

Mailing Date: MAY 13 2009

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 08-2399
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W02-379864
v.	:	
	:	LID - 55435
GEEZEEZ, INC.	:	
T/A THE BOONIES CAFE	:	
1000 E. CATAWISSA ST.	:	
NESQUEHONING, PA 18240-1804	:	
	:	
	:	
CARBON COUNTY	:	
LICENSE NO. R-AP-SS-19913	:	

BEFORE: JUDGE THAU

APPEARANCES:

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

For Licensee
Ex-Parte

ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation that was issued on October 27, 2008, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (Bureau) against Geezeez, Inc., t/a The Boonies Cafe (Licensee), License Number R-AP-SS-19913.

This citation¹ contains three counts.

The first count charges Licensee with violations of Section 493(26) of the Liquor Code [47 P.S. §4-493(26)]. The charge is that Licensee, by servants, agents or employes, issued checks or drafts dated July 22 and August 20, 2008, in payment for purchases of malt or brewed beverages, when Licensee had insufficient funds in, or credit with, the institution upon which drawn for the payment of such checks.

The second count charges Licensee with violations of Section 5.23(c) of the Pennsylvania Liquor Control Board Regulations [40 Pa. Code §5.23(c)]. The charge is that Licensee, by servants, agents or employes, failed to notify the Board within fifteen (15) days of a change of manager which occurred during February 19 through September 8, 2008.

The third count charges Licensee with a violation of Section 493(12) of the Liquor Code [47 P.S. §4-493(12)]. The charge is that on September 8, 2008, Licensee, by servants, agents or employes, refused an authorized employe of the Enforcement Bureau access to records covering the operation of the licensed business when the request was made during business hours.

An evidentiary hearing was conducted on April 9, 2009 at the Scranton State Office Building, PUC Hearing Room 318, 100 Lackawanna Avenue, Scranton, Pennsylvania. Licensee did not appear personally or have any representation.

After review of the transcript of that proceeding, the following Findings of Fact and Conclusions of Law are entered.

FINDINGS OF FACT:

1. A citation hearing notice was mailed by the Office of Administrative Law Judge on February 23, 2009 to Licensee by both certified receipt-return mail and first-class mail to the licensed premises. The notice notified Licensee of the date, time and place of the hearing. The Notice, sent by certified mail, was returned as being marked: "Moved Left No Address Unable to Forward Return to Sender." A copy of the citation notice was also mailed by first class mail to Max Gasker, 147 East Garibaldi Avenue, Nesquehoning, Pennsylvania

2. On February 23, 2009, I issued a Pre-Hearing Order to Licensee at the licensed premises and to Max Gasker, 147 East Garibaldi Avenue, Nesquehoning, Pennsylvania, directing Licensee to submit its pre-hearing memorandum by first class mail to this Office. That Order reiterated the date, time and place of hearing.

1. Commonwealth Exhibit No. C-2, 08-2399, N.T. 8.

3. The Bureau began its investigation on August 21, 2008 and completed it on September 21, 2008. (N.T. 6)

4. The Bureau sent a notice of alleged violations to Licensee at the licensed premises by certified mail-return receipt requested on October 6, 2008, as amended October 20, 2008. The notices alleged violations as charged in the citation. (Commonwealth Exhibit No. C-1, N.T. 8)

Count No. 1:

5. On July 22, 2008, Licensee issued a check to an Importing Distributor for the purchase of beer. The check was dishonored due to insufficient funds and not made good within ten days. The amount of the check was \$339.79. (N.T. 8-11)

6. On August 20, 2008, Licensee issued a check in the amount of \$437.41 for the purchase of beer from an Importing Distributor. The check was dishonored due to insufficient funds and not made good within ten days. (N.T. 8-11)

Count No. 2:

7. On August 28, 2008, a Bureau Enforcement Officer met with Licensee's Corporate Vice President and Manager. She advised the Officer she had nothing to do with the operation of the business since February 19, 2008. (N.T. 12-13)

Count No. 3:

8. On September 8, 2008, a Bureau Enforcement Officer entered the premises at a time when it was open and in operation selling alcoholic beverages. The Officer requested of the individual in charge to see Licensee's records. The person in charge advised the records were not on the licensed premises. (N.T. 16-18)

CONCLUSIONS OF LAW:

1. The notice requirements of Liquor Code Section 471 [47 P.S. §4-471] have been satisfied.

Count No. 1:

2. **Sustained** as charged.

Count No. 2:

3. **Sustained** as charged.

Count No. 3:

4. The Bureau has **failed** to prove that on September 8, 2008, Licensee, by servants, agents or employes, refused an authorized employe of the Enforcement Bureau access to records covering the operation of the licensed business when the request was made during business hours.²

PRIOR RECORD:

Licensee has been licensed since October 17, 2005, and has had two prior violations (Judge's Exhibit No. J-1, N.T. 24):

Adjudication No. 07-2464. Fine \$1,250.00 and R.A.M.P.
Training mandated.
Sales to a minor.
June 3, 2007.

Adjudication No. 08-1130. Fine \$400.00 and 1 day suspension
with thereafter conditions.

1. Failed to comply with the order of the
Administrative Law Judge mandating R.A.M.P.
training.
March 21 to April 25, 2008.
2. Failed to maintain complete and truthful
records covering the operation of the licensed
business for a period of 2 years.
April 23, 2008.

2. The mere fact the Officer was not provided records because they were not on the premises does not rise to a refusal.

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.

As Licensee has failed to appear or obey process, I impose:

Count No. 1 – \$1,000.00 fine.

Count No. 2 – \$1,000.00 fine.

Count No. 3 – Dismissed.

ORDER:

Imposition of Fine

THEREFORE, it is hereby ordered that Licensee pay a fine of \$2,000.00 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. 3:

IT IS FURTHER ORDERED THAT Count No. 3 of Citation No. 08-2399, issued against Geezeez, Inc., t/a The Boonies Café, is DISMISSED.

Retaining Jurisdiction

Jurisdiction is retained to ensure compliance with this Adjudication.

Dated this 30th day of April, 2009.



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. 08-2399
GEEZEEZ, INC.