

Mailing Date: JUL 01 2008

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 07-2896
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W03-363629
v.	:	
	:	LID - 43612
DOWN TOWN LOUNGE, INC.	:	
T/A DOWN TOWN LOUNGE	:	
734 CUMBERLAND ST.	:	
LEBANON, PA 17042-5234	:	
	:	
	:	
LEBANON COUNTY	:	
LICENSE NO. R-AP-SS-9616	:	

BEFORE: JUDGE THAU

APPEARANCES:

For Bureau of Enforcement
Andrew J. Lovette, Esquire
Pennsylvania State Police
3655 Vartan Way
Harrisburg, PA 17110

For Licensee
Edward Riley
Stockholder

ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation that was issued on December 20, 2007, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (Bureau) against Down Town Lounge, Inc., t/a Down Town Lounge (Licensee), License Number R-AP-SS-9616.

This citation¹ contains two counts.

The first 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 October 21, 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 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 October 21, 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.

An evidentiary hearing was conducted on May 19, 2008 at Brandywine Plaza, 2221 Paxton Church Road, Harrisburg, Pennsylvania. Licensee was represented by its Stockholder, Mr. Edward Riley.

After review of the transcript of that proceeding, the following Findings of Fact and Conclusions of Law are entered.

FINDINGS OF FACT:

1. The Bureau began and ended its investigation on October 21, 2007. (N.T. 11)
2. The Bureau sent a notice of alleged violations to Licensee at the licensed premises by certified mail-return receipt requested on November 20, 2007. The notice alleged violations as charged in the citation. (Commonwealth Exhibit No. B-1, N.T. 9)

Count Nos. 1 and 2:

3. On October 21, 2007, a Bureau Enforcement Officer passed the premises. He saw the front awning light was lit. The Officer decided to conduct surveillance. (N.T. 11-12)
4. At 3:40 a.m., the Officer looked into a window. He saw several people seated at the bar and several standing as well. The door to the premises was open. The Officer entered. There were six people present. There was one glass of beer on the bar. (N.T. 13-15)

1. Commonwealth Exhibit No. B-2, N.T. 9.

5. There were approximately 100 customers present at 2:00 a.m. All customers departed the premises at 2:30 a.m., leaving six employes who were cleaning up. (N.T. 45-47)

6. No alcoholic beverages were poured after 2:00 a.m. No employe drank alcoholic beverages after 2:30 a.m. (N.T. 55)

7. Licensee was very busy during the evening of October 20 to the early morning hours of October 21, 2007. Licensee's staff finished cleaning the premises at 3:30 a.m. Some of the employes were there to watch the door and wait for the female employes to go home to insure that all made it to their vehicles, safely. (N.T. 38-39, 44)

CONCLUSIONS OF LAW:

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

Count No. 1:

2. The Bureau **failed** to prove that 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, on October 21, 2007.

Count No. 2:

3. The Bureau **failed** to prove that 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.

DISCUSSION:

I am quite convinced the behavior of those present on the licensed premises when the Officer entered was less than civil. This is particularly true of Mr. Riley, who displayed several brief moments of incivility at the hearing. It is therefore easy to conclude Mr. Riley has a short fuse.

It is unfortunate the lack of respect for the authority conferred upon the Enforcement Officer occurred because that failure undoubtedly contributed to the issuance of this citation. It is not because the Officer was angry but rather because those present refused to explain what they were doing there and why, in full detail.

I believe Licensee's witnesses were all credible and that all six present were engaged in an employment related activity when the Officer entered. That activity was waiting for all to leave together for security reasons.

ORDER:

NOW THEREFORE, it is ordered that Citation No. 07-2896, issued against Down Town Lounge, Inc., t/a Down Town Lounge, is hereby DISMISSED.

Dated this 18th day of June, 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.