

Mailing Date: SEP 29 2009

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 08-1316
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W06-370423
v.	:	
	:	LID - 54087
H.R. LEE CORP.	:	
T/A MAGGIE MALONEY'S	:	
13 N. 5 <sup>TH</sup> ST.	:	
SUNBURY, PA 17801-2309	:	
	:	
	:	
NORTHUMBERLAND COUNTY	:	
LICENSE NO. R-AP-SS-17812	:	

**BEFORE JUDGE FLAHERTY  
BUREAU COUNSEL BALLARON  
FOR LICENSEE: CHESTER LEE**

**ADJUDICATION**

BACKGROUND:

This proceeding arises out of a citation that was issued on July 10, 2008, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter "Bureau") against H.R. LEE CORP., License Number R-AP-SS-17812 (hereinafter "Licensee").

The citation charges Licensee with violation of Section 499(a) of the Liquor Code [47 P.S. §4-499(a)] in that on March 15, 2008, Licensee, by its servants, agents or employees, 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.

The investigation which gave rise to the citation began on February 28, 2008 and was completed on May 15, 2008; and notice of the violation was sent to Licensee by Certified Mail on May 19, 2008. The notice of violation was received by Licensee.

An evidentiary hearing was held on this matter on April 28, 2008 in the PA Dept. of Agriculture, 2130 County Farms Road, Montoursville, Pennsylvania.

Upon review of the transcript of this hearing, we make the following Findings of Fact and reach the following Conclusions of Law:

FINDINGS OF FACT:

1. On March 15, 2008 at 2:20 a.m., an officer of the Bureau arrived outside of the licensed premises. She parked across the street from the licensed premises (N.T. 16).
2. Between 2:20 a.m. and 2:30 a.m. the officer observed numerous individuals exit the licensed premises (N.T. 16-17).
3. At 2:30 a.m. the officer heard individuals inside the licensed premises yelling and talking loudly (N.T. 17).
4. The officer observed one individual exit the premises at 2:37 a.m., two patrons exit at 2:39 a.m. and 2:41 a.m. At that point she could still hear individuals inside the licensed premises (N.T. 17).
5. The officer called the Sunbury Police and asked for assistance for officer safety reasons (N.T. 17).
6. At 2:45 a.m. the officer observed two more individuals exit the licensed premises; and at 2:46 a.m. two more patrons exited the licensed premises (N.T. 17).
7. At 2:48 a.m. the Sunbury Police arrived and the officer along with the local police went over to the door (N.T. 17-18).
8. At 2:48 a.m. the officer knocked on the door and identified herself. The door was opened by Heather Lee (N.T. 18).
9. The officer entered with the local police and found ten people inside the licensed premises. These people included a DJ, the DJ's brother and a friend of the DJ who called himself road crew for the DJ. These three were seated at a table in a room off the main room of the licensed premises. Heather Lee identified herself as a manager. She appeared to be intoxicated as she was slurring her speech (N.T. 19-20). The cleaning lady, Andrea Lee Colon, was present on the licensed premises. Another person present was a female who claimed that she was a bartender in training. Her name was Nicole Lynn Bingaman (N.T. 20).
10. Also present on the licensed premises was an individual from another establishment named Scott Johnson (N.T. 20).
11. There was also an individual present who was training as the door person. His name was Marcus Wayne Lynch (N.T. 20-21).

12. Also present was Chelsea Fae Hommel. She was identified as the daytime bartender. She was observed stumbling out of an area where there was a bathroom. She appeared to be extremely intoxicated (N.T. 21).

13. The only person who appeared to be conducting employe related duties was Ms. Matos who was cleaning up (N.T. 23).

CONCLUSION OF LAW:

The charge in the citation is **sustained**.

DISCUSSION:

The record establishes that at least two of the ten individuals on the licensed premises clearly met the definition of patrons as provided by the Liquor Code. Since they were on the premises after 2:30 a.m. the charge in the citation must be sustained.

Section 499(a) of the Liquor Code [47 P.S. §4-499(a)] provides that all patrons of a licensee shall be required to leave that part of the licensed premises used for the serving of liquor or malt or brewed beverages to guests not later than one-half hour after the time licensee is required by this act to cease serving liquor or malt beverages. In the case of restaurant licensees, the Liquor Code provides that services of alcoholic beverages must cease at 2:00 a.m.

The definition of “patron” as found in Section 102 of the Liquor Code [47 P.S. §1-102] is as follows:

“**Patron**” shall mean an individual who purchases food, nonalcoholic beverages, liquor, alcohol or malt or brewed beverages for a consideration from a licensee or any person on the licensed premises except those actually engaged in employment related activity. (Emphasis mine)

The record discloses that there were at least two people on the licensed premises who were not engaged in employment activity. One of these was Miss Hommel who was the daytime bartender. The other was Mr. Scott Johnson who was either an employe of another Licensee or himself a licensee and therefore not connected with the licensed premises in an employment capacity. Based on the foregoing, it is clear that the Bureau has met its burden and established a violation in this case. Consequently, I conclude that the charge in the citation is sustained.

PRIOR RECORD:

Licensee has been licensed since December 17, 2004, and has had no prior violations. Licensee is, therefore, entitled to be treated as a first time offender.

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.

Under the circumstances of this case, the penalty imposed shall be a fine of \$250.00.

ORDER

THEREFORE, it is hereby ordered that Licensee H.R. LEE CORP., pay a fine of \$250.00 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.

Jurisdiction is retained pending final resolution of the penalty in this matter.

Dated this 17<sup>TH</sup> day of September, 2009.

A handwritten signature in cursive script, reading "Daniel T. Flaherty, Jr.", written over a horizontal line.

Daniel T. Flaherty, Jr., J.

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**MOTIONS FOR RECONSIDERATION MUST BE RECEIVED WITHIN 15 DAYS OF THE MAILING DATE OF THIS ORDER IN 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 submit stub with payment**

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The fine must be paid by Treasurer's Check, Cashier's Check or Certified Check. **Personal checks, which includes business-use personal checks, are not acceptable.** Make 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. 08-1316  
H.R. Lee Corp.