

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 09-0760
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W01-390287
v.	:	
	:	LID - 60541
MAD RIVER MANAYUNK LLC	:	
4100 MAIN ST	:	
PHILADELPHIA PA 19127-1618	:	
	:	
PHILADELPHIA COUNTY	:	
LICENSE NO. R-AP-SS-EHF-1708	:	

JUDGE SHENKLE
 BLCE COUNSEL: James E. Dailey, Esq.
 LICENSEE COUNSEL: Edward B. McHugh, Esq.

ADJUDICATION

BACKGROUND:

The Bureau of Liquor Control Enforcement of the Pennsylvania State Police issued this citation on April 7, 2009. The citation alleges that Licensee violated §13.102(a)(3) of the Liquor Control Board Regulations, 40 Pa. Code §13.102(a)(3), on February 24, 2009, by selling and/or serving an unlimited or indefinite amount of alcoholic beverages for a fixed price, in that Coors Light beer and bottom shelf liquor were served for the set price of \$10.00.

A hearing was held on July 28, 2009 in Plymouth Meeting, Pennsylvania. The parties stipulated to the timely service of the notice letter and the citation.

FINDINGS OF FACT:

1. Liquor enforcement officers visited the licensed premises at about 7:55 p.m. on February 24, 2009. A man who appeared to be a bouncer stood in the entrance and checked the officers' identification. The man said that an "open bar" was taking place that night, but that it had not started yet. The cost of the open bar would be ten dollars for "all you can drink." The officers entered the premises. They were not allowed into the bar area on the left of the building, but they were allowed into the bar area on the right (N.T. 4-7).

2. After five or ten minutes the officers stood in a line to get into the left hand bar area. When his turn came an officer told the bouncer at the head of the line that they wanted to

should be on the list.” The bouncer walked to his rear and spoke with a woman. He then returned to the line and told the officers they could go in. One of the officers gave the bouncer twenty dollars and both officers were given wrist bands. They were then admitted (N.T. 7-10).

3. The investigating officers were familiar with “philly2night” as a web site, but had not signed up for any type of event at the licensed premises through it. After having been admitted to the bar area, the officers ordered alcoholic beverages from a bartender. They were served beer and a mixed alcoholic drink for no charge, although they left a tip (N.T. 10-11, 23-24).

4. The officers were among the first people to arrive. When they first entered, there were about fifteen patrons; when they left, there were 100 to 150. They obtained service of another round of the same beverages for no additional charge. They did not see any signs in this bar area referring to “philly2night,” nor was there any indication that a special event was going on, although there was food available in a corner of the room. There was a disk jockey, but he did not announce anything to indicate a special event was taking place. The patrons were wearing normal, casual attire (N.T. 10-13).

5. The Bureau’s investigation did not include contact with Licensee to request catering records or a catering contract (N.T. 19, 24).

6. The two officers described above consisted of the investigating Liquor Control Enforcement Officer and his immediate supervisor, both undercover. The investigating officer interacted with the bouncer for both of them, but no question was asked of the supervisor, as to what his name was or whether it was on a list (N.T. 22).

7. According to its manager, Licensee’s purpose in dealing with “philly2night” is to increase business. The open bar is “a ten dollar thing that they provide us a list of everyone that signs up through their web site. We take that list and have our doorman check that everyone’s on the list as they come in. That’s about the nature of it, why we used it” (N.T. 29-30).

8. The food available on the evening of February 24, 2009, was Jambalaya. It was available in unlimited quantity until 10:00 p.m. It was served buffet style. While the event was going on, Licensee still permitted nonparticipants to enter the right-hand bar. Such patrons were prevented from entering the left-hand bar by bouncers, who looked for wrist bands (N.T. 30-32).

9. Under date of February 1, 2009, authorized representatives of cities2night and Licensee signed a document entitled “Event Contract.” It provides for an estimated number of guests of 150 on February 24, 2009, from 8:00 to 10:00 p.m. In a section entitled “\$10 OPEN BAR REQUIREMENTS” the document states that Licensee was expected to provide light appetizers or buffet, mixed drinks, and wine and beer product(s) in a separate area. Licensee was required to allow entrance to the event only with proof of registration on a “cities2night.com” guest list and proof of identity. The document requires Licensee to hold cities2night, philly2night and their officers, employees and agents harmless from all claims (N.T. 33, Ex. L-1).

10. The contract is silent as to the disposition of the ten dollar payments. The currency was kept in Licensee's cash register, but Licensee's manager was not privy to how it was divided between Licensee and Philly2night, if it was. He thought the entire amount went to Philly2night (N.T. 35-43).

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CONCLUSIONS OF LAW:

Licensee cannot be penalized for violating §13.102(a)(3) of the Liquor Control Board Regulations, 40 Pa. Code §13.102(a)(3), on February 24, 2009, because of the rule in *PSP, BLCE v. American Serbian Club of Pittsburgh*, 750 A.2d 405 (Pa. Cmwlth. 2000).

DISCUSSION:

The result in this case is controlled by Although 40 Pa. Code §13.102(a)(3) prohibits "the sale or serving, or both, of an unlimited or indefinite amount of liquor, wine, or malt or brewed beverages for a set price," the exception "for catered events which have been arranged at least 24 hours in advance" found in subsection (b)(1) of the regulation applies in this case. See also, *American Legion Home Assn.*, Citation No. 03-0072 (Board Opinion and Opinion by Judge Thau); *S & B Restaurant, Inc.*, Citation No. 05-0992 & 05-2634 (Judge Flaherty); and *C & C Music Industries LLC*, Citation No. 05-2561 (Judge Shenkle).

In this case the uncontradicted evidence shows that the arrangement for the event was made more than 24 hours in advance. The sale of tickets at the door to such an event – which is what effectively occurred with these two officers – is allowed under the rule of *American Serbian Club*. I am satisfied that the requirements of that decision have been met in this case.

ORDER

THEREFORE, it is hereby ORDERED that Citation No. 09-0760 is DISMISSED.

Dated this 1ST day of OCTOBER, 2009.



David L. Shenkle, 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.