

Mailing Date: MAY 18 2012

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

PENNSYLVANIA STATE POLICE,
BUREAU OF LIQUOR CONTROL
ENFORCEMENT (BLCE)

v.

SLATE BAR AND LOUNGE, INC.
T/A SLATE BAR AND LOUNGE
2324 SANS SOUCI PARKWAY
HANOVER TOWNSHIP, PA 18706-5006

LUZERNE COUNTY

Docket No.: 11-2022

BLCE Incident No.: W02-437570

PLCB LID No.: 61832

PLCB License No.: R-AP-SS-3571

BEFORE: Felix Thau, Administrative Law Judge

FOR BLCE: Craig A. Strong, Esquire

LICENSEE: Antonio Mannino, Sole Corporate Officer, Stockholder, and Manager

ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation, containing one count, that was issued on November 30, 2011, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (Bureau) against Slate Bar and Lounge, Inc. (Licensee).

The citation charges Licensee with a violation of Section 499(a) of the Liquor Code [47 P.S. §4-499(a)]. The charge is that Licensee, by your servants, agents, or employees, 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., on October 8, 2011.

I presided at an evidentiary hearing on March 30, 2012 at 100 Lackawanna Avenue, Scranton, Pennsylvania.

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

FINDINGS OF FACT:

1. The Bureau began its investigation on October 8, 2011 and completed it on October 8, 2011. (N.T. 5)
2. The Bureau sent a notice of the alleged violation to Licensee at the licensed premises by certified mail, return receipt requested on, November 2, 2011. The notice alleged the violation as charged in the citation. (Commonwealth Exhibit No. C-1, N.T. 6)
3. A Bureau Enforcement Officer arrived in the area of the premises at 2:40 a.m. on October 8, 2011. It appeared as if the premises was closing. The Officer departed the area to return later in his shift. (N.T. 8-9)
4. The Officer returned to the premises at 3:05 a.m. He maintained a surveillance of the premises. At 3:17 a.m., two individuals departed the common entrance to the bar. They entered into separate cars and left. (N.T. 9)
5. At 3:29 a.m., nine people walked out of the entrance door. Five were carrying either six-packs or twelve-packs of beer. They stayed in the parking lot. Several individuals opened containers of beer. The group remained in the parking lot talking and drinking for about twelve minutes, after which the nine individuals got into five separate vehicles and departed the parking lot. The Officer walked to the front door of the premises to determine if there was still anyone inside. The premises was closed. The Officer departed somewhere between 3:40 and 3:45 a.m. (N.T. 9-10)
6. The licensed premises has an interior connection to several apartments on the second floor of the building in which the licensed premises is housed. It is possible to depart the licensed premises and meet someone coming from the apartments above. There is a door in the common area, which connects the licensed premises to the apartments, that opens to a set of steps going to the upstairs apartments. (N.T. 17-20)

7. The individuals the Officer saw departing the front door, which leads both to licensed premises and the upstairs apartments, came from one of the apartments rather than the licensed premises. (N.T. 22-30)

CONCLUSIONS OF LAW:

1. The notice requirements of Liquor Code Section 471 [47 P.S. §4-471] have been satisfied.
2. The Bureau has failed to prove that Licensee's employees permitted patrons to possess or remove alcoholic beverages from that part of the premises habitually used for the service of alcoholic beverages.

DISCUSSION:

Because the individuals did not depart from the licensed premises but rather from the upstairs apartments, I must dismiss this citation. As I advised Licensee at the hearing and by virtue of 40 Pa. Code §3.52., relating to connection with residents, Licensee is prohibited from maintaining an inside passage, or communication to, or with a residence other than that of the Licensee, Corporate Officer, or Manager. I also advised Mr. Mannino that he must take immediate steps to correct this unlawful condition.

ORDER:

Dismissal

I dismiss the citation for the reasons above stated.

Dated this 9TH day of May, 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.

Appeal Rights

If you wish to appeal this Adjudication, you must file an appeal within thirty days of the mailing date of this Adjudication by contacting the Office of Chief Counsel of the Pennsylvania Liquor Control Board (717-783-9454). For further information, visit www.lcb.state.pa.us. The full requirements for an appeal can be found in 47 P.S. §4-471.