

Mailing Date: JAN 15 2009

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 08-1109
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W09-367781
v.	:	
	:	LID - 50578
JCNK INC	:	
23 E LANCASTER AVE	:	
ARDMORE PA 19003-2319	:	
	:	
MONTGOMERY COUNTY	:	
LICENSE NO. R-AP-549	:	BEFORE: JUDGE SHENKLE

APPEARANCES:

For Bureau of Enforcement: Roy Harkavy, Esq.
For Licensee: Danielle McNichol, Esq.

ADJUDICATION

BACKGROUND:

The Bureau of Liquor Control Enforcement of the Pennsylvania State Police issued this citation on May 28, 2008. There are two counts in the citation.

The first count alleges that Licensee violated §13.102(a)(3) of the Liquor Control Board Regulations, 40 Pa. Code §13.102(a)(3), on January 12, 13, March 8 and 21, 2008, by selling and/or serving an unlimited or indefinite amount of alcoholic beverages for a fixed price, in that unlimited draft beers and top shelf liquor were served for the set price of \$25.00.

The second count alleges that Licensee violated §493(1) of the Liquor Code, 47 P.S. §4-493(1), on January 12 and 13, 2008, by selling, furnishing and/or giving or permitting such sale, furnishing or giving of alcoholic beverages to two visibly intoxicated male patrons.

A hearing was held on December 4, 2008 in Plymouth Meeting, Pennsylvania. The parties stipulated to the timely service of the notice letter and the citation.

FINDINGS OF FACT:

1. Licensee's premises contains an area with pool tables, a seating area for 65 to 70 people who want to eat, a forty-foot bar, a stage, and a dance floor on the lower level. There is also a second floor area overlooking the lower level, which has its own bar and bathrooms. On an average Saturday night the premises will serve 400 to 500 patrons. There is usually

entertainment, either a band or a disk jockey. About 30 staff are employed. On an average Saturday night there will be four to six bartenders, a waitress, eight to ten doormen and spotters (what some would call “bouncers”) and one or two managers (N.T. 59-60).

2. Licensee’s staff is TIPS – Certified. An employee handbook explains their duties in detail. Personnel are required to acknowledge their responsibilities as a part of the employment process. All patrons are carded. A digital image is made of every identification presented. Surveillance tapes are made and reviewed to insure appropriate staff performance. Licensee’s management maintains liaison with local police (N.T. 60-65, 83-84, Exhibits L-1 through L-4).

3. On occasion the premises can become crowded and loud, and people will bump into other people as they make their way around, sometimes spilling drinks, which management attempts to have cleaned up as quickly as possible. On Fridays and Saturdays, the second floor is reserved for private parties (N.T. 65-67).

4. Licensee’s practice, as of January 12, 2008, was to book private parties for three hours, from 9:00 p.m. to midnight. The charge was \$25 per person and included open bar, food buffet, and reserved tables. Parties had to be arranged at least 24 hours in advance. The customer wanting to reserve a party makes a deposit and states the number of guests. Wrist bands are prepared for that party, and when the guests arrive they say the name of the party they are with, pay \$25, and receive a wrist band and a white cup (N.T. 68-69).

5. Licensee’s food buffet has been the same for quite some time: baked ziti, pizza, buffalo wings and French fries. This food is intended for people participating in the parties, but when it is set out on the first floor of the premises no one restricts the buffet to guests with wrist bands. Sometimes, however, the food is set out on the second floor, and it is then available only to party guests (N.T. 70-71).

6. On Saturday, January 12, 2008, there were three parties scheduled at Licensee’s premises. On February 10, there were eight. Party-goers are issued a white plastic cup as a way to control consumption, as they must present the cup as well as wear a wrist band in order to obtain drinks as a part of the open bar. On Saturday, March 8, 2008, six parties had been scheduled. On Saturday, March 23, 2008, eight parties had been booked but two did not show up (N.T. 72-77).

7. During the period of this investigation Licensee advertised two party packages, a “birthday” party and a “bachelorette” party. Both packages included a three-hour top shelf open bar, food buffet and reserved seating when available. The “bachelorette” party cost was twenty dollars per guest and also included a free male dancer; the “birthday” party cost twenty-five dollars per guest but did not include the dancer (N.T. 78-79, Exhibit B-3).

CONCLUSIONS OF LAW:

The weight of the credible evidence did not prove that Licensee violated 40 Pa. Code §13.102(a)(3), on January 12, 13, March 8 and 21, 2008.

The weight of the credible evidence did not prove that Licensee violated 47 P.S. §4-493(1), on January 12 and 13, 2008.

DISCUSSION:

My assessment of the credibility of the witnesses presented by both sides in this case leads me to the conclusion that the weight of the evidence did not support the violations alleged.

As to the allegation that Licensee sold or served an unlimited or indefinite amount of alcoholic beverages for a fixed price, I find that this was not Licensee's practice. All of the participants in the open bar were intended to be guests at a party which had been arranged more than 24 hours in advance. This exception is authorized by 40 Pa. Code §13.102(b)(1). An officer testified that he was permitted to participate in a party to which he had not been invited on one occasion, but I did not believe it.

As to the allegation that Licensee furnished alcoholic beverages to two visibly intoxicated patrons, I did not think the description of the allegedly intoxicated persons established that they were in that condition. I was persuaded that Licensee's management was acting responsibly to such a degree that it is unlikely a visibly intoxicated patron was served. My assessment of witness credibility also caused me to discount the weight of the Bureau's evidence on this point.

ORDER

THEREFORE, it is hereby ORDERED that Citation No. 08-1109 is DISMISSED.

Dated this 14th day of January, 2009.



David L. Shenle, J.

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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.