

Mailing Date: JAN 31 2008

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 07-1338
LIQUOR CONTROL ENFORCEMENT	:	Citation No. 07-2023
	:	
	:	Incident No. W01-351263
v.	:	Incident No. W01-355421
	:	
	:	
	:	LID - 49515
	:	
LA QUINTA, INC.	:	
4602-4604 N. 5 TH ST.	:	As Consolidated Under
PHILADELPHIA, PA 19140-1409	:	Citation No. 07-1338
	:	
	:	
	:	
	:	
	:	
PHILADELPHIA COUNTY	:	
LICENSE NO. R-AP-SS-978	:	

BEFORE: JUDGE THAU

APPEARANCES:

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

For Licensee
Edward B. McHugh, Esquire
Two Greenwood Square
3331 Street Road
Suite 450
Bensalem, PA 19020

ADJUDICATION

BACKGROUND:

This proceeding arises out of two citations that were issued by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (Bureau) against La Quinta, Inc. (Licensee), License Number R-AP-SS-978.

Citation No. 07-1338¹

This citation was issued on June 26, 2007 and contains four counts.

The first count charges Licensee with a violation of Sections 406(a)(3) and 493(16) of the Liquor Code [47 P.S. §4-406(a)(3) and §4-493(16)]. The charge is that on May 20, 2007, Licensee, by servants, agents or employes, sold, furnished and/or gave alcoholic beverages on Sunday between 2:00 A.M. and 11:00 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 May 20, 2007, 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 third 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 May 20, 2007, 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.

The fourth count charges Licensee with violations of Section 437 of the Liquor Code [47 P.S. §4-437] and Section 5.41 of the Pennsylvania Liquor Control Board Regulations [40 Pa. Code §5.41]. The charge is that on April 9, 21 and May 20, 2007, Licensee, by servants, agents or employes, operated its licensed establishment without a valid health permit or license.

Citation No. 07-2023²

This citation was first issued on September 7, 2007 and contains two counts.

The first count charges Licensee with violations of Section 5.32(a) of the Pennsylvania Liquor Control Board Regulations [40 Pa. Code §5.32(a)]. The charge is that on June 24 and July 22, 2007, Licensee, by servants, agents or employes, used, or permitted to be used on the inside of its licensed premises, a loudspeaker or similar device whereby the sound of music or other entertainment, or the advertisement thereof, could be heard outside.

1. Judge's Exhibit No. J-1 (Citation No. 07-1338).
2. Judge's Exhibit No. J-1 (Citation No. 07-2023).

The second count charges Licensee with violations of Sections 406(a)(3) and 493(16) of the Liquor Code [47 P.S. §4-406(a)(3) and §4-493(16)]. The charge is that on June 24 and July 22, 2007, Licensee, by servants, agents or employes, sold, furnished and/or gave alcoholic beverages on Sunday between 2:00 A.M. and 11:00 A.M.

The parties motioned to consolidate Citation No. 07-2023 with Citation No. 07-1338. I granted said Motion and consolidated the citations under Citation No. 07-1338.

An evidentiary hearing was conducted on December 10, 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. Licensee agreed that the Bureau complied with the applicable investigatory and notice requirements of the Liquor Code. (N.T. 7)

Citation No. 07-1338

Count Nos. 1, 2 and 3:

2. On May 20, 2007, sales of alcoholic beverages continued until 2:50 a.m. (N.T. 10)

Count No. 4:

3. On the three dates charged, Licensee was operating without a health license. The license expired but had not been renewed. Licensee has since corrected the deficiency. (N.T. 7)

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Count No. 1:

4. On the date charged, Licensee permitted amplified sound to escape its premises as far away as 50 feet. (N.T. 22-23)

Count No. 2:

5. On June 24, 2007, Licensee sold alcoholic beverages as late as 2:18 a.m. On July 22, 2007, Licensee sold alcoholic beverages as late as 2:25 a.m. (N.T. 17)

CONCLUSIONS OF LAW:

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

Citation No. 07-1338

2. Count Nos. 1, 2, 3, and 4 are sustained as charged.

Citation No. 07-1338

3. Count Nos. 1 and 2, As Consolidated Under Citation No. 07-1338, **sustained** as charged.

PRIOR RECORD:

Licensee has been licensed since July 17, 2002, 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 Nos. 2, 3, 4 and 5 in Citation Nos. 07-1338 and No. 07-2023 as Consolidated.

The violations in question occurred as a result of what I characterized as a renegade manager who was engaging in violations without Licensee's knowledge. Licensee understands Licensee's failure to pay close attention to how the business is operated is a prime factor in causing these violations. Accordingly, I impose the jointly recommended penalty as follows:

Count Nos. 1, 2 and 3 – merged - \$1,500.00 fine.
Count No. 4 - \$200.00 fine.
Count No. 5 - \$300.00 fine.

ORDER:

Imposition of Fine

THEREFORE, it is hereby ordered that Licensee pay a fine of \$2,000.00 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.

Retaining Jurisdiction

Jurisdiction is retained to ensure compliance with this Adjudication.

Dated this 22nd day of January, 2008.

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 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, PA 17110-9661

Citation No. 07-1338 and 07-2023 As Consolidated Under Citation No. 07-1338