

Mailing Date: AUG 12 2011

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 10-2315
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W02-418562
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 STRONG
LICENSEE: LAURA TOMASOVITCH, PRO SE**

ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation that was issued on November 1, 2010, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (Bureau) against JO-LAT, INC., License Number R-AP-SS-6972 (Licensee).

The citation contains four counts.

The first count charges Licensee with a violation of Sections 406(a)(3) and 493(16) of the Liquor Code [47 P.S. §§4-406(a)(3) and 4-493(16)]. The charge is that on September 5, 2010, Licensee, by its servants, agents or employes, sold, furnished and/or gave alcoholic beverages on Sunday between 2:00 a.m. and 11:00 a.m.

The second count charges Licensee with violation of Sections 406(a)(2) and 493(16) of the Liquor Code [47 P.S. §§4-406(a)(2) and 4-493(16)]. The charge is that on September 25, 2010, Licensee, by its servants, agents or employes, sold, furnished and/or gave alcoholic beverages between 2:00 a.m. and 7:00 a.m.

The third count charges Licensee with violation of Section 499(a) of the Liquor Code [47 P.S. §4-499(a)]. The charge is that on September 5 and 25, 2010, Licensee, by its servants, agents or employes, failed to require patrons to vacate that part of the premises habitually used for the service of alcoholic beverages not later than one-half hour after the required time for the cessation of the service of alcoholic beverages.

The fourth count charges Licensee with violation of Section 499(a) of the Liquor Code [47 P.S. §4-499(a)]. The charge is that on September 5 and 25, 2010, Licensee, by its servants, agents or employes, permitted patrons to possess and/or remove alcoholic beverages from that part of the premises habitually used for the service of alcoholic beverages after 2:30 a.m.

An evidentiary hearing was conducted on June 22, 2011 in the Scranton State Office Building, 100 Lackawanna Avenue, Scranton, Pennsylvania.

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 August 31, 2010 and completed it on October 7, 2010 (N.T. 10).

2. The Bureau sent a notice of alleged violation to Licensee at the licensed premises by certified mail, return receipt requested on October 12, 2010. The notice alleged violations as charged in the citation (Commonwealth Exhibit No. C-1, N.T. 10).

Count No. 1

3. On September 5, 2010, a Bureau Enforcement Officer entered the premises in an undercover capacity. He arrived at 1:35 a.m. Last call was announced shortly before 2:00 a.m. At last call, patrons ordered and paid for drinks. Instead of being given the alcoholic beverages, the patrons received plastic cups which were exchanged after 2:00 a.m. for alcoholic beverages. Service of alcoholic beverages continued in this manner until 2:21 a.m. (N.T. 12-18).

Count No. 2

4. The Officer returned to the premises on September 25, 2010, in an undercover capacity. He arrived at approximately 1:35 a.m. The Officer observed a similar practice to that of the previous visit where chips, which were purchased before 2:00 a.m., were exchanged for alcoholic beverages after 2:00 a.m. (N.T. 23-28).

Count Nos. 3 and 4

5. The Officer remained at the premises until 2:37 a.m. Patrons were still present and consuming alcoholic beverages (N.T. 21-22).

CONCLUSIONS OF LAW:

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

PRIOR RECORD:

Licensee has been licensed since July 10, 2000, and has had three prior violations (Commonwealth Exhibit C-3, N.T. 27):

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 the licensed premises (tickets). February 5, 2005.

Adjudication No. 10-1240. Fine \$75.00.

Sold alcoholic beverages on credit on contravention of the Liquor Code and Title 40 of the Pennsylvania Code. May 2, 22 and 25, 2010.

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 \$1,000.00 or more than \$5,000.00 or both for violations of the type found in Counts 1 and 2 of this case.

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 Counts 3 and 4 of this case.

Ms. T., Licensee's Manager, explains that she thought the practice was legal since she has seen other licensees in the area doing the same thing. Ms. T. further explains that her son, age 24, was involved in the service of alcoholic beverages after 2:00 a.m. I advised Ms. T. that she needs to contain her son's behavior while on the premises.

JO-LAT, INC.

CITATION NO. 10-2315

PAGE 4

After a lengthy and informative colloquy regarding future conduct, I am satisfied that \$1,400.00 will correct Licensee's behavior.

Counts 1, 2, 3 and 4 of the citation arise from the same facts and address the same enforcement interests. They will, therefore, be merged for purposes of imposing a penalty.

I impose a fine of \$1,400.00.

ORDER

THEREFORE, it is hereby ordered that Licensee JO-LAT, INC., pay a fine of \$1,400.00 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.

Jurisdiction is retained.

Dated this 9TH day of August, 2011.



Felix Thau, A.L.J.

an

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.

IF YOU WISH TO APPEAL THE DECISION OF THE ADMINISTRATIVE LAW JUDGE'S ORDER, THE APPEAL MUST BE FILED WITHIN 30 DAYS OF THE MAILING DATE OF THE ORDER. PLEASE CONTACT CHIEF COUNSEL'S OFFICE AT 717-783-9454.

Detach here and submit 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.** Make 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

Citation No. 10-2315
Jo-Lat, Inc.