Mailing Date: JUN 07 2007 Appeal

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

PENNSYLVANIA STATE POLICE, BUREAU OF LIQUOR CONTROL ENFORCEMENT	:	Citation No. 06-2832
	:	Incident No. W01-326655
v.	:	
	: LID - 9783	
X-TRA, INC. 212 S. 13TH STREET PHILADELPHIA, PA 19107-5467	:	
PHILADELPHIA COUNTY LICENSE NO. R-SS-EHF-1097	:	

BEFORE: JUDGE THAU

APPEARANCES:

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

For Licensee
John J. McCreesh, III, Esquire
7053 Terminal Square
Upper Darby, PA 19082

ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation that was issued on December 13, 2006, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (Bureau) against X-Tra, Inc. (Licensee), License Number R-SS-EHF-1097.

The citation[1] charges Licensee with violations of Section 493(12) of the Liquor Code [47 P.S. §4-493(12)]. The charge is that on March 31, April 24, May 10 and June 8, 2006, Licensee, by servants, agents or employes, failed to keep on the licensed premises and/or provide an authorized employe of the Enforcement Bureau access to, or the opportunity to copy, complete and truthful records covering the operation of the licensed business.

An evidentiary hearing was conducted on April 30, 2007 at the Philadelphia State Office Building, 1400 West Spring Garden Street, 13th Floor, Room #1, Philadelphia, 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 February 3, 2006 and completed it on November 20, 2006. (Commonwealth Exhibit No. B-1, N.T. 7)

2. The Bureau sent a notice of alleged violations to Licensee at the licensed premises by certified mail-return receipt requested on November 28, 2006. The notice alleged violations as charged in the citation. (Commonwealth Exhibit No. B-1, N.T. 7)

3. On the dates charged, a Bureau Enforcement Officer attempted to inspect Licensee's business records. All of those attempts did not occur through visits to the licensed premises. (N.T. 29)

4. On all of the dates charged, Licensee or Counsel refused to provide the Bureau with any records. (N.T. 7-25)

1. Commonwealth Exhibit No. B-2, N.T. 7.

CONCLUSIONS OF LAW:

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

2. The Bureau **failed** to prove Licensee, by servants, agents or employes, failed to keep on the licensed premises and/or provide an authorized employe of the Enforcement Bureau access to, or the opportunity to copy, complete and truthful records covering the operation of the licensed business, on March 31, April 24, May 10 and June 8, 2006.

DISCUSSION:

The Bureau does not have carte blanche to inspect a licensee's records absent a warrant or probable cause. There are two Liquor Code provisions which do authorize the Bureau to engage in warrantless, administrative inspections, even without probable cause.

Liquor Code Sections 493(12) and 493(21) [47 P.S. §4-493(12) and §4-493(21)], speak to such inspections. The former mandates that business records be kept on the licensed premises; licensees may not refuse the Bureau access to such records when the Bureau makes a request during "business hours."

The term "business hours" presents a difficult exercise in statutory construction. Was that term intended to refer to general business hours or to the specific business hours of the licensee involved? Fortunately, the latter Liquor Code provision, which I read *in pari materia*, with the former, clarifies the point.

Liquor Code Section 493(21) provides it is unlawful for a licensee to refuse to allow the Enforcement Bureau the right to inspect completely the entire licensed premises, but only if the

request is made at a time when the licensee is open for business or when patrons, guests, or members are in that portion of the licensed premises where alcoholic beverages are sold.

Unquestionably, the right to review records, without warrant or probable cause may only be exercised at the licensed premises and when the specified conditions exist. At any other time or place, a licensee is well within legal authority to refuse access to records.

ORDER:

NOW THEREFORE, it is ordered that Citation No. 06-2832, issued against X-Tra, Inc., License No. R-SS-EHF-1097, is DISMISSED.

Dated this 31st 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.