Mailing Date: DEC 10 2008

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 07-2876
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W01-362945
v.	:	
	:	LID - 52069
CLUB POLARIS CORPORATION	:	
452-472 N 9th ST	:	
PHILADELPHIA PA 19123-3806	:	
	:	
PHILADELPHIA COUNTY	:	
LICENSE NO. R-AP-6869	:	BEFORE: JUDGE SHENKLE

APPEARANCES:
For Bureau of Enforcement: Erik Shmukler, Esq.
For Licensee: Edward A. Taraskus, Esq.

ADJUDICATION

BACKGROUND:

The Bureau of Liquor Control Enforcement of the Pennsylvania State Police issued this citation on January 8, 2008. The citation alleges that Licensee violated §404 of the Liquor Code, 47 P.S. §4-404, on October 6, 2007, by failing to adhere to the conditions of an agreement with the Board placing additional restrictions on the license.

A hearing was held on October 7, 2008, in Plymouth Meeting, Pennsylvania. The parties stipulated to the timely service of the notice letter and the citation.

FINDINGS OF FACT:

1. On April 2, 2002, the City of Philadelphia issued a Certificate of Lawful Occupancy to the premises at Licensee's address, authorizing its use as a dance hall for not more than 500 persons (N.T. 5-6, Exhibit B-3).

2. An agreement between Licensee's predecessor in interest (Starlight Ballroom Dance Club, Inc.) and the Board dated July 30, 2004, requires among other things that "Starlight agrees to provide additional security at its establishment by providing for the presence of two (2) off-duty Philadelphia Police officers whenever crowds at the licensed premises are within one hundred (100) persons of the licensed premises' legal occupancy." The provisions of this agreement are binding on Licensee (N.T. 8, Exhibit B-4, supplemented by copy of Conditional Licensing Agreement).

3. Pedro Rosario is employed as a sergeant in the Philadelphia Police Department. On October 6, 2007, his duties were to oversee the deployment of 911 response patrol personnel

within the sixth police district, which includes the licensed premises. At approximately 2:00 a.m. on that date he received a radio call for a shooting at 468 N. 9th Street. He responded to that location, in the second or third police car to arrive (N.T. 10-11).

4. The scene at 468 N. 9th Street was chaotic. Three people had been shot. There were anywhere between 400 to 500 people on the street yelling and screaming. The sergeant had difficulty reaching the victims, and had to push people with his police car so he could get down the street. People were jumping on cars, punching windows out. This took place on the corner where Licensee' club is located, no more than fifty feet from it (N.T. 11-12).

5. At that time of night there was nothing else in the area that was open. The closest night clubs are about one and three blocks away (N.T. 13, 19).

6. Sergeant Rosario's duties included the responsibility to assign off-duty police officers in the district, and as patrol sergeant he should have known of any assignments during his shift. No detail of off-duty police officers was assigned to Licensee's premises on October 6, 2007 (N.T. 13-14).

7. Sergeant Rosario was aware of the existence of a Conditional Licensing Agreement between Licensee and the Board, and testified that it was his understanding "that if the business was expecting 100 or more people they were to hire two off-duty police officers" (N.T. 17).

8. On October 6, 2007, the average occupancy inside the licensed premises was about 350. After the premises closed on that date, Licensee's personnel became aware that something was happening outside. The two other night clubs nearby also close at 2:00 a.m. There is a parking lot at 419 N. 9th Street which is utilized by a number of night clubs (N.T. 21-23).

9. Whenever Licensee expects to have a large crowd, including October 6, 2007, its personnel call the sixth police district to arrange for a detail. Basically every time, or ninety percent of the time, a detail is made available (N.T 24-27).

10. William Green is employed by Licensee as head of security. On October 6, 2007, he was in charge of fourteen other uniformed security guards on duty inside the premises. He estimates that occupancy did not exceed 300 on that evening. When the club was closing he heard gunshots up the street, towards Callowhill. There was a large crowd and everyone was running every different way from all the clubs (N.T. 32-34).

CONCLUSIONS OF LAW:

The evidence did not prove that Licensee violated §404 of the Liquor Code, 47 P.S. §4-404, on October 6, 2007, by failing to adhere to the conditions of its agreement with the Board.

DISCUSSION:

Licensee's president testified that whenever a large crowd is expected, he requests a detail of off-duty police officers, as required by the agreement. On October 6, 2007, he expected a large crowd and therefore requested the detail, several days in advance. He was informed that no off-duty officers were available, and he took no further action to attempt to secure any.

Counsel for the Bureau criticized Licensee's failure to obtain the officers, indicating that other resources – other police districts, the commissioner's office – should have been called upon in order to obtain the officers required.

I find, however, that there was no evidence in this case on which I could base a finding that occupancy of the licensed premises on October 6, 2007, exceeded 400 persons at any time. As I understand the agreement, the requirement for additional security springs into being "whenever crowds at the licensed premises are within one hundred (100) persons of the licensed premises' legal occupancy."

Since I have no evidence that this precondition occurred on the date charged, there is no basis on which I could find that Licensee breached the agreement.

For what it is worth, I note as well that the presence of 15 uniformed security personnel on the date of this incident shows a good faith effort on Licensee's part to comply with the spirit of the agreement.

ORDER

THEREFORE, it is hereby ORDERED that Citation No. 07-2876 is DISMISSED.

Dated this 24TH day of NOVEMBER, 2008.

David L. Shenkle, J.

jb

NOTICE: MOTIONS FOR RECONSIDERATION CANNOT BE ACTED UPON UNLESS THEY ARE IN WRITING AND RECEIVED BY THE OFFICE OF ADMINISTRATIVE LAW JUDGE WITHIN 15 DAYS AFTER THE MAILING DATE OF THIS ORDER, ACCOMPANIED BY A $25.00 FILING FEE.