

Mailing Date: DEC 17 2007

[Appeal](#)

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 07-1258
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W01-353577
	:	
v.	:	
	:	LID - 41921
	:	
DOOPOLE II, INC.	:	
6 E. 21 ST ST.	:	
CHESTER, PA 19013-5413	:	
	:	
	:	
	:	
DELAWARE COUNTY	:	
LICENSE NO. E-SS-2909	:	

BEFORE: JUDGE THAU

APPEARANCES:

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

For Licensee
Ex-Parte

ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation that was issued on June 12, 2007, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (Bureau) against Doopole II, Inc. (Licensee), License Number E-SS-2909.

The citation¹ charges Licensee with a violation of Section 102 of the Liquor Code [47 P.S. §1-102]. The charge is that on May 7, 2007, Licensee's licensed premises was not a bona fide eating place in that Licensee, by servants, agents or employes, maintained insufficient seating.

An evidentiary hearing was conducted on November 5, 2007 at the Philadelphia State Office Building, 1400 West Spring Garden Street, 13th Floor, Room #2, Philadelphia, Pennsylvania. Licensee did not appear personally or have any representation.

After review of the transcript of that proceeding, the following Findings of Fact and Conclusions of Law are entered.

FINDINGS OF FACT:

1. A citation hearing notice was mailed by the Office of Administrative Law Judge on September 19, 2007 to Licensee by both certified receipt-return mail and first-class mail to the licensed premises. The notice notified Licensee of the date, time and place of the hearing. The Notice sent by certified mail was signed for on September 24, 2007. A copy of this notice was also mailed to Licensee's counsel of record.
2. On September 20, 2007, I issued a Pre-Hearing Order to Licensee's counsel directing counsel to submit Licensee's pre-hearing memorandum to this Office. That Order reiterated the date, time and place of hearing.
3. The Bureau began its investigation on May 7, 2007 and completed it on May 11, 2007. (Commonwealth Exhibit No. B-1, N.T. 7)
4. The Bureau sent a notice of an alleged violation to Licensee at the licensed premises by certified mail-return receipt requested on May 15, 2007. The notice alleged a violation as charged in the citation. (Commonwealth Exhibit No. B-1, N.T. 7)
5. On May 7, 2007, a Bureau Enforcement Officer conducted an administrative inspection of the licensed premises at 3:00 p.m., a time when Licensee was open and in operation selling alcoholic beverages. There were no tables or chairs set up. There were ten tables and twenty-five chairs in a locked room which was not accessible to patrons. The tables were stacked against the wall. The chairs were folded up and leaning against the tables. (N.T. 15-16)

1. Commonwealth Exhibit No. B-2, N.T. 8.

CONCLUSIONS OF LAW:

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

PRIOR RECORD:

Licensee has been licensed since May 18, 1998, 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 \$50.00 or more than \$1,000.00 or both for violations of the type found in this case.

I impose a \$350.00 fine and a one day suspension and continuing thereafter until Licensee submits a Certification stating that it has enough of chairs at tables to accommodate at least 30 persons at one time.

ORDER:

Imposition of Fine

THEREFORE, it is hereby ordered that Licensee pay a fine of \$350.00 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.

Imposition of Suspension

IT IS FURTHER ORDERED that the Retail Dispenser Eating Place license (including all permits) of Doopole II, Inc., License No. E-SS-2909, be suspended for a period of one day, and continuing thereafter until Licensee has forwarded a Certification stating that it has enough chairs at tables to accommodate at least thirty persons at one time on the licensed premises to qualify as a bona fide

retail dispenser eating place. However, the suspension period is deferred pending renewal of Licensee's license at which time the suspension period will be fixed by further Order.

IT IS FURTHER ORDERED that the Bureau of Licensing is directed to notify the Office of Administrative Law Judge of the reactivation of the license so an Order may be entered fixing the dates for suspension.

Retaining Jurisdiction

Jurisdiction is retained to ensure compliance with this Adjudication.

Dated this 30th day of November, 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.

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 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

Citation No. 07-1258