

Mailing Date: MAR 22 2011

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 10-1691
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W02-415540
v.	:	
	:	LID - 62127
DOWNTOWN TAKE-OUT AT	:	
BELVEDERE LANES, INC.	:	
15 WALNUT ST.	:	
NICHOLSON, PA 18446-0169	:	
	:	
WYOMING COUNTY	:	
LICENSE NO. R-AP-SS-5385	:	
	:	

BEFORE: JUDGE THAU
BUREAU COUNSEL: Craig A. Strong, Esquire
LICENSEE: Allen Loch, Corporate Officer/Manager

ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation that was issued on August 13, 2010, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (Bureau) against Downtown Take-Out At Belvedere Lanes, Inc. (Licensee), License Number R-AP-SS-5385.

This citation¹ contains three counts.

The first count charges Licensee with violations of Section 493(12) of the Liquor Code [47 P.S. §4-493(12)] and Section 5.52 of the Pennsylvania Liquor Control Board Regulations [40 Pa. Code §5.52]. The charge is that from January 1 through July 14, 2010, Licensee, by servants, agents or employes, failed to maintain malt or brewed beverage dispensing system cleaning records.

1. Commonwealth Exhibit No. C-2, N.T. 20.

The second count charges Licensee with violations of Section 5.51(c) of the Pennsylvania Liquor Control Board Regulations [40 Pa. Code §5.51(c)]. The charge is that from July 6 through 14, 2010, Licensee, by servants, agents or employes, failed to clean malt or brewed beverage dispensing system (faucets, dispensing lines, valves, joints, coupler hose fittings, washers, o-rings, empty beer detectors and draft foam control units) at least once every seven (7) days.

The third count charges Licensee with a violation of Section 5513 of the Crimes Code [18 Pa. C.S. §5513], which is incorporated by reference in Liquor Code Section 471 [47 P.S. §4-471] as “other sufficient cause.” The charge is that on July 14, 2010, Licensee, by servants, agents or employes, possessed or operated gambling devices or paraphernalia or permitted gambling or lotteries, poolselling and/or bookmaking on its licensed premises.

An evidentiary hearing was conducted on February 10, 2011 at the Scranton State Office Building, PUC Hearing Room 318, 100 Lackawanna Avenue, Scranton, Pennsylvania. Licensee was represented by its Corporate Officer/Manager, Mr. L.

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 July 2, 2010 and completed it on July 20, 2010. (N.T. 22)

2. The Bureau sent a notice of alleged violations to Licensee at the licensed premises by certified mail-return receipt requested on July 26, 2010. The notice alleged violations as charged in the citation. (Commonwealth Exhibit No. C-1, N.T. 20)

Count Nos. 1 and 2:

3. A second Officer discovered there were no coil cleaning records. Licensee did not have the beer dispensing system cleaned at least once every seven days. This occurred during the administrative inspection of July 14, 2010. (N.T. 26-28)

Count No. 3:

4. On July 14, 2010, a Bureau Enforcement Officer conducted an administrative inspection of the licensed premises. The Officer observed a video slot machine. He found evidence that led him to conclude it might be a gambling device per se. Several Officers removed the machine from the premises. (N.T. 7-9)

5. On July 20, 2010, a Bureau Enforcement Officer inspected the video slot machine. After careful analysis, the Officer determined the device had an accounting system, a mechanism to knock off games won and was predominantly controlled by chance. (N.T. 30-38)

CONCLUSIONS OF LAW:

1. The notice requirements of Liquor Code Section 471 [47 P.S. §4-471] have been satisfied.
2. Count Nos. 1, 2 and 3 are **sustained** as charged.

PRIOR RECORD:

Licensee has been licensed since November 19, 2009, and has had no prior violations.

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 Count Nos. 1, 2 and 3 in this case.

Mr. L. is fairly new to the business and is now complying with the regulations related to maintaining the beer dispensing system in a sanitary condition. Mr. L. has further been enlightened by our on the record discussion regarding the law on gambling devices per se.

Accordingly, I impose:

- Count Nos. 1 and 2 – merged - \$150.00 fine.
- Count No. 3 - \$550.00 fine.

ORDER:

Imposition of Fine

THEREFORE, it is hereby ordered that Licensee pay a fine of \$700.00 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 11TH day of March, 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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DOWNTOWN TAKE-OUT AT BELVEDERE LANES, INC.