

Mailing Date: OCT 15 2009

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

PENNSYLVANIA STATE :  
POLICE, BUREAU OF : Citation No. 08-1500  
LIQUOR CONTROL ENFORCEMENT :  
 : Incident No. W01-364041  
 :  
 v. :  
 : LID - 15347  
 :  
 ROBERT'S TWI-LITE LOUNGE INC :  
 700 S 20<sup>th</sup> ST :  
 PHILADELPHIA PA 19146-1304 :  
 :  
 PHILADELPHIA COUNTY :  
 LICENSE NO. R-AP-OPS-12139 :

JUDGE SHENKLE  
BLCE COUNSEL: Erik S. Shmukler, Esq.  
LICENSEE COUNSEL: Stephen R. Murphy, Esq.

**ADJUDICATION**

**BACKGROUND:**

The Bureau of Liquor Control Enforcement of the Pennsylvania State Police issued this citation on July 1, 2008. The citation alleges that Licensee violated §§471 and 493(31) of the Liquor Code, 47 P.S. §§4-471 and 4-493(31), and §780-101, *et seq.*, of the Pennsylvania Controlled Substance, Drug, Device and Cosmetic Act, 35 P.S. §780-101, on February 18, 26 and 27, 2008, by aiding, abetting or engaging in the traffic in, or sale of, a controlled substance on its licensed premises and/or permitting the use of the licensed premises in the furtherance of the traffic in, or use of, a controlled substance.

A hearing was held on December 18, 2008, in Plymouth Meeting, Pennsylvania.

**FINDINGS OF FACT:**

1. In late 2005 or early 2006, the District Office Commander of the Bureau of Liquor Control Enforcement in Philadelphia attended a community meeting at Graduate Hospital which was also attended by Licensee's owner and a gentleman who represented himself to be its manager. The meeting also included representatives of Philadelphia's District Attorney and Department of Licenses and Inspections. The purpose of the meeting was to address community concerns about Licensee's establishment, which included complaints of drug sales, disorderly operation, trash and loitering. The commander spoke to Licensee's officer about these issues and made suggestions as to how the establishment might be better policed (N.T. 8-11).

2. On February 18, 2008, two officers of the narcotics unit of the Philadelphia Police Department met with a confidential informant (C.I.) and provided him with \$40 in currency, the serial numbers of which had been recorded previously. The officers searched the C.I. so as to be

satisfied he had nothing else on him. The C.I. then entered the licensed premises. The officers went in after him and sat at the bar. The C.I. was speaking with Licensee's black female bartender, who was standing behind the bar. He handed her the \$40, which she put in her pocket. She went to a shelf behind her and took small objects from a metal container. She put these in a napkin and handed it to the C.I. The C.I. left the premises and the officers followed. The C.I. gave the officers the napkin, which contained two blue packets. These field-tested positive for cocaine (N.T. 28-33, 52).

3. The same three people, two officers and one C.I., returned to the licensed premises on February 26, 2008. They performed the same activities described above, in the same manner, except that this time \$60 was exchanged for three pink packets, a different bartender completed the sale, the items sold were taken from a container under the bar, and the bartender put the money she had been given back in the container (N.T. 33-36, 52).

4. On February 27, 2008, the same C.I. was given \$40 and the same procedure was followed. The C.I. spoke to the bartender he had dealt with the previous day, and she directed him to the end of the bar, where the bathroom and kitchen area were. At that location the C.I. engaged in conversation with a black man, later identified as Calvin Featherstone. This man did not sell drugs to the C.I., but while the officers watched, approximately six people approached Mr. Featherstone and spoke with him, then exchanged money for objects. The officers seated at the bar called their backup officers to enter and execute a search warrant (N.T. 36-39).

5. When the backup officers entered the premises Mr. Featherstone attempted to leave through the kitchen. An officer stopped him as he was opening a freezer. On his person there was a packet of suspected cocaine and some unused, empty packets of the same type which previously held cocaine. In the freezer was \$734 plus the \$60 in pre-recorded bills which had been used the day before. On top of the freezer there were 28 pink and 8 black packets of suspected cocaine. The police also seized a digital scale from the kitchen (N.T. 39-44, 65-66).

6. The police officers who performed the acts described above did not conduct surveillance at the licensed premises prior to these events, nor have they done so since then. The C.I. was the source of their information that alleged drug activity was occurring at the licensed premises. The C.I. did not provide any names. The officers did not see Licensee's corporate officer at any time during these events (N.T. 45-47).

7. The officers chose to use the C.I. for the controlled buys, rather than attempting to make the buys themselves, because the C.I. claimed to have purchased drugs in the premises before, and it appeared that the sellers would not sell drugs to just anybody (N.T. 48-49).

8. Liquor enforcement officers visited the licensed premises on November 1, 21, and December 26, 2007; February 9, March 27, 28, 29, and April 30, 2008. On each of these visits, they did not observe any violations which warranted a citation (N.T. 79-93).

9. On May 16, 2008, the Bureau mailed a notice of violation letter to the licensed premises. The letter states that the investigation was assigned on October 30, 2007, and completed on May 12, 2008. The violation is recited in the same form of language as that used in the citation, except that no date of violation is stated (N.T. 93, Exhibit B-1).

10. On June 11, 2008, the Bureau mailed an "amended letter" to the licensed premises. It is the same as the first letter, except that the violation dates which were later included in this citation are stated, and the date the investigation was completed was changed to 6/4/08 (Ibid).

11. A copy of this citation was mailed to Licensee on the date it was issued, July 1, 2008 (N.T. 94, Exhibit B-2).

12. Officers of Philadelphia's Department of Licenses & Inspections issued a Site Violation to the licensed premises on February 28, 2008, revoking Licensee's business privilege license for permitting or promoting a public and/or private nuisance (selling or manufacturing illegal drugs), effective that date at 4:00 p.m. (N.T. 139, Exhibit L-1).

13. At a meeting on March 10, 2008, Licensee's officer heard the requests of police personnel as to measures which should be implemented to stop future drug activity. This included a surveillance camera system, brighter lighting outside, and posting of signs warning of video surveillance. Police requested the names of employees so as to be able to conduct a background check. Licensee's officer advised the police that the bartender who participated in the incident described in finding of fact #3 above had been fired, and that Calvin Featherstone has been banned from the premises (N.T. 142-143).

14. Under date of March 13, 2008, counsel for Licensee and Licensee's officer, consented to an order of the Court of Common Pleas of Philadelphia County which recites many of the facts set forth above and imposes specific additional duties on Licensee, along the lines set forth at the meeting of March 10, 2008. (N.T. 144, Exhibit L-2).

15. Paragraph 14 of said court order provides: "Nothing in this Consent Decree is meant to affect or have any bearing upon any civil or criminal matters, nor may it be adduced or used for any evidentiary purpose whatsoever, except for enforcement of the terms herein." (Ibid).

16. Licensee has complied with the requirements of the Consent Decree, and has become R.A.M.P. – certified as of April 24, 2008. Licensee's officer now spends more time at the business than she was doing at the time of the incidents described above, and the business is not open as many hours as it used to be (N.T. 145-159, Exhibits L-3, L-4, and L-5).

#### CONCLUSIONS OF LAW:

1. The Bureau notified Licensee of the nature of the violation alleged in this citation within thirty days of the completion of the investigation, as required by 47 P.S. §4-471(b).

2. Licensee violated §§471 and 493(31) of the Liquor Code, 47 P.S. §§4-471 and 4-493(31), and §780-101, *et seq.*, of the Pennsylvania Controlled Substance, Drug, Device and Cosmetic Act, 35 P.S. §780-101, on February 18, 26 and 27, 2008, by permitting the use of the licensed premises in furtherance of traffic in a controlled substance.

3. The terms of an order of the Court of Common Pleas of Philadelphia County do not prevent an administrative law judge from taking cognizance of its provisions, where they are relevant to a consideration of the appropriate penalty in a liquor control enforcement case.

DISCUSSION:

I find that the notice letter of May 16, 2008, was sufficient compliance with the requirement of 47 P.S. §4-471(b) that the Bureau notify Licensee of the nature of the violation alleged within thirty days of the completion of the investigation. The Bureau was entitled to continue its investigation, and was not obliged to end it on March 31, 2008, the date the Bureau's officer received the police reports detailing the events set forth in the findings of fact.

I find that the deficiency of the original notice, which did not set forth the dates of alleged violations, did not prevent the notice from being effective within the meaning of the statute.

I recognize that the provisions of the consent decree prohibit its use as evidence in another proceeding, and I agree that the entry of the decree does not render the Bureau's investigation and the present adjudication moot in any way.

I believe, however, that I am entitled to consider the entry of the decree and evidence of Licensee's compliance since that time as a mitigating circumstance. The penalty I am imposing reflects that consideration, in that my belief in the necessity of protecting the public from the activities of this establishment has been diminished.

At the same time I cannot ignore Licensee's negligence in allowing its premises to become a base for dealers in a controlled substance. Although Licensee's officer may not actually have known the details of the behavior going on in her establishment, she should have known them. When a licensee's own bartender sells drugs over the counter in the licensed establishment, and when no one stops a customer from using the kitchen to store money and drugs, that licensee cannot avoid responsibility by looking the other way.

PRIOR RECORD:

Licensee has been licensed since December 8, 1972, and has had five prior violations since July 1, 1987, the date of establishment of the Office of Administrative Law Judge:

Citation No. 90-1604. \$100.00 fine.

1. Not a *bona fide* restaurant in that food items were insufficient.

Citation No. 95-1631. 1 day suspension.

1. Sales during prohibited hours on an election day. May 16, 1995.

Citation No. 98-1065. \$400.00 fine.

1. Gambling (machines).

Citation No. 05-2647. \$500.00 fine.

1. Sold liquor for consumption off premises. September 15 and 24, 2005.
2. Loudspeakers could be heard outside. September 14, November 4 and 5, 2005.

Citation No. 07-2647. \$300.00 fine.

1. Loudspeakers could be heard outside. August 17 and October 12, 2007.

PENALTY:

Section 471 of the Liquor Code, 47 P.S. §4-471, prescribes a penalty of license suspension or revocation or a fine in the \$50.00 to \$1,000.00 range, or both, for violations of the type found in this case.

ORDER

THEREFORE, it is hereby ORDERED that Licensee, Roberts Twi-Lite Lounge, Inc., License No. R-AP-OPS-12139, shall pay a fine of one thousand dollars (\$1,000.00) within 20 days of the mailing date of this order. In the event the fine is not paid within 20 days, Licensee's license will be suspended or revoked. Jurisdiction is retained.

Dated this 5<sup>TH</sup> day of October, 2009.



David L. Shenle, J.

jb

**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.**

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