

Mailing Date: OCT 08 2008

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

| | | |
|-------------------------------|---|-------------------------|
| PENNSYLVANIA STATE | : | |
| POLICE, BUREAU OF | : | Citation No. 08-0465 |
| LIQUOR CONTROL ENFORCEMENT | : | |
| | : | Incident No. W02-369752 |
| v. | : | |
| | : | LID - 42777 |
| SHANIX, INC. | : | |
| 385-391 MAIN ST. | : | |
| KINGSTON, PA 18794-3230 | : | |
| | : | |
| | : | |
| | : | |
| LUZERNE COUNTY | : | |
| LICENSE NO. R-AP-SS-EHF-15374 | : | |

BEFORE: JUDGE THAU

APPEARANCES:

For Bureau of Enforcement
Craig A. Strong, Esquire
Pennsylvania State Police
7448 Industrial Parkway
Macungie, PA 18062

For Licensee
Nicholas Chirico
Sole Corporate Officer and
Manager

ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation that was issued on April 2, 2008, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (Bureau) against Shanix, Inc. (Licensee), License Number R-AP-SS-EHF-15374.

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 February 16, 2008, 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 February 16, 2008, 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 September 5, 2008 at the Scranton State Office Building, PUC Hearing Room 318, 100 Lackawanna Avenue, Scranton, Pennsylvania. Licensee was represented by its Sole Corporate Officer and Manager, Mr. Nicholas Chirico.

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 February 16, 2008. (N.T. 8)
2. The Bureau sent a notice of alleged violations to Licensee at the licensed premises by certified mail-return receipt requested on February 21, 2008. The notice alleged violations as charged in the citation. (Commonwealth Exhibit No. C-1, N.T. 7)

Count Nos. 1 and 2:

3. A Bureau Enforcement Officer arrived in the vicinity of the premises at 2:45 a.m., on February 16, 2008. While standing outside, the Officer peered through the openings in the venetian blinds and saw four people seated at the bar. Each of the four had drinks in front of them. At 2:49 a.m., the Officer attempted to gain entry to the premises by knocking on the door. He gained entry and saw a total of nine people at the establishment.

4. One of the individuals seated at the bar drank some beer. (N.T. 19)

1. Commonwealth Exhibit No. C-2, N.T. 7.

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 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.

Count No. 2:

3. **Sustained** as charged.

PRIOR RECORD:

Licensee has been licensed since September 9, 1998, and has had seven prior violations (Commonwealth Exhibit No. C-3):

Adjudication No. 00-0876. Fine \$200.00.

Engaged in unlawful discrimination in that you served female patrons free alcoholic beverages while denying male patrons the same privilege.
May 3, 2000.

Adjudication No. 01-0499. Fine \$1,000.00.

1. Sales to minors.
February 15, 2001 and 20 unknown dates since November 2000.
2. Minors frequenting.
February 15, 2001 and 20 unknown dates since November 2000.

Adjudication No. 01-0860. Fine \$150.00.

Used loudspeakers or devices whereby music could be heard outside.
April 13, 2001.

Adjudication No. 01-1202. Fine \$150.00.

Used loudspeakers or devices whereby music could be heard outside.
May 11, 2001.

Adjudication No. 01-1366. Fine \$250.00.
Used loudspeakers or devices whereby music could
be heard outside.
June 9, 2001.

Adjudication No. 02-0359. Fine \$75.00.
Served an unlimited or indefinite amount of alcoholic
beverages for a fixed price.
February 3, 2002.

Adjudication No. 03-0483. Fine \$450.00.
Sold and/or served an unlimited or
indefinite amount of alcoholic beverages
for a fixed price.
March 4, 2003

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 Count No. 2 in this case.

As Licensee has an Extended Hours Food license, patrons are permitted to remain on the premises beyond 2:30 a.m., to purchase food.

I impose a \$100.00 fine.

ORDER:

Imposition of Fine

THEREFORE, it is hereby ordered that Licensee pay a fine of \$100.00 within 20 days of the mailing date of this Order. In the event the aforementioned fine is not paid within 20 days from the mailing date of this Order, Licensee's license shall be suspended or revoked.

Dismissal of Count No. 1

IT IS FURTHER ORDERED THAT Count No. 1 of Citation No. 08-0465, issued against Shanix, Inc., is DISMISSED.

Retaining Jurisdiction

Jurisdiction is retained to ensure compliance with this Adjudication.

Dated this 30th day of September, 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.

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. 08-0465
SHANIX, INC.