Jones, who was in the courtroom. Attorney for Licensee presented a menu; Mr. Chisolm stated that the menu and food items had been available and since February of 2006.

Shortly after the citation was issued in June of 2006, Mr. Chisolm met with his attorney and began taking steps to guard against future illegal activities on the premises. Mr. Chisolm purchased a metal detector in the nature of a wand, which is used on the premises on Thursday, Friday and Saturday nights – the busier nights on the premises. Mr. Chisolm testified that there are cameras in the ceiling in the front of the bar and that there is a second camera in the back of the bar. There are two other cameras, which are focused on the two cash registers. The cameras were purchased July 16, 2006, shortly after the issuance of this citation and a few months after the events giving rise to the issuance of the citation. There is a television downstairs, showing activities captured on the four cameras.

Licensee also identified a sign posted at the front of the bar which prohibits smoking in the area in front of the bar. The signage also prohibits loitering and drug use and indicates that the premises is under surveillance. Mr. Chisolm believes that these measures have made a difference in the operation of his business.

Mr. Chisolm was not on the premises on the night of February 2, 2006 when it is alleged that drug activity took place on the premises. He claims that *Charna*, an employee, contacted him about the alleged activity, and he instructed her to call the police. Mr. Chisolm reviewed the videotape and stated that he did not recognize the people on the tape who were involved in the alleged drug use and who were in possession of a firearm. Mr. Chisolm does not recall being on the premises at the time of the March 11th inspection nor on May 7, 2006.

Unfortunately, all substantial affirmative steps were taken after the Citation was issued and not before or immediately after the incidents of February 2, 2006 and March 11, 2006 when there was clear evidence of patrons in possession of drugs and firearms, or on May 7, 2006, when an individual was shot and killed on the premises.

After evaluating the facts and circumstances of this case, the Office of Administrative Law Judge finds that the legal standard of *TLK* was met and that the Licensee permitted drug use and disorderly conduct on the premises by failing to take substantial affirmative steps to avert a known pattern of criminal conduct. This failure to act culminated in a tragedy on the licensed premises.

Jake's Lounge, Inc.
Citation No. 06-1518

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 this case.

Therefore, penalties shall be assessed as follows:

Count No. 1 - \$1,000.00 and twenty days suspension.

Count No. 2 - \$1,000.00 and twenty-five days suspension.

Accordingly, we issue the following

ORDER:

THEREFORE, it is hereby Ordered that Licensee, Jake's Lounge, Inc., License Number R-AP-SS-OPS-1225, pay a fine of Two Thousand Dollars (\$2,000.00) 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.

IT IS FURTHER ORDERED that the Restaurant Liquor License of Jake's Lounge, Inc., License Number R-AP-SS-OPS-1225, be suspended for a period of thirty (30) days **BEGINNING** at 7:00 a.m. on Monday, February 23, 2009 and **ENDING** at 7:00 a.m. on Thursday, April 9, 2009.

Licensee is directed on Monday, February 23, 2009 at 7:00 a.m. to place the enclosed placard of notice of suspension (identified as Form No. PLCB-1925 and as printed with red and black ink) in a conspicuous place on the outside of the licensed premises or in a window plainly visible from outside the licensed premises and to remove said license from the wall and place it in a secure location.

Licensee is advised if a replacement placard is needed for any reason they are available at all State Liquor Stores/Wine and Spirit Shoppes.

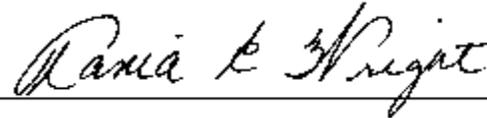
The "Bureau of Enforcement" is directed to visit and monitor the aforementioned licensed premises for compliance with this Order.

The Licensee is authorized on Thursday, April 9, 2009 at 7:00 a.m. to remove the placard of suspension and return the license to its original wall location.

Jake's Lounge, Inc.
Citation No. 06-1518

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

Dated this 13th day of November, 2008.



Tania E. Wright, J.

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.

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Detach Here and Return Stub with Payment

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

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Jake's Lounge, Inc.