

Mailing Date: MAY 10 2011

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

PENNSYLVANIA STATE :
POLICE, BUREAU OF : Citation No. 09-1348
LIQUOR CONTROL ENFORCEMENT :
 : Incident No. W09-388011
 :
 v. :
 : LID - 43114
 :
 ARCH STREET HOTEL INC :
 T/A ARCH STREET HOTEL :
 120-122 ARCH ST :
 CATASAUQUA PA 18032-2772 :
 :
 NORTHAMPTON COUNTY :
 LICENSE NO. H-AP-2854 :

JUDGE SHENKLE
BLCE COUNSEL: Roy Harkavy, Esq.
LICENSEE COUNSEL: Charles E. Shoemaker, Jr., Esq.

ADJUDICATION

BACKGROUND:

The Bureau of Liquor Control Enforcement of the Pennsylvania State Police issued this citation on July 1, 2009. There are three counts in the citation.

The first count alleges that Licensee violated §5.41 of the Liquor Control Board Regulations, 40 Pa. Code §5.41, on May 6, 2009, by failing to display on the licensed premises documentary evidence that it meets all sanitary requirements for a public eating place.

The second count alleges that Licensee violated §5.51(a) of the Liquor Control Board Regulations, 40 Pa. Code §5.51(a), on May 6, 2009 by failing to clean the coils, tap rods and connections of its malt or brewed beverage dispensing system at least once every seven days.

The third count alleges that Licensee violated §§102 and 461(c) of the Liquor Code, 47 P.S. §§1-102 and 4-461(c), on May 6, 2009, on the basis that the licensed premises was not a *bona fide* hotel, because there were insufficient bedrooms available for the use of guests.

A hearing was held on March 4, 2011, Allentown, Pennsylvania. The parties stipulated to the timely service of the notice letter and citation.

The Bureau's motion to withdraw the second count was granted on February 28, 2011. At the hearing, counsel for the Bureau stated his intention to withdraw the first count as well, and to present evidence only in support of the third count (N.T. 5).

FINDINGS OF FACT:

1. On May 6, 2009, a liquor enforcement officer inspected the licensed premises and asked to see the bedrooms. The owner of the real estate (Licensee's landlord) took him to the second floor, where the officer understood there were six hotel rooms. He opened the rooms. The landlord said that he was staying in one of them but that it could be made available to a patron if needed. The officer went to the third floor, where he understood there were four bedrooms, but saw that all of them were used for storage (N.T. 11-14).

2. On May 22, 2009, a legal custodian of the Board's records attested that the minimum number of bedrooms required for this license is ten (Exhibit C-3).

3. Four of the required bedrooms were not habitable on May 6, 2009, in the opinion of both the liquor enforcement officer and Licensee's landlord (N.T. 15, 134-136).

CONCLUSIONS OF LAW:

The Bureau's motion to withdraw the first count was granted on March 4, 2011.

The Bureau's motion to withdraw the second count was granted on February 28, 2011.

Licensee violated §§102 and 461(c) of the Liquor Code, 47 P.S. §§1-102 and 4-461(c), on May 6, 2009, on the basis that the licensed premises was not a *bona fide* hotel, because there were insufficient bedrooms available for the use of guests.

DISCUSSION:

Since this premises was initially granted a hotel liquor license by the Board on August 1, 1940, it is subject to the definition of "hotel" given in 47 P.S. §744-1001:

The word "**hotel**", as used in this act, shall mean any reputable place operated by a responsible person of good reputation, where the public may, for a consideration, obtain sleeping accommodations; at least one-half of the required number of bedrooms shall be regularly available to transient guests seven days weekly, except in resort areas; at least one-third of such bedrooms shall be equipped with hot and cold water, a lavatory, commode, bathtub or shower, and a clothes closet; and an additional one-third of the total of such required rooms shall be equipped with lavatory and commode

On May 6, 2009, the uncontroverted evidence in this case showed that only one bedroom could have been made available to transient guests. This is obviously fewer than one-half of the required number of bedrooms, so the citation must be sustained.

In re Concord Ranch, Inc., 578 A.2d 1339, (Pa. Cmwlth. Ct. 1990) involved an inspection of hotel premises in which there was no dispute as to whether or not the licensee "had enough rooms available to serve as bedrooms. However, the Enforcement Officer who visited the premises on the

date in question testified that there were desks and filing cabinets in all the available rooms, and that they all appeared to be in use as offices. There were mattresses, box springs, and bureaus stored in the basement. However, the statute requires ‘permanent’ bedrooms . . .”

It is not enough for a hotel to have a specific number of rooms which might arguably, in someone’s imagination, be turned into real hotel rooms someday. To be “*bona fide*” a hotel’s rooms must be habitable, as Commonwealth Court made clear with its decision of *In re Boelter Bar Corp.*, 372 A.2d 1253 (Pa. Cmwlth. Ct. 1977):

Appellant properly explains the fact that there were no rooms available on the cited dates and for many months before and after on the basis that the rooms were in an uninhabitable condition and he was completely renovating them as well as the hallways. Obviously, this was necessary work, but does not justify the continued operation of the hotel liquor license on premises which do not qualify to have one. Certainly the Board recognized the appellant's good faith when it did not revoke the license and forfeit the bond, but rather merely suspended the license for 15 days and onward until the property qualifies.

PRIOR RECORD:

Licensee has been licensed since December 4, 1998, and has had prior violations as follows:

Citation No. 00-0858. \$50.00 fine.

1. Permitted entertainment without an amusement permit.

Citation No. 07-1590. \$1,250.00 fine.

1. Sales to a visibly intoxicated person. May 18, 2007.
2. Loudspeaker whereby music could be heard outside. May 18, 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 range, or both, for violations of this type.

ORDER

THEREFORE, it is hereby ORDERED that Licensee, Arch Street Hotel, Inc., t/a Arch Street Hotel, License No. H-AP-2854, shall pay a fine of one hundred dollars (\$100.00) 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 28TH day of APRIL, 2011.



David L. Shenkle, 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

The fine must be paid by cashier's check, certified check or money order. Personal and business checks are not acceptable unless bank certified. 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

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Arch Street Hotel, Inc.