Mailing Date: FEB 28 2014

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

PENNSYLVANIA STATE POLICE, BUREAU OF LIQUOR CONTROL ENFORCEMENT	:	IN RE: Citation No.: 13-0667
v.	:	BLCE Incident No.: W04-457453
GEO MORE ENTERPRISES, LLC T/A GEOS RESTAURANT AND LOUNGE 3838 STATE ROUTE 30 UNITY TWP. LATROBE, PA 15650-5256	:	PLCB LID No.: 59088 PLCB License No.: R-AP-SS-18493

BEFORE: JUDGE RODERICK FRISK

APPEARANCES:

BLCE COUNSEL: Emily L. Gustave, Esquire
LICENSEE COUNSEL: Gregory T. Nichols, Esquire

ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation that was issued on April 3, 2013, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter Bureau) against Geo More Enterprises, LLC, t/a Geos Restaurant and Lounge, License Number R-AP-SS-18493 (hereinafter Licensee).

This citation charges Licensee with a violation of Section 499(a) of the Liquor Code, [47 P.S. §4-499(a)] in that on February 16, 2013, Licensee, by its servants, agents or employees, failed to require patrons to vacate that part of the premises habitually used for the service of alcoholic beverages not later than one-half hour after the required time for the cessation of the service of alcoholic beverages.

An administrative hearing was conducted on December 3, 2013 at 2:00 p.m., at 2 Parkway Center, Pittsburgh, PA. The Bureau was represented by Emily L. Gustave, Esquire. Licensee was represented by Gregory T. Nichols, Esquire.

At the Administrative Hearing, counsel for Licensee stipulated that the notice requirements as set forth at Section 471 of the Liquor Code have been satisfied.

After hearing the testimony presented, and upon review of the evidence submitted, the following Findings of Fact and Conclusions of Law are entered:

FINDINGS OF FACT:

1. On February 16, 2013, Licensee did not possess an after hours food permit. (N.T. 21-22, Exhibit C-3)

2. While in the vicinity of Licensee's premises at 3:32 a.m. on February 16, 2013, a Liquor Enforcement Officer observed 10 vehicles in the parking lot and the interior lights of the premises illuminated. At this time, the Enforcement Officer requested the assistance of a fellow Enforcement Officer who was in the area. (N.T. 8-9)

3. After parking, the Enforcement Officer exited his vehicle and observed five unidentified individuals departing Licensee's premises. While standing outside the front of the premises, the Enforcement Officer briefly observed three males conversing near the bar and a fourth male playing a video gaming device. The Enforcement Officer further noted that the premises appeared clean with no alcoholic beverages present. (N.T. 9-12, 17-18)

4. The Enforcement Officer knocked on the front door, was permitted to enter and immediately identified himself to the four males. (N.T. 12-13)

5. The Enforcement Officer questioned the four males and determined that the male observed playing the video gaming device was Eric Wolfinger, who was one of the bartenders on duty that evening. The other three males, identified as Josh Nadger, Jordan Japaleo and Nicholas Falbo, stated that they often are employed as disc jockeys at Licensee's premises. The Enforcement Officer's questioning produced unclear results as to whether or not these individuals were working that particular evening. (N.T. 13-14)

6. Upon further questioning, the Enforcement Officer was advised that Samantha Dugan was in charge of the premises that evening. Mr. Wolfinger proceeded to the back of the premises to advise Ms. Dugan of the Enforcement Officer's presence. A moment later, Ms. Dugan entered the bar area and explained that she was the shift manager that evening. (N.T. 15)

7. Approximately three minutes following his entry, and while speaking to Ms. Dugan, the second Enforcement Officer arrived at the premises. (N.T. 15)

8. Upon inquiry, Ms. Dugan advised the Enforcement Officers that the four males were just "hanging out" and that no one was drinking. The Enforcement Officers made no further inquiry as to the activities that Ms. Dugan was engaged in or who was responsible for cleaning the premises. (N.T. 15-16)

9. The Enforcement Officers departed Licensee's premises at 3:38 a.m. with the aforementioned individuals preparing to leave the premises. (N.T. 16)

10. During the evening of February 15/16, 2013, Samantha Dugan was working as a bartender and shift manager, Eric Wolfinger was working as a bartender at the main bar and Nicholas Falbo was working as lead disc jockey and assisted with computer issues. Josh Nadger and Jordan Japaleo also worked as disc jockeys that evening. (N.T. 29-36)

11. On the evening in question, more than 100 patrons were present and a live band performed and the disc jockeys provided entertainment prior to the band's performance and during intermissions. (N.T. 46-47)

12. It is Licensee's policy that all individuals working, including disc jockeys, remain after close to assist in cleanup as Licensee does not employ a separate cleaning staff. (N.T. 51)

13. The cleaning of Licensee's premises on the date in question was completed by the aforementioned workers at approximately 3:15 to 3:20 a.m. During the Enforcement Officers' visit, Mr. Wolfinger was also required to remain on the premises until his cash register drawer was balanced with the evening's transactions. Difficulty with the credit card transactions delayed closing out this cash register. (N.T. 58-60)

14. At the time of the Enforcement Officer's entry, Ms. Dugan was in the rear area of the premises manually inputting over 100 credit card transactions from the evening's business due to a technical failure with its newly-acquired credit card terminal. Mr. Falbo assisted Ms. Dugan with computer issues through much of the evening. (N.T. 35-36)

15. Gwen M. Moreland, wife of LLC member, George Moreland, testified that as the result of a recent occurrence at Licensee's premises involving an armed individual, Licensee's employees were urged to depart the premises in groups for security reasons. (N. T. 64-68)

DISCUSSION:

This Court notes at the onset it is well established that the Bureau must prove its case by a fair preponderance of the evidence. ***Pennsylvania Liquor Control Board v. Leggens,*** 542 A.2d 653 (Pa. Cmwlth. 1988); ***Omicron Enterprises,*** 449 A.2d 857 (Pa. Cmwlth. 1982); ***Com. v. Moreno,*** 14 A.3d 133 (Pa.Super. 2011).

It has been further established that it is for this court to decide the credibility of witnesses and the weight to be given to their testimony. ***State Correctional Institute v. Robison,*** 561 A.2d 82 (Pa. Cmwlth. 1989). Further, this court may accept or reject, in whole or in part, the testimony of any witness. ***Kubler v. Yeager,*** 150 A.2d 383 (Pa. Super 1959). It is with these principles in mind that further analysis of this case is conducted.

At the hearing, Licensee offered the testimony of three of the five individuals present during the Bureau's investigation of Licensee's premises. Ms. Dugan testified that at the time of the Enforcement Officers' visit, she was in the rear of the premises attempting to manually input over 100 credit card transactions from the evening's business due to a technical failure with its newly acquired credit card terminal. On this particular evening, Ms. Dugan sought the help of Mr. Falbo, who has expertise in information technology, and was attempting to rectify the issues with the internet service. This problem further delayed Mr. Wolfinger in balancing the transactions in his cash register. Ms. Dugan further testified that Mr. Wolfinger, Mr. Falbo, Mr. Nadger and Mr. Japaleo, as a matter of normal protocol, remained on the premises until cleanup was completed.

Ms. Gwen Moreland, wife of LLC member George Moreland, corroborated the testimony of Ms. Dugan and Mr. Falbo regarding the difficulty in manually inputting numerous credit card transactions in addition to and following cleanup of the premises. Ms. Moreland further testified that all of her employees including the disc jockeys present on the evening in question are required to assist in cleanup as Licensee does not employ a separate cleaning staff.

Finally, Ms. Moreland testified that Licensee recently implemented a policy requiring its employees to depart the premises at closing in groups of at least five, if possible, for security reasons.

The Liquor Code requires patrons to vacate licensed premises [47 P.S. §4-499(a)]. However, individuals "engaged in an employment related activity" are not patrons within the meaning of the Liquor Code.

Section 1-102 of the Liquor Code defines a patron as "an individual who purchases food, nonalcoholic beverages, liquor, alcohol or malt or brewed beverages for a consideration from a licensee or any person on the licensed premises **except those actually engaged in an employment related activity."** (Emphasis added)

Upon thorough review of the testimony and evidence presented, this Court concludes that the five individuals present were actually engaged in employment related activities on Licensee's premises during the six minute visit by the Enforcement Officers on February 16, 2013. It is the opinion of this Court that under the circumstances of this particular case, the four males had completed their cleanup duties at approximately 3:15 to 3:20 a.m. and were waiting for Ms. Dugan to complete entering the credit card transactions for the evening in order that the employees could leave the premises in a group for security reasons.

Accordingly, the Bureau has failed to establish the violation as charged by a clear preponderance of the evidence.

CONCLUSION OF LAW:

1. The Bureau has failed to establish that on February 16, 2013, Licensee, by its servants, agents or employees, failed to require patrons to vacate that part of the premises habitually used for the service of alcoholic beverages not later than one-half hour after the required time for the cessation of the service of alcoholic beverages, in violation of Section 499(a) of the Liquor Code, [47 P.S. §4-499(a)].

ORDER:

Accordingly, it is hereby ORDERED that Citation No. 13-0667 be DISMISSED.

Jurisdiction is retained to ensure compliance with this Order.

Dated this 7TH day of February, 2014.

Roderick Frisk

Roderick Frisk, J.

clm

NOTE: MOTIONS FOR RECONSIDERATION MUST BE RECEIVED WITHIN 15 DAYS OF THE MAILING DATE OF THIS ORDER IN THE OFFICE OF ADMINISTRATIVE LAW JUDGE AND REQUIRE A $25.00 FILING FEE. A WRITTEN REQUEST FOR RECONSIDERATION MUST BE SUBMITTED WITH THE 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.