

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. 10-1394
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W02-412771
v.	:	
	:	LID - 51293
PROSPECT STREET CAFÉ, INC.	:	
23 S. PROSPECT ST.	:	
NANTICOKE, PA 18634-2319	:	
	:	
LUZERNE COUNTY	:	
LICENSE NO. R-AP-SS-10788	:	
	:	

BEFORE: JUDGE THAU
BUREAU COUNSEL: Craig A. Strong, Esquire
LICENSEE: Michael D. Yelen, Esquire

ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation that was issued on July 16, 2010, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (Bureau) against Prospect Street Café, Inc. (Licensee), License Number R-AP-SS-10788.

The citation¹ charges Licensee with a violation of Section 5.51(c) of the Pennsylvania Liquor Control Board Regulations [40 Pa. Code §5.51(c)]. The charge is that on June 15, 2010, Licensee, by servants, agents or employes, failed to clean malt or brewed beverage dispensing system faucets, dispensing lines, valves, joints, couplers, hose fittings, washers, o-rings, empty beer detectors and draft foam units at least once every seven (7) days.

An evidentiary hearing was conducted on January 11, 2011 at the Scranton State Office Building, PUC Hearing Room 318, 100 Lackawanna Avenue, Scranton, Pennsylvania.

1. Commonwealth Exhibit No. C-2, N.T. 7.

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 May 10, 2010 and completed it on June 15, 2010. (N.T. 9)
2. The Bureau sent a notice of an alleged violation to Licensee at the licensed premises by certified mail-return receipt requested on June 18, 2010. The notice alleged a violation as charged in the citation. (Commonwealth Exhibit No. C-1, N.T. 7)
3. On June 15, 2010, a Bureau Enforcement Officer conducted an administrative inspection of the premises at approximately 6:00 p.m. Because Mr. H. (Licensee's Corporate President), did not maintain beer dispensing system cleaning records, the Officer inspected the system. He inserted a napkin into the taps which, when removed, was covered with a brown, slimy substance that was, in the Officer's opinion, consistent with yeast build up. (N.T. 8-10)
4. Mr. H. cleans the beer dispensing system every Sunday. He takes the system apart and uses the proper cleaning solution. He was trained in cleaning the system by a Budweiser sales representative. (N.T. 30-35)

CONCLUSIONS OF LAW:

1. The notice requirements of Liquor Code Section 471 [47 P.S. §4-471] have been satisfied.
2. The Bureau **failed** to prove that on June 15, 2010, Licensee, by servants, agents or employees, failed to clean malt or brewed beverage dispensing system faucets, dispensing lines, valves, joints, couplers, hose fittings, washers, o-rings, empty beer detectors and draft foam control units at least once every seven (7) days.

DISCUSSION:

Based on my reasoning in *Kaldes, Inc.*, Adjudication No. 07-3136, I dismiss the charge. A system which is cleaned at least once every seven days in compliance with the regulation is presumptively clean. The Bureau must overcome that presumption. The evidence presented by the Bureau is insufficient to do so.

ORDER:

NOW THEREFORE, it is ordered that Citation No. 10-1394, issued against Prospect Street Café, Inc., is DISMISSED.

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.