

Mailing Date: OCT 20 2008

[Appeal](#)

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 07-2881
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W01-359896
v.	:	
	:	LID - 57457
LA MOLINA INC	:	
57-59 LONG LANE	:	
UPPER DARBY PA 19082-2507	:	
	:	
DELAWARE COUNTY	:	
LICENSE NO. R-AP-SS-9212	:	

BEFORE: JUDGE SHENKLE

APPEARANCES:

For Bureau of Enforcement: Erik S. Shmukler, Esq.

For Licensee: John J. McCreesh, III, Esq.

ADJUDICATION

BACKGROUND:

The Bureau of Liquor Control Enforcement of the Pennsylvania State Police issued this citation on December 11, 2007. There are two counts in the citation.

The first count alleges that Licensee violated §§471 and 493(31) of the Liquor Code, 47 P.S. §§4-471 and 4-493(31), and §780-101, et seq, of the Pennsylvania Controlled Substance, Drug, Device and Cosmetic Act, 35 P.S. §780-101, on August 15, 17 and 23, 2007, by aiding, abetting or engaging in the traffic in, or sale of, a controlled substance on its licensed premises and/or permitting the use of the licensed premises in the furtherance of the traffic in, or use of, a controlled substance.

The second count alleges that Licensee violated §102 of the Liquor Code, 47 P.S. §1-102, on August 23, 2007, on the basis that the licensed premises was not a *bona fide* restaurant because there were insufficient food items.

A hearing was held on July 10, 2008, in Plymouth Meeting, Pennsylvania. The parties stipulated to the timely service of the notice letter and citation.

FINDINGS OF FACT:

1. Upper Darby Township Police Officer Phillip Lydon, acting in an undercover capacity, purchased cocaine from Tyreek Walker on August 15, 2007, while sitting in the officer's vehicle in the area of 69th Street and Marshall Road (N.T. 5-7, 21-22).

2. After the transaction was completed, Mr. Walker asked Officer Lydon for a ride to the licensed premises, which is known as the Brandon House. When the officer dropped Mr. Walker off he said to him, "I got your number. I'll give you a call." Walker told the officer that if he couldn't get a hold of him he should come to the Brandon House because he was normally there (N.T. 7).

3. Later that day Officer Lydon had a telephone conversation with Mr. Walker in which he requested two bags of cocaine, and agreed to pay forty dollars for it. The officer then went into the licensed premises and nodded to Mr. Walker, who was there. The officer sat down. After five or ten minutes Mr. Walker came over to him and said "meet me in the bathroom." The two men went into the bathroom and completed the agreed exchange (N.T. 7-8).

4. On August 17, 2007, Officer Lyden had another telephone conversation with Mr. Walker and as a result went to the licensed premises at about 7:30 p.m. He entered, sat down, and ordered a drink. Mr. Walker was sitting at the end of the bar. He motion to Officer Lyden. They went into the bathroom. Walker had a large quantity of white powder, and poured some of it onto a dollar bill, which the officer crumpled up and put in his pocket (N.T. 9-10).

5. On both of these occasions, August 15 and 17, 2007, there were other patrons in the licensed premises, attended by two bartenders (N.T. 11).

6. On August 23, 2007, the police planned to arrest Mr. Walker after Officer Lyden made another purchase, so there were other undercover officers in the premises when Officer Lyden entered a little after 8:00 p.m. As before, the officer sat for a couple of minutes before Mr. Walker signaled the officer to meet him in the bathroom, where Walker provided two small Ziploc bags of cocaine in exchange for forty dollars (N.T. 12-13).

7. After making the purchase, Officer Lyden continued to sit in the bar, drinking beer and playing video games. At about 9:30 p.m. he went to the bathroom and found Ramon Douglas there. Douglas asked the officer if he needed anything. The officer told Douglas that he didn't want to upset Walker because he was "my guy" and Douglas said "no, that's cool" and the officer said he could use a twenty. Douglas said "we only have twenty-fives" and the officer agreed. Douglas said he had to go talk to his boy and he'd be right back (N.T. 14-16).

8. The officer watched Douglas leave the rest room, and saw him go directly to Sungsun Ratanaburi, who had been seated with Douglas earlier. Ratanaburi reached into his pocket and got a little white packet, which he gave to Douglas. Douglas brought the packet to the officer, who gave him \$25 (N.T. 15-16).

9. Later that night the officer was in the bathroom again, in the toilet stall, when Douglas sold a small Ziploc bag containing white powder to another man standing with him at the urinal, in exchange for currency (N.T. 17).

10. The licensed premises was open and operating during the events of August 23, 2007, described above, with other patrons attended by two bartenders (N.T. 18).

11. The items purchased by Officer Lyden during the events described above were tested by a regional laboratory of the Pennsylvania State Police, Bureau of Forensic Services, and found to contain cocaine, a Schedule II drug (N.T. 19, Exhibit B-3).

12. Officer Lyden did not notify the owners of this licensed premises following any of the events described above that drug dealers had been operating in the premises. The nature of the transactions Officer Lyden engaged in was such that both parties acted so as to keep their activity secret. The transactions were not done openly, but when Douglas asked the officer on August 23 if there was anything he needed, the drug-related conversation took place in front of two other men who were using the rest room at the time (N.T. 21-26).

13. When Ratanaburi passed the one-inch square packet of cocaine to Douglas, he put it on the bar and slid it toward Douglas. One of Licensee's bartenders was standing next to him at the time (N.T. 28-29).

14. Detective Marlowe Freeman of the City of Chester Police Department and the Delaware County Drug Task Force visited the licensed premises as part of the detail of officers in the premises on August 23, 2007. He was looking for Tyreek Walker, who arrived at the premises at about the same time. Detective Freeman watched Walker as he made eye contact with customers. When he saw both the customer and Walker go to the rest room, he went himself, and saw Walker exchange two bags of marijuana for currency (N.T. 33-37).

15. Detective Freeman saw Mr. Walker make two additional sales that evening in the same way, except that the second sale took place in an area outside the men's room. The establishment was open and operating during this time, with other patrons present (N.T. 37-41).

16. Liquor Enforcement Officer Jason Suppin inspected the licensed premises on August 23, 2007, and found that there was no food in the establishment. Evaristo Rojas, Licensee's president, stated that they did not sell food (N.T. 55-56).

17. Had he been available to testify, Detective John Newell of the Delaware County Criminal Investigation Division would have testified that he arrested one of Walker's customers outside the premises based on the description provided by Detective Freeman. The customer was found to be in possession of cocaine (N.T. 57-62).

CONCLUSIONS OF LAW:

Licensee violated §471 of the Liquor Code, 47 P.S. §4-471, on August 15, 17 and 23, 2007, by permitting the licensed premises to be used in the traffic in a controlled substance.

Licensee violated §102 of the Liquor Code, 47 P.S. §1-102, on August 23, 2007, in that the licensed premises was not a *bona fide* restaurant because it had no food.

DISCUSSION:

When a licensee is charged under §471 of the Liquor Code for the unlawful acts of its employees or patrons, the Pennsylvania Supreme Court has held that “some element of scienter on the part of the licensee is required to endanger the license,” if the underlying conduct violates the Crimes Code rather than a standard of conduct set forth in the liquor laws. *PLCB v. TLK, Inc.*, 518 Pa. 500, 544 A.2d 931 (1988). Although the court did not list every form that such guilty knowledge could take, two principles in particular were expressly approved:

The first is that if a licensee knew or should have known of illegal activities by an employee or patron, the licensee is liable. The second principle is that a licensee may defend his license by demonstrating that he took substantial affirmative steps to guard against a known pattern of illegal activities. – 544 A.2d at 933

The citation in *TLK* was sustained on the basis of a single drug sale initiated in the licensed premises. However, the requisite scienter was established by a six-month investigation at the premises by an undercover narcotics agent:

Agent Way testified that he was able to purchase drugs from a patron of the establishment, and that he observed drug sales between patrons, sales of stolen goods, the use of drugs in the bathroom, and a drug sale take place in the presence of the bartender. Due to the pervasive nature of this illicit activity, it may be said that the licensee should have known of the misconduct of his employee.

-- 544 A.2d at 944

I find that the evidence in this case was sufficient to support the conclusion that Licensee knew or should have known of the drug sales occurring on its premises. Despite this actual or imputed knowledge, there was no evidence that Licensee took substantial affirmative steps to guard against a known pattern of illegal activities.

PRIOR RECORD:

Licensee has been licensed since December 29, 2006, and has had one prior violation:

Citation No. 07-1082X. \$100.00 fine.

1. Bad checks for malt or brewed beverages. March 2, 2007.

PENALTY:

Section 471 of the Liquor Code, 47 P.S. §4-471, prescribes a penalty of license suspension or revocation or a fine in the \$50.00 to \$1,000.00 range, or both, for violations of the type found in this case. Penalties are assessed as follows:

Count 1 – a fine of \$1,000.00 plus suspension of license for fourteen days.
Count 2 – a fine of \$300.00 plus verification of compliance.

ORDER

THEREFORE, it is hereby ORDERED that Licensee, La Molina, Inc., License No. RAP-SS-9212, shall pay a fine of one thousand three hundred dollars (\$1,300.00) within 20 days of the mailing date of this order. In the event the fine is not paid within 20 days, Licensee's license will be suspended or revoked. Jurisdiction is retained.

IT IS FURTHER ORDERED that the Restaurant Liquor License of Licensee, La Molina, Inc., License No. R-AP-SS-9212, shall be suspended for a period of fourteen (14) days BEGINNING at 7:00 a.m. on Monday, December 1, 2008, and ENDING at 7:00 a.m. on Monday, December 15, 2008.

IT IS FURTHER ORDERED that Licensee shall submit verification in the form attached hereto that the premises now has sufficient food to qualify as a *bona fide* restaurant. In the event the verification is not submitted within twenty (20) days from the mailing date of this order, Licensee's license will be further suspended or revoked.

Licensee is directed on Monday, December 1, 2008, at 7:00 a.m. to place the enclosed placard of notice of suspension (identified as Form No. PLCB-1925 and as printed with red and black ink) in a conspicuous place on the outside of the licensed premises or in a window plainly visible from outside the licensed premises and to remove said license from the wall and place it in a secure location.

Licensee is advised if replacement placards are needed for any reason they are available at all Pennsylvania Liquor Stores/Wine & Spirits Shoppes.

The Bureau is directed to visit and monitor the premises for compliance with this order.

Licensee is authorized on Monday, December 15, 2008, at 7:00 a.m. to remove the placard of suspension and return the license to its original wall location.

Dated this 10th day of October, 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.

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. 07-2881 La
Molina, Inc.

VERIFICATION

Subject to the penalties contained in 18 Pa. C. S. §4904, relating to unsworn falsification to authorities, the undersigned officer verifies that the licensed premises now has sufficient food, utensils and dishes to accommodate people.

Licensee acknowledges that sufficient food, cooking equipment, utensils, and dishes are to be maintained at all times this license is in operation.

_____ Corporate Officer's Signature

Date

Submit this verification to:

PLCB-Office of Administrative Law Judge
Brandywine Plaza
2221 Paxton Church Road
Harrisburg PA 17110-9661