Mailing Date: JAN 14 2011

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 10-0962
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W01-408188
v.	:	
	:	LID - 56586
DOC MAGROGANS HOLDINGS L P	:	
T/A DOC MAGROGANS OYSTER BAR	:	
115-119 E GAY ST	:	
WEST CHESTER PA 19380-3146	:	
	:	
CHESTER COUNTY	:	
LICENSE NO. R-AP-SS-EHF-14662	:	

JUDGE SHENKLE
BLCE COUNSEL: Erik S. Shmukler, Esq.
LICENSEE COUNSEL: Edward B. McHugh, Esq.

ADJUDICATION

BACKGROUND:

The Bureau of Liquor Control Enforcement of the Pennsylvania State Police issued this citation on May 11, 2010. The citation alleges that Licensee violated §13.102(a) of the Liquor Control Board Regulations, 40 Pa. Code §13.102(a), on March 24 and April 1, 2010, by discounting the price of alcoholic beverages for a period or periods other than a consecutive period of time not to exceed two hours in a business day.

A hearing was held on December 2, 2010 in Plymouth Meeting, Pennsylvania. The parties stipulated to the timely service of the notice letter and citation.

FINDINGS OF FACT:

1. In February and March, 2010, Licensee maintained a web site which included calendars showing its specials and music for the month. For Wednesdays during March, this calendar advertised "All You Can Eat Snow Crab Legs for $19.99," "Trivia Downstairs at 10pm," "Mug Club," "In the Biz 25% Off," "$3 Victory Drafts," and "$3 Sweet Tea Vodka Drinks." The calendar also stated that Happy Hour was Monday through Friday between 4 and 6 p.m. and included "½ Priced Drafts • $1 Raw Oysters • ½ Priced Appetizers." (N.T. 4-7, Exhibit B-3).

2. A liquor enforcement officer entered the licensed premises at about 5:30 p.m. on Wednesday, March 24, 2010. He asked the bartender if there were any specials. She said that there was a Happy Hour going on until 6:00 p.m. with half-off drafts. The officer ordered a Stella Artois brand draft beer, for which he was charged $3 (N.T. 7-9).

3. At approximately 6:30 p.m. the officer ordered another Stella Artois draft beer, for which he was charged $5.45. He asked the bartender why the price had risen. She said that Happy Hour was over, but also indicated that there was an all-day Wednesday special on Victory draft beer and Sweet Tea vodka drinks for $3. The regular price for the Victory was $6 and for Sweet Tea Vodka drinks it was $7. The officer purchased a Victory draft for $3 (N.T. 9-10).

4. On April 1, 2010, the officer returned to the premises at 7:30 p.m. and asked the bartender if there were any specials. He said that Happy Hour was over, but there was a special for Yuengling brand draft beer for $2. The officer ordered this beer and paid $2 for it. About 45 minutes later the bartender told the officer that there was also a special on Yuengling 12-ounce bottles. The officer ordered another Yuengling draft. Another officer accompanying him ordered a $2 Yuengling bottle. The officers paid $2 for each drink (N.T. 11-12).

CONCLUSIONS OF LAW:

The evidence presented did not prove that Licensee violated §13.102(a) of the Liquor Control Board Regulations, 40 Pa. Code §13.102(a), on March 24 and April 1, 2010, by discounting the price of alcoholic beverages for a period or periods other than a consecutive period of time not to exceed two hours in a business day.

DISCUSSION:

Counsel for Licensee argued that the evidence presented by the Bureau was insufficient to prove a violation of the regulation cited, and I am constrained to agree.

There is no question that Licensee's calendar advertised discounts of alcoholic beverages, and if the Bureau had charged unlawful advertising or liquor enforcement officers had made purchases during the investigation proving that Licensee actually discounted alcoholic beverages in an unlawful way, this citation would have been sustained.

On March 24, 2010, the officer arrived at the premises at 5:30 p.m. and made his last purchase at approximately 6:30 p.m. Licensee advertised that all-day specials were in effect for both "$3 Victory Drafts" and "$3 Sweet Tea Vodka Drinks" but the officer purchased only one of these. Based on the purchases actually made, the evidence did not show a violation on this date.

On April 1, 2010, we do not know what Licensee advertised, because the calendar for that month was not offered in evidence. The only specials communicated to the officers were on Yuengling brand beer. One officer had a draft and the other had a bottle of the same brand. According to LCB Advisory Opinion No. 99-337, "[t]he licensee could also choose one brand of beer to discount and specials could include both draft and bottled forms of the brand that is chosen."

I find additional support for this conclusion in the decisions of my colleagues, the Honorable Tania E. Wright in *1700 PRT, Inc.*, Citation No. 97-2721, and the Honorable Daniel T. Flaherty, Jr., in *DB's Spot, LLC,* Citation No. 09-2593.

ORDER

THEREFORE, it is hereby ORDERED that Citation No. 10-0962 is DISMISSED.

Dated this 4TH day of January, 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.