

Mailing Date: SEP 29 2010

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 09-2487
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W03-398866
v.	:	
	:	LID – 48200
EL GRAN RODEO, INC.	:	
T/A EL RODEO	:	
4659 JONESTOWN RD.	:	
HARRISBURG, PA 17109-6225	:	
	:	
DAUPHIN COUNTY	:	
LICENSE NO. R-AP-SS-19518	:	

**BEFORE JUDGE FLAHERTY  
BUREAU COUNSEL PIETRZAK  
LICENSEE: JAMES WALSH, ESQUIRE**

**ADJUDICATION**

**BACKGROUND:**

This proceeding arises out of a citation that was issued on November 5, 2009, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter “Bureau”) against EL GRAN RODEO, INC., License Number R-AP-SS-19518 (hereinafter “Licensee”).

The citation contains two counts.

The first count charges Licensee with violation of Section 467 of the Liquor Code [47 P.S. §4-467] in that on August 12, 2009, Licensee, by its servants, agents or employes, failed to constantly and conspicuously expose Restaurant Liquor license under a transparent substance on the licensed premises.

The second count charges Licensee with violation of Section 493(12) of the Liquor Code 47 P.S. §4-493(12)] in that on August 12, 2009, Licensee, by its servants, agents or employes, failed to keep records on the licensed premises.

The investigation which gave rise to the citation began on August 12, 2009 and was completed on September 28, 2009; and notice of the violation was sent to Licensee by Certified Mail on October 19, 2009. The notice of violation was received by Licensee.

An evidentiary hearing was held on this matter on May 18, 2010 in the Office of Administrative Law Judge, Brandywine Plaza, 2221 Paxton Church Road, Harrisburg, Pennsylvania.

Upon review of the transcript of this hearing, we make the following Findings of Fact and reach the following Conclusions of Law:

FINDINGS OF FACT:

COUNTS 1 AND 2

1. On August 12, 2009, an officer of the Bureau visited the licensed premises to conduct a routine inspection (N.T. 10-11).
2. Upon entry, the officer looked throughout the foyer and bar counter area of the licensed premises and could not locate the liquor license for the premises posted anywhere (N.T. 12). The officer questioned the Board approved manager for the licensed premises, Ms. Trejo who indicated that the license was in a small office area near the cash register (N.T. 12-13).
3. The officer found the liquor license on top of a file cabinet. There was a stack of papers in front of it which mostly obscured it (N.T. 13).
4. The officer requested that Ms. Trejo produce liquor and beer invoices for the preceding two years. Ms. Trejo went into the restaurant part of the premises in search of the liquor and beer invoices. She came back and stated that she couldn't find all of the invoices. In particular the invoices from June through December of 2008 were not found (N.T. 14-15).
5. Ms. Trejo later found the missing invoices in a box in the office of the licensed premises (N.T. 37-38).
6. The officer made no arrangements to come back and view the missing records (N.T. 37).

CONCLUSIONS OF LAW:

Count 1 of the citation is **sustained**.  
Count 2 of the citation is **dismissed**.

DISCUSSION:

COUNT 1

Section 467 of the Liquor Code [47 P.S. §4-467] requires that Licensee display its liquor license under a transparent substance in a conspicuous place. In this case, although Licensee had the liquor license displayed, it was obscured by papers that had been placed in front of it. It was, therefore, at least at that point in time not in a conspicuous place. Consequently, I must conclude that Count 1 of the citation is sustained.

COUNT 2

Section 493(12) of the Liquor Code [47 P.S. §4-493(12)] requires that records covering the operation of the licensed business including invoices for beer and liquor be kept on the licensed premises for a period of two years. In this case, the invoices in question were in fact on the licensed premises. Had the officer come back to the licensed premises for another visit he would have been able to determine that this was the case. Under these circumstances, I conclude that Licensee was in compliance with the Section in question, and Count 2 will be dismissed.

PRIOR RECORD:

Licensee has been licensed since May 9, 2002, and has had one prior violation:

Citation No. 08-0995. Fine \$600.00.

1. Unlawfully possessed liquor obtained from a source other than a Pennsylvania State Store. February 15, 2008.
2. Sold, furnished or gave liquor for consumption off premises. February 12, 2008.

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.

Under the circumstances of this case, the penalty imposed shall be as follows:

Count 1 - \$50.00 fine  
Count 2 – Dismissed

ORDER

THEREFORE, it is hereby ordered that Licensee EL GRAN RODEO, INC., pay a fine of \$50.00 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.

IT IS FURTHER ORDERED that Count No. 2 of the Citation be DISMISSED.

Jurisdiction is retained pending final resolution of the penalty in this matter.

Dated this 16<sup>TH</sup> day of September, 2010.



Daniel T. Flaherty, Jr., J.

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**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 submit stub with payment**

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The fine must be paid by Cashier's Check, Certified Check or Money Order. **Personal and business checks are not acceptable unless bank certified.** Make 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. 09-2487  
El Gran Rodeo, Inc.