

Mailing Date: DEC 20 2011

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

PENNSYLVANIA STATE :
POLICE, BUREAU OF : Citation No. 11-0608
LIQUOR CONTROL ENFORCEMENT :
 : Incident No. W01-426134
 :
 v. :
 : LID - 39269
 :
 DELAWARE COUNTY LAGOON INC :
 TAYLOR AVE & DELAWARE RIVER :
 ESSINGTON PA 19029-1230 :
 :
 :
 DELAWARE COUNTY :
 LICENSE NO. H-AP-SS-EHF-88 :

JUDGE SHENKLE
BLCE COUNSEL: Erik S. Shmukler, Esq.
LICENSEE COUNSEL: John J. McCreesh, III, Esq.

ADJUDICATION

BACKGROUND:

The Bureau of Liquor Control Enforcement of the Pennsylvania State Police issued this citation on April 26, 2011. The citation alleges that Licensee violated §13.102(a)(3) of the Liquor Control Board Regulations, 40 Pa. Code §13.102(a)(3), on February 12, 2011, by selling and/or serving an unlimited or indefinite amount of alcoholic beverages for a fixed price, in that unlimited bottled beer and liquors were served for the set price of \$25.00.

A hearing was held on October 27, 2011, in Plymouth Meeting, Pennsylvania. The parties stipulated to the timely service of the notice letter and citation.

FINDINGS OF FACT:

1. On February 12, 2011, a liquor enforcement officer arrived at the licensed premises at 10:58 p.m. He was greeted by a doorman who checked his identification. He then went to a cashier who asked the officer if he wanted to pay the cover or have the open bar. The officer said he wanted the open bar. He paid the cashier \$25 and she gave him a blue wristband (N.T. 5).

2. The officer went to the first bar on the left and ordered a beer and a glass of rum, which were served to him for no charge. Other patrons at that bar were also participating in the open bar. The officer asked the bartender how late the open bar ran and she said one o'clock (N.T. 6).

3. Later in the visit the officer went to another bar in the premises, on the middle right, next to a dance floor. He ordered two drinks, whiskey and coke and cranberry and vodka, for which he was not charged. When the officer left the premises at 11:50 p.m. there were about 150 patrons. He did not have any food, nor did he see any. A "Single and Sinful" event was going on (N.T. 6-7).

4. The officer entered the premises at the front door. The first bar he visited was about ten feet from the door. The second bar was about 25 feet from the first. There were other bars in the premises which he did not visit. The officer knew about the event because he saw information about it online when he was researching the premises (N.T. 9-11).

5. The licensed premises includes a hotel with 130 guest rooms, a marina, a couple of banquet rooms and a large bar/restaurant/nightclub space. There is a banquet room (capacity 130) to the right of the second bar the officer visited, and, across from the dance floor, in the back, another very large wedding facility (capacity 220) (N.T. 13).

6. Licensee's owner had contracted with a group called "Skin" for the rental of some space in which they could have guests and also sell their wares. The group was to use the private room on the other side of the dance floor. Licensee was to provide a food and beverage package. The buffet, located in the private space, included pasta, roast beef, and chicken. It was expected that the group would consist of about 50 people, for which the owner expected a minimum of \$1,250 (\$25 per person). The people coming to the event each paid \$25. The owner believes that the cashier assumed the officer was with that group (N.T. 14-18).

CONCLUSIONS OF LAW:

Sustained as charged.

DISCUSSION:

The regulation in question provides in its entirety as follows:

§ 13.102. Discount pricing practices.

(a) General. Retail licensees may discount the price of alcoholic beverages for a consecutive period of time not to exceed 2 hours in a business day, but may not engage in discount pricing practices between 12 midnight and the legal closing hour. Retail licensees may not engage in the following discount pricing practices unless specifically excepted in subsection (b):

(1) The sale or serving, or both, of more than one drink of liquor, wine, or malt or brewed beverages at any one time to any one person, for the price of one drink.

(2) The sale or serving, or both, of an increased volume of one drink of liquor, wine, or malt or brewed beverages without a corresponding and proportionate increase in the price for the drink.

(3) The sale or serving, or both, of an unlimited or indefinite amount of liquor, wine, or malt or brewed beverages for a set price.

(4) The pricing of alcoholic beverages in a manner which permits the price to change within the 2-hour period.

(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.

(2) The offering for sale of one specific type of alcoholic beverage or drink per day or a portion thereof at a reduced price, if the offering does not violate subsection (a). For purposes of this section, a specific type of alcoholic beverage means either a specific registered brand of malt or brewed beverages, a type of wine, a type of distilled spirits or a mixed drink. Examples of permissible drink discounts are found in Board Advisory Notice 16.

It may be seen that paragraph (a) of the regulation establishes the general rule and paragraph (b) provides for two exceptions, the first of which allows “for catered events which have been arranged at least 24 hours in advance.”

There was no evidence in this case from which I could determine when the catered event described in this case was arranged. Although Licensee’s owner credibly testified that such an event had been arranged, there was no testimony or other evidence showing when that arrangement had been made. I cannot and will not presume or guess when this may have happened.

The 24-hour advance requirement is an integral part of the first exception, and since compliance with that rule has not been proven, Licensee has failed to establish its defense.

Even if the date of the agreement had been proven, the evidence in this case would still support a violation, because this discount pricing practice extended past midnight, which is prohibited in paragraph (a).

PRIOR RECORD:

Licensee has been licensed since June 4, 1997, and has had one prior violation:

Citation No. 01-1106-\$100.00 fine.

1. Purchased malt or brewed beverages on credit.

PENALTY:

Section 471 of the Liquor Code, 47 P.S. §4-471, prescribes a penalty of license suspension or revocation or a fine in the \$50.00 to \$1,000.00 range, or both, for violations of this type.

ORDER

THEREFORE, it is hereby ORDERED that Licensee, Delaware County Lagoon, Inc., License No. H-AP-SS-EHF-88, shall pay a fine of three hundred dollars (\$300.00) within 20 days of the mailing date of this order. In the event the fine is not paid within 20 days, Licensee's license will be suspended or revoked. Jurisdiction is retained.

Dated this 12TH day of DECEMBER, 2011.



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.

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