

Mailing Date: MAY 29 2008

[Appeal](#)

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 07-2351
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W05-358173
v.	:	
	:	LID - 47295
JELMS HOTEL COMPANY, L.P.	:	
D/B/A PATTON JOINT VENTURE	:	
1955 WADDLE RD.	:	
STATE COLLEGE, PA 16803	:	
	:	
	:	
	:	
	:	
CENTRE COUNTY	:	
LICENSE NO. H-AP-SS-5860	:	

ADJUDICATION

BEFORE: JUDGE THAU

BACKGROUND:

This proceeding arises out of a citation that was issued on October 17, 2007, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (Bureau) against Jelms Hotel Company, D/B/A/ Patton Joint Venture (Licensee), License Number H-AP-SS-5860.

The citation charges Licensee with violations of Section 102 of the Liquor Code [47 P.S. §1-102]. The charge is that on August 28, September 1 and 4, 2007, Licensee’s licensed premises was not a bona fide hotel where the public may, for a consideration obtain meals, in that, Licensee, by servants, agents or employes, failed to provide food upon request.

This matter was submitted by way of Stipulations of Fact in lieu of a hearing.

The following Stipulations of Fact and Conclusions of Law are entered.
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FINDINGS OF FACT:

1. Licensee only provides breakfast food service to those individuals who have purchased a room at the hotel. Licensee does not provide any other regular food service.
2. Liquor Enforcement Officer Jeffrey E. Butler visited the subject premises on Monday, August 6, 2007 at 1445 hours. Officer Butler immediately noticed in the breakfast area a sign stating the hours of operation as 6:00 a.m. On duty at the front desk was a white female identified as Amy Rhodes. Officer Butler asked her, "Are the posted hours the only time the hotel serves food?" She answered yes. Officer Butler then said, "If I was not a hotel guest could I come in for breakfast?" Ms. Rhodes replied "No, the food is only for guests of the hotel.
3. Liquor Enforcement Officer Jeffrey E. Butler entered the premises at 1430 hours on Tuesday, August 28, 2007. Ms. Rhodes was again working at the front desk. Officer Butler questioned her about food service at the hotel. She told Officer Butler that the hotel does not have food service for non-hotel guests. She directed Officer Butler to several area restaurants.
4. Liquor Enforcement Officer Jeffrey E. Butler visited the premises on Tuesday, September 4, 2007 at 1317. On duty at the front desk was a female employe wearing a name tag with "Kelly" written on it. Through a conversation with Kelly, Officer Butler verified again that the hotel does not have food service for non-hotel guests.
5. Liquor Enforcement Officer Lora A. Lion entered the subject hotel at 1345 on Saturday, September 1, 2007. Officer Lion asked an employe of the licensed premises about obtaining food service and was told that the hotel only has breakfast food service for hotel guests. Officer Lion returned to the front desk and spoke with an employe named "Amy." This employe told Officer Lion that the hotel does not have food service for non-hotel guests. This employe then directed Officer Lion to another
Hampton Inn location.
6. The Bureau's investigation was assigned on
July 24, 2007 and was completed on September 17, 2007 as set forth in Exhibit No. 1.

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7. The Bureau complied with the applicable notice requirements of the Liquor Code.

CONCLUSIONS OF LAW:

The Bureau has **failed** to prove that Licensee's licensed premises was not a bona fide hotel where the public may, for a consideration, obtain meals, in that Licensee by servants, agents or employees, failed to provide food upon request, on August 28, September 1 and 4, 2007.

DISCUSSION:

This is a companion case to Adjudication No. 07-2327, as both cases present precisely the same question. The crux of the Bureau's cases is that Licensee's restaurant operation is not "open to the public" as required by Liquor Code Section 461(c) [47 P.S. §4-461(c)] because Licensee limits its food service to hotel guests.¹ I disagree.

Although the Liquor Code provides for a plethora of limitations as to the manner a licensee may operate, there still remains a rather vast arena left to a licensee's discretion. This is particularly true of a licensee's targeted clientele. In *Appeal of Elan of Philadelphia, Ltd.*, 439 A.2d 905 (Pa.Cmwlth. 1982), our Commonwealth Court had occasion to discuss only one of the many permutations a licensee may legally explore, i.e., requiring a cover charge.

Simply because a licensee engages in a business plan that eliminates a segment of the population from patronizing the premises, does not mean the licensee is engaging in an unlawful operation based on the business not being open to the general public.

1. In that regard, the wording in the charge is unartfully drawn, as it is not the failure to provide food which the Bureau relies upon. Moreover and as I have said in any number of Adjudications,

it is not per se unlawful for a licensee to fail to provide food upon request. Rather, it is the factual environment in which that failure occurs which will tip the scales one way or the other.

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The following is only a short list of examples designed to underscore how every licensee's business practice eliminates certain members of the public:

1. By limiting hours of operation to the exclusion of those who work during those hours, a licensee remains open to the public.
2. By providing a smoke free environment, to the exclusion of smokers, a licensee remains open to the public.
3. By requiring a coat and tie to the exclusion of those who are casually dressed, a licensee remains open to the public.
4. By adopting a vegetarian menu, to the exclusion of those who prefer meat, a licensee remains open to the public.
5. By requiring payment by cash only, to the exclusion of those who prefer credit cards, a licensee remains open to the public.
6. By providing a French cuisine, to the exclusion of those who prefer another style, a licensee remains open to the public.
7. By providing a menu of high calorie foods, to the exclusion of those who are dieting, a licensee remains open to the public.
8. By providing non-organically grown food, to the exclusion of those who prefer organic food, a licensee remains open to the public.
9. By providing a variety of food prohibited by one's religious beliefs, to the exclusion of those whose religious beliefs have dietary restrictions, a licensee remains open to the public.
10. By providing a rather expensive menu, to the exclusion of those who are financially limited, a licensee remains open to the public.

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11. By providing live entertainment, to the exclusion of those who want a quiet meal, a licensee remains open to the public.
12. By promoting an environment conducive to family attendance, to the exclusion of those who would prefer the absence of children, a licensee remains open to the public.
13. By providing food to only hotel guests, to the exclusion of those who are not hotel guests, a licensee remains open to the public.

ORDER:

NOW THEREFORE, it is ordered that Citation No. 07-2351, issued against Jelms Hotel Company, L.P., t/a Springhill Suites, is DISMISSED.

Retaining Jurisdiction

Jurisdiction is retained to ensure compliance with this Adjudication.

Dated this 22nd day of May, 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.