

Mailing Date: JAN 17 2007

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 06-1769
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W01-325564
v.	:	
	:	LID - 33791
TRAN FAMILY ENTERPRISES, INC.	:	
2534-36 KENSINGTON AVE. &	:	
2529 POTTER ST.	:	
PHILADELPHIA, PA 19125	:	
	:	
	:	
PHILADELPHIA COUNTY	:	
LICENSE NO. R-AP-11616	:	

**BEFORE:** JUDGE THAU

APPEARANCES:

For Bureau of Enforcement  
Erik S. Shmukler, Esquire  
Pennsylvania State Police  
6901 Woodland Avenue  
Philadelphia, PA 19142

For Licensee  
Phan Tran  
Sole Corporate Officer

**ADJUDICATION**

BACKGROUND:

This proceeding arises out of a citation that was issued on August 1, 2006, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (Bureau) against Tran Family Enterprises, Inc. (Licensee), License Number R-AP-11616.

This citation<sup>1</sup> contains two counts.

The first count charges Licensee with a violation of Section 499(a) of the Liquor Code [47 P.S. §4-499(a)]. The charge is that on December 11, 2005, Licensee, by 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 second count charges Licensee with a violation of Section 499(a) of the Liquor Code [47 P.S. §4-499(a)]. The charge is that on December 11, 2005, Licensee, by servants, agents or employes, permitted patrons to possess and/or remove alcoholic beverages from that part of the premises habitually used for the service of alcoholic beverages after 2:30 A.M.

An evidentiary hearing was conducted on November 30, 2006 at the Philadelphia State Office Building, 1400 West Spring Garden Street, 13<sup>th</sup> Floor, Room #1, Philadelphia, Pennsylvania. Licensee appeared at the hearing without counsel. Licensee's daughter, Ms. Tran-Doerr acted as translator for her father, Licensee.

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 January 19, 2006 and completed it on June 22, 2006. (N.T. 21)

2. The Bureau sent a notice of alleged violations to Licensee at the licensed premises by certified mail-return receipt requested on July 3, 2006. The notice alleged violations as charged in the citation. (Commonwealth Exhibit No. B-1, N.T. 47)

Count Nos. 1 and 2:

3. A Philadelphia Police Officer arrived in the area of the premises on December 11, 2005 at approximately 3:00 a.m. There were a number of people standing outside the premises. There also seemed to be a disturbance inside the licensed premises. Additional Philadelphia Police Officers arrived to separate some of the people. Licensee's management was advised that the people inside must leave. (N.T. 49-53)

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1. Commonwealth Exhibit No. B-2, N.T. 47.

4. The Philadelphia Police Officer did not actually go inside the building. He stood at the door with a half of step inside. He noticed that the front door opened into a hallway where he saw people, some of whom were holding alcoholic beverages. His observation lasted no more than two minutes. (N.T. 55-59)

5. The hallway observed by the Philadelphia Police Officer is one with a ramp to enter into the premises. It is approximately ten feet long and 36 inches wide. (N.T. 66-67)

CONCLUSIONS OF LAW:

1. The notice requirements of Liquor Code Section 471 [47 P.S. §4-471] have been satisfied.

Count No. 1:

2. The Bureau has **failed** to prove that on December 11, 2005, Licensee, by 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.

Count No. 2:

3. The Bureau has **failed** to prove that on December 11, 2005, Licensee, by servants, agents or employes, permitted patrons to possess and/or remove alcoholic beverages from that part of the premises habitually used for the service of alcoholic beverages after 2:30 A.M.

DISCUSSION:

In order to sustain its burden of proof, the Bureau must establish that patrons failed to vacate a “part of the premises habitually used for the service of alcoholic beverages.” The Bureau must also prove that Licensee permitted patrons to remove alcoholic beverages from “that portion of the premises habitually used for the service of alcoholic beverages.”

The Bureau has established there were customers in a hallway leading from the front door to the service area. However, the Bureau has not established those customers, some of whom were holding alcoholic beverages, came from the area of the premises habitually used for the service of alcoholic beverages. Accordingly, the citation must be dismissed.

ORDER:

NOW THEREFORE, it is ordered that Citation No. 06-1769, issued against Tran Family Enterprises, Inc., is hereby DISMISSED.

Dated this 10th day of January, 2007.

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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.**