

Mailing Date: MAR 02 2012

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

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|------------------------------|---|---------------------------------|
| PENNSYLVANIA STATE POLICE, | : | |
| BUREAU OF LIQUOR CONTROL | : | Docket No.: 11-0762 |
| ENFORCEMENT (BLCE) | : | |
| | : | |
| v. | : | BLCE Incident No.: W05-418870 |
| | : | |
| KNC, LLC | : | |
| T/A 797 SPORTS BAR & LOUNGE | : | PLCB LID No.: 61020 |
| 244 W. COLLEGE AVE. | : | |
| STATE COLLEGE, PA 16801-3842 | : | |
| | : | PLCB License No.: R-AP-SS-19784 |
| | : | |
| CENTRE COUNTY | : | |

ADJUDICATION

BEFORE: Administrative Law Judge Felix Thau

FOR BLCE: Michael C. Nickles, Esquire

FOR LICENSEE: Charles N. Shurr, Jr., Esquire

BACKGROUND:

This proceeding arises out of a citation, containing two counts, and issued on April 29, 2011, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (Bureau) against KNC, LLC (Licensee).

The first count charges Licensee with a violation of Sections 404 and 471 of the Liquor Code [47 P.S. §§4-404 and 4-471]. The charge is that Licensee's corporation pled guilty to summary violations of State College Borough ordinances for Actual Occupancy Level charge Part L, Section 3, Chapter 7, Section 713.3 and International Fire Code Over Occupancy, Chapter 9 Section 901.1 and was fined \$2,000.00 plus costs on August 9, 2010.

The second count charges Licensee with a violation of Section 493(12) of the Liquor Code [47 P.S. §4-493(12)]. The charge is that Licensee, by your servants, agents, or employees, failed to keep records on the licensed premises on November 15, 2010.

Licensee has executed a Statement of Waiver, Admission and Authorization in which Licensee: admits to the violation charged in the citation and that the Bureau complied with the applicable investigatory and notice requirements of the Liquor Code, authorizes the Administrative Law Judge to enter an Adjudication without a hearing based on a summary of facts as provided by the Bureau and prior Adjudication history, and waives the right to appeal this Adjudication.

Therefore, I make the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT:

Count No. 1

1. Municipal Code Enforcement Officers arrived at the premises on August 9, 2010. There were 271 patrons present. The maximum legal occupancy is 247 patrons. Licensee's representatives had no idea of the number of patrons present.

Count No. 2

2. On November 15, 2010, two Bureau Enforcement Officers arrived at the premises at 5:00 p.m. to conduct an administrative inspection. Although Licensee's beer dispensing system was clean, receipts evidencing payment for those cleanings were not on the premises. The receipts were kept at another licensed establishment which has ownership connections to the subject license.

3. Licensee's collection receipts for the various amusement devices on the premises were also at the other establishment.

CONCLUSION(S) OF LAW:

The violations are sustained as charged.

DISCUSSION:

For some time, I have been hammering away about how public safety is compromised when a licensee exceeds occupancy levels permitted by law. Set by those with expertise and in a position of authority, these levels are designed to ensure public safety. Since part of my responsibility as an Administrative Law Judge requires me to be a custodian of public safety, I consider any breach serious.

I see two components to Licensee's violation as charged in Count 1. One is indicative of Licensee's lack of concern for the duty to maintain occupancy levels as permitted by law. I reach this conclusion because Licensee's representatives could not provide the Municipal Officers with the actual number of patrons on the premises "Finding of Fact No. 1."

The second factor is the degree to which Licensee exceeded the maximum. There is a major difference between the degree to which safety is subverted when a licensee exceeds a maximum by one customer as opposed to fifty. Moreover, the ratio derived by dividing the value in excess by the maximum also is significant.

For example, if a licensee exceeds a lawful maximum by fifty customers and has a fifty customer limit, public safety has severely deteriorated, as Licensee has exceeded the maximum by 100 percent. Still, another licensee may exceed its maximum occupancy level by fifty customers, but has a large enough facility to allow for 1,000 patrons at one time. In the latter situation, licensee has exceeded the maximum by five percent. Thus, the identical absolute value by which both licensees, in these examples have exceeded their respective maximum (fifty customers) have a disparate impact on public safety.

ADJUDICATION HISTORY:

Licensee has been licensed since June 1, 2009, and has the following Adjudication history:

Docket No. 10-0560C. Fine \$2,900.00 and R.A.M.P. training mandated.

1. Manager failed to devote full time and attention to the licensed business, November 1 through 16, 2009.
2. Failed to notify the board within 15 days of a change of manager, November 16, 2009 through January 7, 2010.
3. Sales after your license expired and had not been renewed and/or validated, February 3, 2010.
4. Sales to a minor, February 26, 2010.

Docket No. 10-1632. Fine \$250.00.

Failed to keep records on the licensed premises, May 4, 2010.

PENALTY ASSESSMENT CRITERIA:

Mandatory Requirement(s)

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 the violations found herein.

Discretionary Component(s)

In this matter, Licensee exceeded its legal maximum occupancy level by twenty-four persons, nearly ten percent above the maximum. I consider this a substantial breach.

This is the first time the charge such as in Count No. 1 has crossed my desk. I therefore owe it to Licensee and others to assess a penalty with some leniency, especially since Licensee has already incurred a well-deserved, substantial fine.

I impose:

Count No. 1 - \$350.00

Count No. 2 - \$150.00

ORDER:

Imposition of Fine

Licensee must pay a \$500.00 fine within 20 days of the mailing date of this Adjudication. The mailing date is located on this Adjudication's first page, upper left corner. If Licensee fails to comply, the Liquor Code requires that I suspend or revoke the license.

Retaining Jurisdiction

Jurisdiction is retained to ensure compliance with this Adjudication.

Dated this 24TH day of February, 2012.



Felix Thau, A.L.J.

bc

General Information

This Adjudication is a legal document. It affects your rights, privileges, and obligations. The information which follows is a general guide. Therefore, you may want to consult with an attorney.

Applying for Reconsideration

If you want the Administrative Law Judge to reconsider this Adjudication, you must submit a written application and a nonrefundable \$25.00 filing fee. Both must be received by the Office of Administrative Law Judge, (PLCB - Office of Administrative Law Judge, Brandywine Plaza, 2221 Paxton Church Road, Harrisburg, PA 17110-9661) within fifteen days of this Adjudication's mailing date. Your application must describe the reasons for reconsideration. The full requirements for reconsideration can be found in Title 1 Pa. Code §35.241.

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.** 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