

Mailing Date: OCT 2 2008

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 08-0259
LIQUOR CONTROL ENFORCEMENT	:	
	:	
v.	:	Incident No. W04-367580
	:	
AZ INC	:	
T/A CAFÉ SAM	:	LID-12274
5242 BAUM BLVD	:	
PITTSBURGH PA 15224-2304	:	
	:	
	:	
ALLEGHENY COUNTY	:	
LICENSE NO. R-SS-6490	:	

BEFORE: JUDGE ROBERT F. SKWARYK

APPEARANCES:

For Bureau of Enforcement:
Nadia L. Vargo, Esquire

For Licensee:
Kenneth Stiles, Esquire

ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation that was issued on February 15, 2008, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter Bureau) against AZ, Inc., T/A Café Sam, License Number R-SS-6490 (hereinafter Licensee).

The citation charges Licensee with violation of Section 5.51(a) of the Liquor Control Board Regulations [40 Pa. Code §5.51(a)], in that on January 22, 2008, Licensee, by its servants, agents or employees, failed to clean coils, tap rods and connections at least once every seven (7) days.

The investigation which gave rise to the citation began on January 9, 2008 and was completed on January 22, 2008. The notice of violation letter was mailed to Licensee on January 28, 2008.

An evidentiary hearing was held on this matter on August 26, 2008, in Pittsburgh, Pennsylvania.

Upon review of the transcript of the hearing and the Pre-Hearing Memorandum, we make the following Findings of Fact and reach the following Conclusions of Law:

FINDINGS OF FACT:

1. Licensee is a corporation located in Allegheny County, Pennsylvania and holds Restaurant Liquor License Number R-SS-6490. (N.T. 4).
2. On Saturdays January 5, 12, 19 and 26, 2008, Licensee's employee, Mary Turyan, cleaned Licensee's four draft beer coils and taps using the Board prescribed method and recorded the cleanings on the bottom of the 2007 beer coil cleaning record. (N.T. 50-53, 58-59, Exhibit L-1, L-2)
3. On Tuesday, January 22, 2008, an enforcement officer visited the licensed premises to conduct a routine inspection and found Licensee's 2008 beer coil cleaning record with no entries for January 5, 12, and 19, 2008. (N.T. 8, 16, Exhibit L-2)
4. Mary Turyan was not present during the officer's visit and earlier had replaced the 2007 coil cleaning record with a 2008 record. (N.T. 8, 56-58)
5. Mary Turyan placed the 2007 coil cleaning record in her desk on the premises which contained the additional cleaning dates of January 5, 12 and 19, 2008. (N.T. 57)
6. Licensee's corporate president, Andrew Zins, was present during the officer's visit and was unable to provide the officer with the 2007 coil cleaning record, but did provide him with the 2008 coil cleaning record which had no entries for January, 2008. (N.T. 12-14, 25-26)

CONCLUSION OF LAW:

The Bureau did not show by a preponderance of the evidence that on January 22, 2008, Licensee did not clean its coils, tap rods and connections in violation of Title 40, Pa. Code, Section 5.51(a).

The citation is DISMISSED.

DISCUSSION:

The burden of proof is on the Bureau to show by a clear preponderance of the evidence that a violation of the Liquor Code occurred. Pa. Liquor Control Board v. PPC Circus Bar, Inc., 506 A.2d (Pa. Cmwlth. 1986); In Re: Omicron Enterprises, 449 A.2d (Pa. Cmwlth. 1982). The phrase "preponderance of evidence" has been defined as evidence which is of greater weight or more convincing than evidence which is in opposition to it. Black's Law Dictionary, Fifth Edition, West Publishing Company, Copyright 1979, Page 1064.

AZ, INC.
T/A CAFÉ SAM
Citation No. 08-0259

Title 40 Pa. Code, Section 5.51 of the Liquor Control Board Regulations provides as follows:

(a) Coils, tap rods and connection, used in drawing malt or brewed beverages in licensed establishments, shall be thoroughly cleaned at least once every 7 days at the sole expense of the licensee dispensing the beverages on draft. The cleaning of coils, tap rods and connections by one licensee for another licensee is prohibited.

(b) The following methods of cleaning coils, tap rods and connections have been approved by the Board:

- (1) Live steam.
- (2) Hot water and soda solution, followed by thorough rinsing with hot water.
- (2) Another method which thoroughly cleans the coils, tap rods and connections and leaves them in a sanitary condition.

At the hearing held on the matter, the enforcement officer, corporate president and Mary Turyan testified. I find the testimony of Mary Turyan to be credible, in that she cleaned Licensee's draft beer coils and taps on a weekly basis in January, 2008, in accordance with the Board regulation, Title 40 Pa. Code section 5.51(a). The notations were placed on the bottom of the 2007 cleaning record because she was busy with other end of calendar year 2007 work. As such the citation is dismissed.

PRIOR RECORD:

Licensee has been licensed since June 18, 1987, and no prior violations since July 1, 1987, the date of establishment of the Office of Administrative Law Judge.

PENALTY:

Section 471 of the Liquor Code [47 P.S. §4-471] prescribes a penalty of license suspension or revocation or a fine of not less than \$50.00 or more than \$1,000.00 or both for violations of the type found in this case.

ORDER:

THEREFORE, it is hereby ordered that Citation 08-0259 is DISMISSED.

JURISDICTION IS RETAINED UNTIL CASE IS CLOSED.

Dated this 1st day of October, 2008.

Robert F. Skwaryk, J.