

Mailing Date: DEC 29 2008

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 08-0537
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W03-351539
v.	:	
	:	LID - 42182
TONY'S MINING COMPANY	:	
RESTAURANT, INC.	:	
T/A TONY'S MINING CO	:	
RESTAURANT	:	
211 REXMONT RD.	:	
PO BOX 87	:	
CORNWALL, PA 17016-0087	:	
	:	
LEBANON COUNTY	:	
LICENSE NO. R-AP-SS-11839	:	

**BEFORE:** JUDGE THAU

APPEARANCES:

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

For Licensee  
Steve C. Nicholas, Esquire  
2215 Forest Hills Drive  
Suite 37  
Harrisburg, PA 17112

**ADJUDICATION**

BACKGROUND:

This proceeding arises out of a citation that was issued on March 27, 2008, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (Bureau) against Tony's Mining Company Restaurant, Inc., t/a Tony's Mining Co. Restaurant (Licensee), License Number R-AP-SS-11839.

The citation<sup>1</sup> charges Licensee with a violation of Section 471 of the Liquor Code [47 P.S. §4-471 and 18 Pa. C.S. §2709]. The charge is that on March 31, 2007, Licensee, by servants, agents or employes, engaged in harassment.

An evidentiary hearing was conducted on December 4, 2008 at Brandywine Plaza, 2221 Paxton Church Road, Harrisburg, Pennsylvania

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 its investigation on April 3, 2007 and completed it on February 26, 2008. (N.T. 8)
2. The investigation was an ongoing and continuing one as evidenced by the various activities the Officer identified in his testimony. (N.T. 8-34)
3. The Bureau sent a notice of an alleged violation to Licensee at the licensed premises by certified mail-return receipt requested on February 29, 2008. The notice alleged a violation as charged in the citation. (Commonwealth Exhibit No. C-1, N.T. 6)
4. On the date charged, Licensee's Manager engaged in harassment and was found guilty on August 10, 2007, before a District Magistrate. (Commonwealth Exhibit No. C-3)
5. The harassment giving rise to the charge occurred on the licensed premises when Licensee's Manager grabbed and cornered an employee. (N.T. 56)

CONCLUSIONS OF LAW:

1. The notice requirements of Liquor Code Section 471 [47 P.S. §4-471] have been satisfied.
2. The citation is **sustained** as charged.

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1. Commonwealth Exhibit No. C-2, N.T. 6.

PRIOR RECORD:

Licensee has been licensed since March 18, 1998, and has had no prior violations.

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.

I cannot adopt the Bureau's recommended penalty as I find it entirely too severe. Although I cannot excuse Licensee's Manager's behavior, I do recognize there was some provocation. The Magistrate imposed a \$50.00 fine and costs of \$127.00. I impose a \$125.00 fine.

ORDER:

**Imposition of Fine**

THEREFORE, it is hereby ordered that Licensee pay a fine of \$125.00 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.

**Retaining Jurisdiction**

Jurisdiction is retained to ensure compliance with this Adjudication.

Dated this 23rd day of December, 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

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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

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