

Mailing Date: JAN 30 2012

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

PENNSYLVANIA STATE :
POLICE, BUREAU OF : Citation No. 10-1940
LIQUOR CONTROL ENFORCEMENT :
 : Incident No. W09-412105
 :
 v. :
 : LID - 60707
 :
 TU CASA NIGHT CLUB & RESTAURANT INC :
 233 HAMILTON ST STORE 8 :
 ALLENTOWN PA 18101-1840 :
 :
 :
 LEHIGH COUNTY :
 LICENSE NO. R-AP-SS-EHF-8183 :

JUDGE SHENKLE
BLCE COUNSEL: Roy Harkavy, Esq.
LICENSEE COUNSEL: Edward B. McHugh, Esq.

ADJUDICATION

BACKGROUND:

The Bureau of Liquor Control Enforcement of the Pennsylvania State Police issued this citation on September 13, 2010. There are two counts in the citation.

The first count alleges that Licensee violated §§406(a)(2) and 493(16) of the Liquor Code, 47 P.S. §§4-406(a)(2) and 4-493(16), on June 4, 2010, by selling, furnishing and/or giving alcoholic beverages between 2:00 a.m. and 7:00 a.m.

The second count alleges that Licensee violated §493(10) of the Liquor Code, 47 P.S. §4-493(10), on June 4, 2010, by permitting dancing to music provided by a disc jockey until 2:20 a.m.

A hearing was held on December 9, 2011, in Allentown, Pennsylvania. The parties stipulated to the timely service of the notice letter and citation.

FINDINGS OF FACT:

1. A liquor enforcement officer visited the licensed premises at least four times during this investigation, which commenced on April 29, 2010, and ended on August 4, 2010 (N.T. 19-20, Exhibit C-1).

2. Licensee's president is at the premises every day it is open, and supervises the personnel to see that the laws regarding sales of alcoholic beverages are strictly observed (N.T. 27-29, 41-45).

3. As a regular practice, Licensee's president signals the employees working at the bar to cease the delivery of alcoholic beverages at five minutes before 2:00 a.m. This allows a couple of

minutes for the completion of sales which may have been in process. After 2:00 a.m., no alcoholic beverages are to be delivered (N.T. 30-33).

4. Throughout the premises there are signs posted, in about four places, advising in Spanish and English that no alcoholic drinks will be sold after 2:00 a.m. (N.T. 33-34, Exhibit L-1).

5. At sometime after 2:00 a.m. on June 4, 2010, a liquor enforcement officer ordered beer in the licensed premises and was refused service (N.T. 7-11).

CONCLUSIONS OF LAW:

The weight of the evidence did not prove that Licensee violated §§406(a)(2) and 493(16) of the Liquor Code, 47 P.S. §§4-406(a)(2) and 4-493(16), on June 4, 2010, by selling, furnishing and/or giving alcoholic beverages between 2:00 a.m. and 7:00 a.m.

The weight of the evidence did not prove that Licensee violated §493(10) of the Liquor Code, 47 P.S. §4-493(10), on June 4, 2010, by permitting dancing to music provided by a disc jockey until 2:20 a.m.

DISCUSSION:

Aspects of the Bureau's evidence caused me to doubt its accuracy: the officer's estimate of the size of the premises (300 feet by 300 feet) and the conflict with the Licensee's evidence as to the number of bartenders on duty (three vs. two, to serve 25 people).

Licensee's evidence persuaded me that the premises is habitually operated in a lawful manner. Although this testimony was framed in terms of usual procedure rather than a specific recollection of the date in question, I found it sufficiently credible to reach the conclusion that the liquor enforcement officer's uncorroborated report of the correct time of day was inaccurate.

ORDER

THEREFORE, it is hereby ORDERED that Citation No. 10-1940 is DISMISSED.

Dated this 24TH day of January, 2012.

jb


David L. Shenle, J.

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.