

Mailing Date: JAN 15 2010

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 09-0459
LIQUOR CONTROL ENFORCEMENT	:	
	:	
v.	:	Incident No. W01-380284
	:	
SOLO NIGHTCLUB LLC	:	
520 N. CHRISTOPHER	:	LID - 57893
COLUMBUS BLVD.	:	
PHILADELPHIA PA 19123	:	
	:	
	:	
PHILADLEPHIA COUNTY	:	
LICENSE NO. R-AP-SS-8363	:	

APPEARANCES:

FOR THE BUREAU OF ENFORCEMENT:

JAMES E. DAILEY, ESQ.

FOR THE LICENSEE:

EDWARD B. McHUGH, ESQ.

BEFORE: JUDGE WRIGHT

ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation that was issued on March 10, 2009, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter "Bureau") against Solo Nightclub, LLC, License Number R-AP-SS-8363 (hereinafter "Licensee").

An Administrative hearing was held on Tuesday, July 7, 2009, pursuant to requisite and appropriate hearing notice. The parties stipulated to the service and receipt of the notice letter and the citation.

The citation charges Licensee with violation of Section 404 of the Liquor Code, 47 P.S. Section 4-404, in that on August 31, 2008 and January 30, 2009, Licensee, by its servants, agents or employes, failed to adhere to the conditions of the agreement entered into with the Board placing additional restrictions upon the subject license.

FINDINGS OF FACT:

1. An officer from the Bureau of Enforcement visited the licensed premises to conduct an investigation relative to violations of a Conditional Licensing Agreement (N.T. 94-96 and Exhibit B-3).

2. Certified records from the Pennsylvania Liquor Control Board indicate that a Conditional Licensing Agreement was signed between Chief Counsel of the Pennsylvania Liquor Control Board and Johnny Nguuyen of JP Entertainment Liquor, LLC on October 26, 2006. A certified approval and letter of authority dated July 11, 2007 was sent to Solo Nightclub, LLC. The letter granted conditional approval for the license application for transfer from JP Entertainment, LLC. The letter indicates that it is understood that the terms of the Conditional Licensing Agreement approved by the Board on November 1, 2006 (dated October 26, 2006) will remain in effect on the license and at that location (Exhibit B-3).

3. The Conditional Licensing Agreement states in pertinent part:

- e. JP Entertainment will not use, hire or employ the services of any promoter or the services provided by a promoter to operate or conduct business or events at the premises;**

4. On August 31, 2008, an officer from the Bureau of Enforcement visited the licensed premises at approximately 10:00 p.m. He parked his car on Springarden Street and walked to the premises. When he was around the corner on Delaware Avenue, he saw a line in front of the establishment. He waited in line for a few minutes because they were not letting anyone in until 10:30 p.m. Outside, he saw a Power 99 van. Power 99 is a radio station (N.T. 97).

5. People were permitted into the premises. They went through security and were patted down. The person checked his identification card by reading it and returning it to the officer (N.T. 98).

6. While he was inside the premises, the officer noted that the premises was open and operating. He ordered a vodka and cranberry juice, an alcoholic beverage (N.T. 98-99).

7. After the officer paid admission to the premises, he was permitted to enter the premises. He noted that there was a disc jockey that night who was broadcasting live. The officer saw a disc jockey and disc jockey booth. There were bartenders behind the counter serving drinks to patrons (N.T. 99-100).

8. The officer heard the disc jockey indicate that Power 99 was broadcasting live. He was playing music on the premises. The officer was in the premises for approximately an hour (N.T. 100).

9. Mr. Tran, the owner, was on the premises. The officer did not speak to him on that occasion (N.T. 100).

10. After the October 31 visit to the premises, the officer attempted to contact Mr. Tran (N.T. 101).

11. The officer interpreted the Power 99 event as the promotion in violation of the agreement, in that it was an outside entity (N.T. 101-102).

12. The officer continued to try to reach Mr. Tran (N.T. 102-103).

13. The officer went to the premises on October 12, 2008, but did not go inside. Instead he conducted a surveillance outside the premises (N.T. 103-104).

14. The officer visited the premises on January 30, 2009 at approximately 10:00 p.m. There was a line outside the premises. The doorman checked the officer's identification. He was also patted down. The officer proceeded to move to the side and paid a cover charge of twenty dollars. He showed his driver's license when he was outside of the premises (N.T. 104-105 and 108-109).

15. The officer purchased a vodka and cranberry, an alcoholic beverage while on the premises (N.T. 105).

16. At this time, there were approximately thirty patrons inside the premises (N.T. 105).

17. There was, at this time, a disc jockey on the premises from 100.3 (The Beat), a radio station. The officer heard the disc jockey indicate that he was broadcasting live from the premises (N.T. 105-106).

18. The officer also heard a conversation concerning the *Miskeen* clothing line. He saw advertising on the premises concerning this line of clothing. The officer heard the disc jockey ask for the models to report to the disc jockey booth (N.T. 106-107).

19. Sometime after January 30, 2009, the officer spoke with Mr. Tran regarding the dates of August 31, 2008 and January 31, 2009. Mr. Tran denied that they were promotional events and stated that the radio stations were used only for advertising (N.T. 111-112).

20. The flyer does not indicate anything other than that Power 99 would be broadcasting live from the licensed premises (N.T. 115-116 and Exhibit L-1).

21. The officer did not know who was responsible for collecting an admission fee. He did not know who was responsible for providing security (N.T. 116-117).

22. Tam Tran is the owner of the licensed premises. On August 31, 2008 and January 30, 2009, the radio station did broadcast live from the premises. The patrons were there to dance to the music. He indicated that he was responsible for the financial arrangement that evening and for collecting admission and providing security and bar stuff (N.T. 121-123).

23. Licensee indicated that the radio stations are paid to advertise events at the licensed establishment (N.T. 124-125).

24. Mr. Tran indicated that he was responsible for the fashion show and that the radio stations did not provide any promotional services (N.T. 126-129).

25. The radio stations are used for advertising to get customers to come to the premises (N.T. 130-140).

26. Mr. Tran indicated that the guest list consisted of guests whom he invites after they get in touch with him through his cell phone and/or his website. Mr. Tran has disc jockeys nightly (N.T. 127).

CONCLUSIONS OF LAW:

There is insufficient evidence to conclude that on August 31, 2008 and January 30, 2009, Licensee, by its servants, agents or employees, failed to adhere to the conditions of the agreement entered into with the Board placing additional restrictions upon the subject license, in violation of Section 404 of the Liquor Code, 47 P.S. Section 4-404.

DISCUSSION:

A Conditional Licensing Agreement (CLA) was signed between the Chief Counsel of the Pennsylvania Liquor Control Board and Johnny Nguuyen of JP Entertainment Liquor, LLC on October 26, 2006. A Certificate of Approval & Letter of Authority dated July 11, 2007 was sent to Solo Nightclub, LLC. The letter granted conditional approval for the license application for transfer from JP Entertainment, LLC. Upon transfer of the license, Licensee was duly advised that the terms of the Conditional Licensing Agreement approved by the Board on November 1, 2006 (dated October 26, 2006) would remain in effect.

Prohibition against Promoters Operating or Conducting Business or Events at the Premises

Licensee is charged with violation of the Conditional Licensing Agreement, which places additional restrictions upon the license. The Conditional Licensing Agreement (CLA) states in pertinent part:

- 7e. JP Entertainment will not use, hire or employ the services of any promoter or the services provided by a promoter to operate or conduct business or events at the premises;

The definition suggests that we ought to *follow the money* and the control over the event in determining whether one is a promoter. The agreement permits disc jockeys and live entertainment, but restricts the number of events. The Bureau interpreted that clause in the CLA so as to restrict the use of an *outside* promoter.

On August 31, 2008 an officer from the Bureau of enforcement noted that Power 99 FM radio station was doing a live radio broadcast from the licensed premise. On January 30, 2009, an officer from the Bureau noted there was a twenty dollar cover charge on the premises, however, an employee held a list of names of individuals who were permitted to enter at a reduced price of \$10.00. Once inside the premises, the officer noted that a disc jockey from radio station 100.3 *the Beat* was playing music.

The officer saw signs for a fashion show to *promote* the *Miskeen* clothing line. The disc jockey made an announcement for the models to assemble and stated that Tasha Mickey would be there shortly. The fashion show did not take place while the officer was on the premises.

The Conditional Licensing Agreement solely prohibits the use of a promoter to operate or conduct events on the premises. In marketing business, the terms advertiser and promoter are *terms of art*, having special meanings within that industry. The words have commonality of meaning, but are not the same. But, the ordinary meanings of the words can provide the Court with a guide as to what is meant by promoter and promoting, words which are repeatedly used, but not defined in the Conditional Licensing Agreement.

In relevant part, Webster's on-line dictionary defines ***promoter***, a noun, as follows:

- 1:** one that promotes; *especially*: one who assumes the **financial** responsibilities of a sporting event (as a boxing match) including contracting with the principals, renting the site, and collecting gate receipts.

There is no ban on advertisers/advertising or entertainers/entertainment in the CLA. The presence of a disc jockey from a radio station or even a live broadcast from the premise is not *per se* a violation of the agreement. It is necessary for the Bureau to provide the financial details, obligation and responsibilities of the parties involved in order to establish a violation of the CLA. For instances, a flyer that was submitted suggests that Licensee and the radio station were jointly *presenting* an event, which was to occur on February 15, 2009. However, there is no allegation of a violation on that date.

The Court is unable to determine whether the events of August 31, 2008 and January 30, 2009 violate the CLA. The officer testified at one point that *an employee* took his ticket money. There was no information on who was receiving the door money or regarding anyone's level of control, participation or reward. When the officer spoke to the Licensee, Licensee stated that it was all just advertisement and not promotion. The Bureau provided very little evidence to the contrary. Under the circumstances, the Court does not find that Licensee violated the CLA, as is charged.

Requirement for Installation and Utilization of a Transaction Scanning Device

The Conditional Licensing Agreement (CLA) further states in pertinent part that:

- 7i. JP Entertainment shall install and utilize a transaction scan device to scan the identification of all patrons purchasing alcoholic beverages;

The officer stated that his identification was visually checked prior to entering the licensed premises. Over the objection of Licensee's attorney, the Bureau officer was permitted to testify that his identification was not scanned on either of his visits to the premises. However, there is no mention of Licensee's failure to use a scanning device in the notice of violation, the citation or in the pre-hearing memorandum. While the charge was broad and could have encompassed any or all aspects of the CLA, it is *unfair* for allegations, which were previously known and available to the Bureau, to be raised for the first time at the hearing. Licensee is reminded that use of a transactional scanning device is required and that the device must be maintained and consistently utilized.

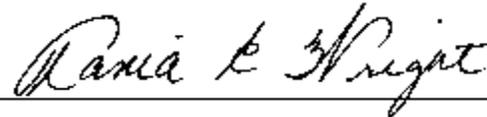
Accordingly, we issue the following

Solo Nightclub, LLC
Citation No. 09-0459

ORDER:

THEREFORE, it is hereby Ordered that Citation Number 09-0459 is DISMISSED.

Dated this 31ST day of December, 2009.

A handwritten signature in cursive script, reading "Tania E. Wright", is written over a horizontal line.

Tania E. Wright, J.

NOTE: 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.

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