

Mailing Date: APR 10 2012

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 11-0595
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W02-422625
v.	:	
	:	LID - 63011
KR SCRANTON ASSOCIATES, LLC	:	
519 LINDEN ST.	:	
SCRANTON, PA 18503-1605	:	
	:	
	:	
	:	
LACKAWANNA COUNTY	:	
LICENSE NO. R-AP-SS-10837	:	

**BEFORE JUDGE FLAHERTY
BUREAU COUNSEL STRONG
LICENSEE: EDWARD A. TARASKUS, ESQUIRE**

ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation that was issued on April 18, 2011, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter "Bureau") against KR SCRANTON ASSOCIATES, LLC, License Number R-AP-SS-10837 (hereinafter "Licensee").

The citation charges Licensee with violation of Section 13.102(a)(3) of the Liquor Control Board Regulations [40 Pa. Code §13.102(a)(3)] in that on November 24 and December 31, 2010, Licensee, by its servants, agents or employes, sold and/or served an unlimited or indefinite amount of alcoholic beverages for a fixed price in that unlimited alcohol was served for the set price of \$20.00 and \$25.00.

The investigation which gave rise to the citation began on November 22, 2010 and was completed on March 7, 2011; and notice of the violation was sent to Licensee by Certified Mail on March 23, 2011. The notice of violation was received by Licensee.

An evidentiary hearing was held on this matter on December 13, 2011 in the Scranton State Office Building, 100 Lackawanna Avenue, Scranton, Pennsylvania.

Upon review of the transcript of this hearing, we make the following Findings of Fact and reach the following Conclusions of Law:

FINDINGS OF FACT:

1. On November 24, 2011 at 8:50 p.m., an officer of the Bureau arrived at the licensed premises (N.T. 86-87).
2. The officer observed two lines of patrons entering the licensed premises. There was a left line which was labeled for a drink special which cost \$20.00. The other line was for regular customers (N.T. 87).
3. The officer was required to show identification. He then paid \$20.00 after which he was given a plastic cup. He was told not to lose the plastic cup or he would have to pay \$20.00 to get another one (N.T. 87).
4. After getting the plastic cup, the officer ordered a mixed drink containing rum and diet coke. The drink was served to the officer with no additional charge (N.T. 88).
5. The officer observed hundreds of alcoholic drinks being served to patrons without charge at the time of service (N.T. 88-89).
6. On December 31, 2010 a second officer of the Bureau arrived at the licensed premises at 9:15 p.m. (N.T. 104).
7. The officer observed a sign outside the premises, and numerous signs inside the premises that said, "All you can drink \$25.00, 9:00 to 12:00; music by Drop Dead Sexy." (N.T. 104).
8. The officer was pointed to the line for the \$25.00 special. A female individual informed him that for \$25.00 he could have unlimited well drinks and unlimited Bud Lite beer until midnight. He was informed that he could be given a clear cup (N.T. 104-105).
9. The officer paid \$25.00 and entered the licensed premises (N.T. 105).
10. During the evening, the officer ordered and received three spiced rum and diet coke mixed drinks for which there was no charge other than the initial \$25.00 cover charge (N.T. 105).
11. The officer saw many patrons with clear cups like the one that he purchased who were served drinks without charge (N.T. 105-106).

12. In September of 2010, Licensee entered into two written “Banquet Contracts” with Bridges and a Bottle LLC. One contract was for Thanksgiving Eve (November 23, 2010) and the other was for New Year’s Eve 2010 (December 31, 2010) (N.T. 112 and Exhibits C-3 and C-4).

13. Under the arrangement, Bridges and a Bottle LLC used the premises and provided entertainment on each of the two evenings (N.T. 110).

14. The event on November 23, 2010 was to run from 8:00 p.m. to 11:00 p.m. The anticipated number of guests was 500. The price was \$12.50 per person with a down payment paid at signing of \$250.00. Food in the form of “Chef’s Choice Hors D’oeuvres” was to be provided from 8:00 p.m. until 8:30 p.m. There was to be an Open Bar from 8:00 p.m. until 8:30 p.m. for “House brands and draft beer.” The balance due to Licensee was to be paid by Bridges and a Bottle LLC at the conclusion of the event (N.T. 110-111 and Exhibit C-4).

15. The event on December 31, 2010 was to run from 9:00 p.m. to 12:00 a.m. The anticipated number of guests was 500. The price was \$25.00 per person with a down payment paid at signing of \$250.00. Food in the form of “Chef’s Choice Hors D’oeuvres” was to be provided from 9:00 p.m. to 10:00 p.m. There was to be an open bar from 9:00 p.m. to 12:00 a.m. for “House brands and draft beer.” The balance due to Licensee was paid at the conclusion of the event (N.T. 110-111 and Exhibit C-3).

16. At each of the events described above, personnel from Bridges and a Bottle LLC collected a charge from patrons wishing to participate in the event; and Licensee had security personnel present to verify the count (N.T. 110).

17. The food provided at each of the events described above was prepared by personnel of Licensee on the licensed premises (N.T. 113).

18. All alcohol served at the above described events was supplied by Licensee (N.T. 111-112).

CONCLUSION OF LAW:

The charge in the citation must be **dismissed**.

DISCUSSION:

I am of the opinion that the event in question falls within the “catered event” exception in Section 13.102 of the Liquor Control Board Regulations [40 Pa. Code §13.102].

Section 13.102(a)(3) of the Liquor Control Board Regulations [40 Pa. Code §13.102(a)(3)] prohibits the sale or serving or both of an unlimited or indefinite amount of liquor, wine or malt or brewed beverages for a fixed price.

An exception to the prohibitions mentioned above is found in Section 13.102(b)(1) of the Liquor Control Board Regulations [40 Pa. Code §13.102(b)(1)] which provides:

(b) Exceptions. Nothing in subsection (a) prohibits:

(1) The sale or serving, or both of an unlimited or indefinite amount of liquor, wine or malt or brewed beverages for a fixed price for catered events which have been arranged at least 24 hours in advance.

As I indicated in *S & B Restaurant, Inc.*, t/a The Woodlands, An Inn, Citation No. 05-2634, I am of the opinion that the elements of a catered event are:

1. The furnishing of liquor and/or malt or brewed beverages together with food;
2. For the accommodation of a person or entity other than the licensee;
3. In accordance with arrangements made at least 24 hours in advance;
4. For a private function;
5. Which is paid for by a person or entity other than the licensee.

In addition, the Commonwealth Court of Pennsylvania has held that the party for whom a catered event is held may sell tickets to the event to members of the general public at the door to the premises where the event is held. *Pa. State Police v. American Serbian Club*, 750 A.2d 405 (Pa. Cmwlth. 2000).

On the basis of the record in this case, I believe that the event in question was a “catered event” within the meaning of the Regulation. The citation must, therefore, be dismissed.

ORDER

IT IS HEREBY ORDERED that Citation No. 11-0595 be **DISMISSED**.

Dated this 30TH day of March, 2012.



Daniel T. Flaherty, Jr., J.

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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.