

Mailing Date: MAY 17 2013

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

PENNSYLVANIA STATE	:	In re Citation No. 12-0777
POLICE, BUREAU OF	:	
LIQUOR CONTROL ENFORCEMENT	:	BLCE Incident No. W09-440174
	:	
v.	:	PLCB LID No. 15146
	:	
GM INVESTORS, LTD.	:	PLCB License No. R-AP-SS-11774
T/A OLD TIME SALOON	:	
201-203 W. 7 th AVE	:	
CONSHOHOCKEN, PA 19428-1639	:	

JUDGE SHENKLE
BLCE COUNSEL: Roy Harkavy, 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 May 18, 2012. The citation alleges that Licensee violated §404 of the Liquor Code, 47 P.S. §4-404, on January 21 and March 30, 2012, by failing to adhere to the conditions of an agreement with the Board putting additional restrictions on the license.

A hearing was held on March 21, 2013, in Plymouth Meeting, Pennsylvania. The parties stipulated to the timely service of the notice letter and citation.

FINDINGS OF FACT:

1. On January 21, 2012, a liquor enforcement officer entered the licensed premises in an undercover capacity at about 10:45 p.m. She was investigating Licensee on the basis of a complaint from the PLCB regarding its Conditional Licensing Agreement (CLA) (N.T. 6-7).

2. The CLA was signed on behalf of Licensee on October 13, 2011, and on behalf of the Board on October 21, 2011. The parties stipulated that Licensee is the holder of this license, that it has applied to renew the license for the term effective May 1, 2010, and that the Board has authority to object and has done so, on the basis of 4 adjudicated citations and 7 incidents of disturbance at or immediately adjacent to the licensed premises (Exhibit B-3).

3. In light of these stipulations, the parties agreed that Licensee would (a) become R.A.M.P. – compliant within 90 days; (b) have monthly meetings with the police and keep records

thereof; (c) employ at least one person as security in the interior of the licensed premises, "clothed to make their status as security apparent" from 9:00 p.m. to 2:30 a.m. every Tuesday through Saturday the premises is open; (d) maintain 6 interior and 2 exterior cameras and retain the recordings for 14 days; (e) within 60 days, install the equipment necessary to allow remote access viewing of its video surveillance system via laptop computer; (f) hold weekly staff meetings to discuss operational issues and keep records thereof; and (g) maintain a written barred patrons list (Ibid).

4. During her visit of January 21, 2012, the officer was looking for security personnel, cameras, and R.A.M.P. signage. She did not see any security personnel, nor did she see the six interior cameras required (N.T. 7).

5. On March 30, 2012, the officer entered the licensed premises in an undercover capacity at about 9:10 p.m. She did not see any security personnel. She looked for cameras but was not certain whether the required number were present (N.T. 8).

6. On April 11, 2012, the officer conducted a routine inspection at the licensed premises. She reviewed the inspection report, which stated that there were no violations observed, with Licensee's manager. She went over the CLA and informed the manager of the violations she had seen. The manager stated that they had a pizza maker who would work on the pizza side until ten o'clock and then would go over and act as security. The officer told the manager that they were required to have security at nine o'clock (N.T. 9-10).

7. During her visit of January 21, 2012, the officer entered through the door on the bar side of the premises. She saw two or three cameras, she believed, on that side. She did not go into the pizza side of the premises, which is also licensed, and could not see into it from the bar. The officer did not visit the pizza side until she conducted the routine inspection (N.T. 10-11).

8. The routine inspection revealed that there were enough cameras, adding those on the bar side to those on the pizza side, to comply with the CLA. Since the officer did not visit the pizza side during either of the violation dates alleged, she was not able to testify as to the presence or absence of security guards in that portion of the premises (N.T. 12-13).

CONCLUSIONS OF LAW:

The evidence presented did not prove a violation of the provisions of the CLA.

DISCUSSION:

The only complete inspection of this licensed premises during this investigation took place on April 11, 2012, and on that date Licensee was in full compliance, according to the officer's testimony. A complete inspection revealed the presence of the required video equipment, so the only issue is whether Licensee's security person was required by the CLA to spend all of his time in the barroom or whether he was able to spend some of his time in the pizza side of the premises.

I find that the Bureau's evidence did not prove a violation of the CLA. This finding does not depend on the evidence presented by Licensee, which showed that the security person was present at the required times. The Bureau's case fails in the first instance because of the incompleteness of its inspection, which did not rule out the presence of a security person because the entire licensed premises was not visited.

A successful prosecution of citations such as this one will require first, that investigating officers know the complete extent of a licensed premises before visiting it, and second, that they make a point of visiting the entire licensed premises. Observations which do not meet these criteria will be of no use to the Bureau in cases of this kind.

The additional point might be made that the security person who testified confirmed that the shirt he wore to work bore Licensee's trade name on the front and the word "Staff" on the rear. Counsel for the Bureau pointed out that the shirt did not bear the word "security."

I do not read the CLA to require use of the word "security" on the clothing of the personnel who perform that function. The document requires that the clothing identify the person's function. In the context of a licensed premises I am satisfied that the clothing used in this case would cause any reasonable person to conclude that the wearer's function included security. The agreement could have made a more specific requirement if that had been intended.

ORDER

THEREFORE, it is hereby ORDERED that Citation No. 12-0777 is DISMISSED.

Dated this 10TH day of MAY, 2013.



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.