

Mailing Date: MAY 30 2007

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 06-2743
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W03-339754
v.	:	
	:	LID - 54230
MAMMA VENTURA RESTAURANT &	:	
LOUNGE, LLC	:	
T/A MAMMA VENTURA	:	
13 CHAMBERSBURG ST.	:	
GETTYSBURG, PA 17325-1102	:	
	:	
ADAMS COUNTY	:	
LICENSE NO. R-AP-SS-20389	:	

BEFORE: JUDGE THAU

APPEARANCES:

For Bureau of Enforcement
Andrew J. Lovette, Esquire
Pennsylvania State Police
3655 Vartan Way
Harrisburg, PA 17110

For Licensee
Robert E. Campbell, Esquire
112 Baltimore Street
Gettysburg, PA 17325

ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation that was issued on November 30, 2006, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (Bureau) against Mamma Ventura Restaurant & Lounge, LLC, t/a Mamma Ventura (Licensee), License Number R-AP-SS-20389.

This citation¹ contains two counts.

The first count charges Licensee with a violation of Sections 406(a)(2) and 493(16) of the Liquor Code [47 P.S. §4-406(a)(2) and §4-493(16)]. The charge is that on September 16, 2006, Licensee, by servants, agents or employes, sold, furnished and/or gave alcoholic beverages between 2:00 A.M. and 7:00 A.M.

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 September 16, 2006, 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 May 1, 2007 at the Brandywine Plaza, 2221 Paxton Church Road, Harrisburg, 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 September 13, 2006 and completed it on November 4, 2006. (N.T. 11-12)

2. The Bureau sent a notice of alleged violations to Licensee at the licensed premises by certified mail-return receipt requested on November 13, 2006. The notice alleged violations as charged in the citation. (Commonwealth Exhibit No. C-1, N.T. 10)

Count Nos. 1 and 2:

3. On Saturday, September 16, 2006 at 2:49 a.m., a Bureau Enforcement Officer arrived in the vicinity of the premises. The Officer walked along the side of the building on a walkway to the north end where the main entrance to the barroom is located. (N.T. 12)

1. Commonwealth Exhibit No. C-2, N.T. 10.

4. The main entrance was locked but there was a small window approximately 6 by 12 inches in the doorway. Through that window, the Officer was able to see Mr. Fazzolari, Licensee's only LLC Member and Manager, sitting behind the bar. It appeared to the Officer that Mr. Fazzolari was doing paperwork. An individual later identified as Mr. R. crossed the Officer's field of view. Mr. R. was carrying a bottle of beer. As the door was locked, the Officer knocked. Mr. R. came to the door and opened it. The Officer displayed his credentials, identified himself to Mr. R. and that he was there to do an after hours check. Mr. R. invited the Officer in. Seated on the patron side of the bar counter were three individuals. Directly in front of one of the three was a twelve ounce bottle of beer, approximately 75% full. (N.T. 12-15)

5. Mr. R. told the Officer that he was working there that night and that he helped himself to a beer at 2:30 a.m. (N.T. 16-18)

6. The Officer asked Mr. Fazzolari if that was the situation, if it was true that Mr. R. got the beer after 2:00 a.m. Mr. Fazzolari acknowledged the statement was true. (N.T. 18-19)

CONCLUSIONS OF LAW:

1. The notice requirements of Liquor Code Section 471 [47 P.S. §4-471] have been satisfied.
2. Count Nos. 1 and 2 are **sustained** as charged.

DISCUSSION:

Licensee raised several Constitutional issues at the hearing. Counsel argued the Bureau failed to provide those present at the licensed premises "Miranda" warnings. Accordingly, any statements made must be excluded. Licensee further argued the Officer's entry onto the licensed premises violated State and Federal Constitutional proscriptions against warrantless searches. Consequently, any observations or statements made are inadmissible.

I questioned Counsel as to why no mention was made of these arguments in Licensee's Pre-Hearing Memorandum, particularly when there is clearly spelled out within the Memorandum the obligation to do so. I received a response which was unsatisfactory (N.T. 7-8).

While such a failing may be considered a waiver of the issues, had Licensee suffered Constitutional deprivation, it would have been incumbent upon me to react accordingly. This record leads to the opposite conclusion.

Miranda Warnings

The so-called Miranda warnings are limited in scope. Not every encounter with police or other government official requires Miranda warnings. Such warnings are required only if one is in custodial interrogation. It is the custodial nature of the questioning which triggers strict adherence to these warnings. *Com. V. Michael*, 431 A.2d 333 (Pa.Super. 1981). Moreover, Miranda warnings are not required in non-criminal investigations even though the results of such investigations may result in criminal prosecution. *Com. V. McLaughlin*, 379 A.2d 1056 (Pa. 1977); *Com. v. Ziegler*, 470 A.2d 56 (Pa. 1983)

Search of Premises

Administrative inspections of certain regulated businesses fall within the exception to the requirement of a search warrant. Moreover, there may be exigent circumstances where an administrative inspection may be accomplished without warrant. *Simpson v. City of New Castle*, 740 A.2d 287 (Pa.Cmwlth. 1999); *Roman's Lounge and Catering, Inc.*, Citation No. 04-1628, www.lcb.state.pa.us/webapp/Legal/PublicAdjudicationSrch.asp. The above constitutes two exceptions to the warrant requirement. *Com. v. Stewart*, 740 A.2d 712 (Pa.Super. 1999)

There is evidence in this record to support both of these exceptions. However, there is clear and unequivocal evidence of the applicability of another exception to the warrant requirement. That is, of course, consent. The Officer's entry was accomplished via voluntary consent. *Com. v. Barnette*, 760 A.2d 1166 (Pa.Super. 2000); *Com. v. Busch*, 713 A.2d 97 (Pa.Super. 1998)

Hearsay

Based on hearsay, Licensee objected to the verbal admissions of furnishing alcoholic beverages after hours made by Mr. R. and Mr. Fazzolari. I sustained Licensee's objection to Mr. R.'s admission but not to Mr. Fazzolari's. As Mr. Fazzolari is Licensee's Sole Member and Manager and was seen working behind the bar, his statements constitute an admission by a party-opponent as well as a declaration of a party's agent [Pa. Rule of Evidence No. 803(25)].

PRIOR RECORD:

Licensee has been licensed since March 11, 2005, and has had no prior violations.

PENALTY:

Section 471 of the Liquor Code [47 P.S. §4-471] prescribes a penalty of license suspension or revocation or a fine of not less than \$1,000.00 or more than \$5,000.00 or both for violations of the type found in Count No. 1 and a penalty of license suspension or revocation or a fine of not less than \$50.00 or more than \$1,000.00 or both for violations of the type found in Count No. 2 in this case.

I merge Count Nos. 1 and 2 and impose a \$1,000.00 fine.

ORDER:

Imposition of Fine

THEREFORE, it is hereby ordered that Licensee pay a fine of \$1,000.00 within 20 days of the mailing date of this Order. In the event the aforementioned fine is not paid within 20 days from the mailing date of this Order, Licensee's license shall be suspended or revoked.

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 to:

PLCB - Office of Administrative Law Judge
Brandywine Plaza
2221 Paxton Church Road
Harrisburg, Pennsylvania 17110-9661

Retaining Jurisdiction

Jurisdiction is retained to ensure compliance with this Adjudication.

Dated this 29th day of May, 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.