

Mailing Date: FEB 09 2011

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 10-1240
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W02-408076
v.	:	
	:	LID - 46074
JO-LAT, INC.	:	
T/A PUZZLES PUB	:	
528 SANDERSON ST.	:	
THROOP, PA 18512-1244	:	
	:	
LACKAWANNA COUNTY	:	
LICENSE NO. R-AP-SS-6972	:	
	:	

BEFORE: JUDGE THAU
BUREAU COUNSEL: Craig A. Strong, Esquire
LICENSEE: Ex-Parte

ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation that was issued on June 16, 2010, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (Bureau) against Jo-Lat, Inc., t/a Puzzles Pub (Licensee), License Number R-AP-SS-6972.

The citation¹ charges Licensee with violations of Section 493(2) of the Liquor Code [47 P.S. §4-493(2)] and Sections 11.192 and 11.193 of the Pennsylvania Liquor Control Board Regulations [40 Pa. Code §11.192 and §11.193]. The charge is that on May 2, 22 and 25, 2010, Licensee, by servants, agents or employes, sold alcoholic beverages on credit in contravention of the provisions of the Liquor Code and Title 40 of the Pennsylvania Code.

An evidentiary hearing was conducted on January 10, 2011 at the Scranton State Office Building, PUC Hearing Room 318, 100 Lackawanna Avenue, Scranton, Pennsylvania.

1. Commonwealth Exhibit No. C-2, N.T. 26.

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

FINDINGS OF FACT:

1. The Bureau began its investigation on February 17, 2010 and completed it on May 27, 2010. (N.T. 24)
2. The Bureau sent a notice of alleged violations to Licensee at the licensed premises by certified mail-return receipt requested on June 3, 2010. The notice alleged violations as charged in the citation. (Commonwealth Exhibit No. C-1, N.T. 24)
3. On the dates charged, Licensee sold alcoholic beverages on credit based on a Bureau Enforcement Officer's seizure of what appeared to be credit slips (Commonwealth Exhibit No. C-3).
4. The transaction identified on May 25, 2010, represents a patron who made a purchase but left without paying.

CONCLUSIONS OF LAW:

1. The notice requirements of Liquor Code Section 471 [47 P.S. §4-471] have been satisfied.
2. Licensee, by servants, agents or employes, sold alcoholic beverages on credit in contravention of the provisions of the Liquor Code and Title 40 of the Pennsylvania Code on May 2 and 22, 2010.

DISCUSSION:

It is almost axiomatic to say that intent is not an element in a Liquor Code violation. However, certain charges, by definition, require intent. This is one. The concept of a credit transaction embodies a contract between a buyer and a seller where the intention is for the seller to provide credit. That is the case for the transaction on May 2 and May 22, 2010 but not for May 25, 2010. As the buyer left the premises without paying, there was no meeting of the minds; there was no intent to sell alcoholic beverages on credit.

PRIOR RECORD:

Licensee has been licensed since July 10, 2000, and has had two prior violations (Commonwealth Exhibit No. C-4):

Adjudication No. 03-1518. Fine \$50.00.
Failed to display on the licensed premises
documentary evidence that the premises meets all
sanitary requirements for a public eating place.

Adjudication No. 05-0416. Fine \$350.00.
Possessed or operated gambling devices or permitted
gambling on your licensed premises (tickets).
February 5, 2005.

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.

I impose a \$75.00 fine.

ORDER:

Imposition of Fine

THEREFORE, it is hereby ordered that Licensee pay a fine of \$75.00 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.

Retaining Jurisdiction

Jurisdiction is retained to ensure compliance with this Adjudication.

Dated this 28TH day of January, 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, PA 17110-9661

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JO-LAT, INC.