

Mailing Date: APR 08 2011

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 10-1146
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W03-408361
v.	:	
	:	LID - 56329
GATOR DEVELOPMENT, LLC	:	
T/A PETE'S CAFE	:	
401-403 MARKET ST.	:	
NEW CUMBERLAND, PA 17070-1939	:	
	:	
	:	
CUMBERLAND COUNTY	:	
LICENSE NO. R-AP-SS-15960	:	

BEFORE: JUDGE THAU
BUREAU COUNSEL: Thomas M. Ballaron, Esquire
LICENSEE: Ex-Parte

ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation that was issued on June 3, 2010, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (Bureau) against Gator Development, LLC, t/a Pete's Cafe (Licensee), License Number R-AP-SS-15960.

The citation¹ charges Licensee with a violation of Sections 406(a)(2) and 493(16) of the Liquor Code [47 P.S. §4-406(a)(2) and §4-493(16)]. The charge is that on March 13, 2010, Licensee, by servants, agents or employees, sold, furnished and/or gave alcoholic beverages between 2:00 A.M. and 7:00 A.M.

An evidentiary hearing was conducted on February 28, 2011 at Brandywine Plaza, 2221 Paxton Church Road, Harrisburg, Pennsylvania. Licensee did not appear personally or have any representation.

1. Commonwealth Exhibit No. C-3, N.T. 9.

After review of the transcript of that proceeding, the following Findings of Fact and Conclusions of Law are entered.

FINDINGS OF FACT:

1. A citation hearing notice was mailed by the Office of Administrative Law Judge on January 12, 2011 to the address of 7535 Windsor Dr., Ste. 200, Allentown, Pennsylvania 18195-1034. The notice notified identified the date, time and place of the hearing. The Notice, sent by certified mail, was signed for on January 14, 2011.²
2. The Bureau began its investigation on February 23, 2010 and completed it on May 5, 2010. (N.T. 11)
3. The Bureau sent a notice of an alleged violation to Licensee at the licensed premises by certified mail-return receipt requested on May 24, 2010. The notice alleged a violation as charged in the citation. (Commonwealth Exhibit No. C-1, N.T. 9)
4. On March 13, 2010, a Bureau Enforcement Officer conducted an undercover visit to the licensed premises. When he entered, there were approximately 40 patrons present. There was one employe on duty. At 1:35 a.m., the employe announced last call. The Officer purchased a bottle of beer. He asked the barmaid to keep it cold for him. At 2:07 a.m., the barmaid served the Officer the bottle of beer purchased at last call. At 2:25 a.m., an employe walked behind the bar counter and poured himself a glass of beer. The employe drank the beer. The Officer departed at 2:33 a.m. (N.T. 12-16)

2. The above address is that of Jack N. Seitz, counsel for Sovereign Bank, which purchased the license at a Sheriff's sale. As between a licensee and a third party, a license is property. However, as between the Commonwealth and a licensee, a license is a privilege [47 P.S. §4-468(a)]. Therefore, as between the Office of Administrative Law Judge and Sovereign Bank, the bank has no standing with respect to this matter. Nonetheless, a copy of this Adjudication is being sent to Sovereign Bank's counsel, as Adjudications are public records.

CONCLUSIONS OF LAW:

1. The notice requirements of Liquor Code Section 471 [47 P.S. §4-471] have been satisfied.
2. The citation is **sustained** as charged.

PRIOR RECORD:

Licensee has been licensed since May 18, 2006, and has had five prior violations (Commonwealth Exhibit No. C-5):

Adjudication No. 08-0146. Fine \$2,550.00 and RAMP training mandated.

1. Used loudspeakers or devices whereby music could be heard outside.
May 26, 2007.
2. Sales to a visibly intoxicated person.
July 5, 2007.
3. Failed to maintain complete and truthful records covering the operation of the licensed business for a period of 2 years.
December 12, 2007.

Adjudication No. 08-1111X. Fine \$150.00.

Issued worthless checks in payment for malt or brewed beverages.
February 15 and 26, 2008.

Adjudication No. 08-1643X. Fine \$250.00.

Issued worthless checks in payment for malt or brewed beverages.
April 29, May 9 and 14, 2008.

Adjudication No. 08-2065C & 08-2156X consolidated. Fine \$1,550.00.

1. Sales to a minor.
July 9, 2008.
2. Issued worthless checks in payment for malt or brewed beverages.
July 18, 2008.

Adjudication No. 10-0206. Fine \$400.00.
Used loudspeakers or devices whereby music could
be heard outside.
January 1, 2010.

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 \$1,000.00 or more than \$5,000.00 or both for violations of the type found in this case.

Further, Section 471(c) of the Liquor Code [47 P.S. §4-471(c)] requires that the penalty imposed include license revocation or suspension where the violation in question is the third or subsequent violation of any of the offenses referred to in subsection 471(b) of the Liquor Code [47 P.S. §4-471(b)] and/or the Crimes Code within a four year period. The following Adjudications (08-0146 – Count No. 2 and 08-2065C and 08-2156X, consolidated – Count No. 1), in combination with the charge in this citation, requires that license revocation or suspension must be included as part of the penalty.

I adopt the recommended penalty of a \$1,250.00 fine and a one day suspension.

ORDER:

Imposition of Fine

THEREFORE, it is hereby ordered that Licensee pay a fine of \$1,250.00 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.

Imposition of Suspension

IT IS FURTHER ORDERED that the Restaurant Liquor license (including all permits) of Gator Development, LLC, t/a Pete's Cafe, License No. R-AP-SS-15960, be suspended for a period of one day. However, the suspension period is deferred pending renewal of Licensee's license at which time the suspension period will be fixed by further Order.

IT IS FURTHER ORDERED that the Bureau of Licensing is directed to notify the Office of Administrative Law Judge of the reactivation of the license so an Order may be entered fixing the dates for suspension.

Retaining Jurisdiction

Jurisdiction is retained to ensure compliance with this Adjudication.

Dated this 4TH day of April, 2011.



Felix Thau, A.L.J.

pm

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, Pennsylvania 17110-9661

Citation No. 10-1146
GATOR DEVELOPMENT, LLC