

Mailing Date: JUNE 27 2012

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

PENNSYLVANIA STATE	:	In re Citation No. 10-1540
POLICE, BUREAU OF	:	
LIQUOR CONTROL ENFORCEMENT	:	BLCE Incident No. W09-410226
	:	
v.	:	PLCB LID No. 26096
	:	
BETTY'S PARADISE INC	:	PLCB License No. H-AP-SS-69
T/A BETTY'S PARADISE	:	
338 N 6 <sup>th</sup> ST	:	
READING PA 19601-3008	:	

JUDGE SHENKLE  
BLCE COUNSEL: Roy Harkavy, Esq.  
LICENSEE COUNSEL: James Polyak, Esq.

**ADJUDICATION**

**BACKGROUND:**

The Bureau of Liquor Control Enforcement of the Pennsylvania State Police issued this citation on July 26, 2010. The citation alleges that Licensee violated §404 of the Liquor Code, 47 P.S. §4-404, on April 3, May 2 and 29, 2010, by failing to adhere to the conditions of an agreement with the Board putting additional restrictions on the license.

A hearing was held on May 11, 2012, in Allentown, Pennsylvania. The parties stipulated to the timely service of the notice letter and citation as Exhibits C-1 and C-2. This stipulation enables the conclusion that I have jurisdiction in the matter, since it establishes that the Bureau notified Licensee of the result of its investigation within thirty days after its completion, and that the citation filed conforms to the notice and alleges violation dates within the preceding year.

At the hearing, counsel for the Bureau marked a document as C-3 and asked a witness to identify it (N.T. 7). Counsel for Licensee asked if the document was an original. The following colloquy occurred:

**ATTORNEY HARKAVY:**

This is what we have, Your Honor. We don't have really --- it's very hard for us to get originals at this point where we still are to get a hold of the files.

**JUDGE:**

Sure. But was it not my usual practice to get a certification from the Custodian of Records that attached to it is the document that is in their files? That's what I usually get; right?

ATTORNEY HARKAVY:

That's correct.

ATTORNEY POLYAK:

Judge, the only reason I'm pressing the issue is because I was not the lawyer ---

JUDGE:

I know.

ATTORNEY POLYAK:

--- that was involved in this. And I have some concerns about it, which we'll get into later with the testimony. But I'm going to lodge an objection unless there is an original or a proper foundation laid for a copy.

JUDGE:

Well, this would be a great waste of effort if you were not able to put this in, so I'm going to let the record open for you to supplement it with a certified copy of this, which I do believe in 99 chances out of a hundred it's going to be exact[ly] what I have in front of me. But then we will be doing it by the book, and we wouldn't have wasted our time.

ATTORNEY HARKAVY:

Thank you, Your Honor.

ATTORNEY POLYAK:

Thank you.

JUDGE:

Okay. (N.T. 7-9).

The hearing proceeded with the presentation of witnesses. At the time for argument, counsel for Licensee asked, "Is the record closed, Your Honor?" I responded, "No, the record's not closed because I did not receive a certified copy of the basic document and it was my belief that this mere [ministerial] thing would --- holding up the hearing for that would not be justified. And so I let it open. But of course, they do have to prove to me that the official records of the Board contain such a thing before I can really do anything about this case. There's only the one count to consider." (N.T. 34).

As of the date this adjudication is being submitted to the Harrisburg Office of Administrative Law Judge for distribution, more than one month has passed since the date of the hearing. No certification from the Board's custodian of records has been received, nor has there been any other communication from the office of counsel for the Bureau.

A copy of a document (Exhibit C-3) said to be the one which forms the foundation of this case was identified in the record, but it was not received in evidence. The copy consists of five pages. The first page bears "Received" rubber stamps from the Office of Chief Counsel and from Licensing. There is also a rubber-stamp indication on each page that the document pertains to the same BLCE Incident Number given in the caption of the citation. Some people have apparently initialed the first page, only, of the document. There appear to have been signatures applied to the last page, but the entire document has clearly made one or more trips through a fax machine, judging by the poor quality of reproduction.

Counsel for Licensee objected to the admission of Exhibit C-3 without proper proof. Since counsel was not the same person who represented Licensee at the time the agreement went into effect, this objection is entirely reasonable and well-taken. Without proper certification Exhibit C-3 is hearsay which may not be received over objection.

Without satisfactory proof of the existence of an agreement to place additional restrictions on a license, a citation for violation §404 of the Liquor Code, 47 P.S. §4-404, must fail.

ORDER

THEREFORE, it is hereby ORDERED that Citation No. 10-1540 is DISMISSED.

Dated this 22<sup>ND</sup> day of JUNE, 2012.

  
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.**

**WHETHER OR NOT RECONSIDERATION HAS BEEN REQUESTED, AGGRIEVED PERSONS MAY APPEAL TO THE PLCB, NORTHWEST OFFICE BUILDING, HARRISBURG, PA 17124 WITHIN 30 DAYS AFTER THE MAILING DATE OF THIS ORDER.**

**THE PLCB CHIEF COUNSEL'S TELEPHONE NUMBER IS 717-783-9454.**