Mailing Date: August 7, 2008

PENNSYLVANIA LIQUOR CONTROL BOARD
HARRISBURG, PA 17124-0001

PENNSYLVANIA STATE POLICE BUREAU OF LIQUOR CONTROL ENFORCEMENT	: : : : : : :	Citation No. 07-2327
vs.		
JELMS HOTEL COMPANY, L.P. t/a Springhill Suites 1935 Waddle Road State College, PA 16803-1639	: : : :	License No. H- 5935

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OPINION

The Pennsylvania State Police, Bureau of Liquor Control Enforcement ("Bureau") appealed the Adjudication and Order of Administrative Law

Judge Felix Thau ("ALJ"), wherein the ALJ dismissed the above-referenced citation.

The citation charged Licensee, Jelms Hotel Company, L.P. t/a Springhill Suites ("Licensee") with violation of section 102 of the Liquor Code [47 P.S. § 1-102] in that, on August 28, September 1 and 4, 2007, Licensee's premises was not a bona fide hotel where the public may, for a consideration, obtain meals, such that it failed to provide food upon request.

Pursuant to section 471 of the Liquor Code [47 P.S. § 4-471], the appeal in this case must be based solely on the record before the ALJ. The Board shall only reverse the decision of the ALJ if the ALJ committed an error of law or abused his discretion, or if his decision was not based upon substantial evidence. "Substantial evidence" has been defined as such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. Johnson v. Pennsylvania Bd. of Probation and Parole, 706 A.2d 903 (Pa. Cmwlth. 1998); Chapman v. Pennsylvania Bd. of Probation and Parole, 86 Pa. Cmwlth. 49, 484 A.2d 413 (1984).

On appeal, the Bureau contends that the ALJ's conclusions of law were erroneous. Specifically, the Bureau avers that the ALJ's conclusion that

License may refuse food service to members of the public constitutes an error of law.

The Board has reviewed the record in light of the Bureau's appeal, together with Licensee's brief, and concludes that the ALJ's Adjudication and Order shall be affirmed.

The parties stipulated to the facts in this matter. It was stipulated that the Bureau's enforcement officer visited the subject premises on Monday, August 6, 2007, at 2:30 p.m., and noted a sign in the breakfast area that read "Hours of Operation 6:30 to 9:00 Monday – Friday and 7:00 to 10:00 Saturday and Sunday." Licensee's desk clerk, Ryan Fitzpatrick, told the enforcement officer that the hours posted were the only times the hotel served food and that, if he were not a hotel guest, he was not eligible for the breakfast. Similar occurrences took place on Tuesday, August 28, 2007 at approximately 2:20 p.m., and on September 1 and September 4, 2007 at 1:45 p.m. and 1:12 p.m., respectively.

Section 102 of the Liquor Code [47 P.S. § 1-102] defines "hotel" as "any reputable place operated by responsible persons of good reputation where the public may, for a consideration, obtain sleeping accommodations and meals and which, in a city, has at least ten, and in any other place at least

six, permanent bedrooms for the use of guests... ." Section 461(c) of the Liquor Code states that a hotel, for purposes of that section of the Liquor Code,

> "... shall mean any reputable place operated by a responsible person of good reputation where the public may, for a consideration, obtain sleeping accommodations, and...
>
> (6) A public dining room or rooms operated by the same management accommodating at least 30 persons at one time and a kitchen, apart from the dining room or rooms, in which food is regularly prepared for the public."

[47 P.S. § 4-461(c)].

The Bureau argues that, because Licensee only provides breakfast food service to individuals who have rented a room at the hotel, Licensee has failed to meet the definition of a hotel as provided in the Liquor Code. In support of its argument, the Bureau proffers the ALJ's decision in Savitri Corporation, Inc. (Citation No. 02-0508), wherein the licensee was charged with not operating as a bona fide hotel, in that the licensee provided only a continental breakfast for hotel guests. The ALJ sustained the citation, concluding that the licensee did not maintain sufficient food to serve thirty (30) members of the public as required in the Liquor Code. The Bureau also argues that, in

Thomas E. Bunworth, Janice M. Bunworth, t/a Tommy B's, (Citation No. 04-0763), a citation for failing to operate as a bona fide hotel was sustained by the ALJ because there was no food service available at the licensed hotel.

In support of the ALJ's decision, Licensee argues that differences in language used by the General Assembly in the Liquor Code, as section 102 is compared to section 461, validates Licensee's refusal to offer food to anyone who is not a guest of the hotel. [47 P.S. §§ 1-102, 4-461]. Licensee's attorney also argues, on the basis of In Re: Appeal of EElan of Philadelphia, Ltd. v. Commonwealth of Pennsylvania, Pennsylvania Liquor Control Bd., 439 A.2d 905 (Pa. Cmwlth. 1982), that "...hotel licensees such as Licensee possess discretion in terms of targeting clientele, and Licensee's practice of providing food service as part of lodging costs represents a form of targeting clients over which Licensee must be granted discretion."

In considering the arguments, the Board finds no conflict between the meaning of sections 102 and 461 of the Liquor Code. [Id.]. Both define basic requirements for an applicant to be eligible to hold a hotel liquor license.

In both the Bureau's and Licensee's briefs, it is assumed that the General Assembly has used the term "general public." This is not the case.

There is nothing in the Liquor Code or the Board's Regulations that would require that the food service facilities of a hotel be available during all hours of operation to the entirety of the population of a community. The "public" is defined as: (1) The community or the people as a group, or (2) A group of people sharing a mutual interest. [Webster's II New College Dictionary, Houghton Mifflin Company 1999, page 895].

There is no dispute that Licensee has a kitchen ("a place where food is cooked or prepared," Id., page 608). Licensee evidently prepares food in this kitchen on a daily basis. There also is no dispute that Licensee maintains a dining room or rooms containing tables and chairs accommodating at least thirty (30) persons at one time. There is no requirement in either the Liquor Code or the Board's Regulations that a licensee makes its services and facilities available to members of the "general public." [In Re: Appeal of Makro Self-Service Wholesale Beer Distribution Corp., 26 Pa. D. & C.3d, 549 (CCP Bucks 1982)].

A food service facility is considered to be open to the public even if there are entrance requirements imposed, so long as the public could meet those requirements and patronize the facility. This interpretation also has

been followed in advisory opinions issued from the Board's Office of Chief Counsel, to wit, Board Advisory Opinion Numbers 07-523 and 03-423.

Based on the foregoing, the decision of the ALJ is affirmed.

O R D E R

The decision of the ALJ is affirmed.

The appeal of the Bureau is dismissed.

The parties must adhere to all conditions set forth in the ALJ's Order issued May 22, 2008.

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Board Secretary