

Mailing Date: JUN 04 2014

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

PENNSYLVANIA STATE	:	In re Citation No. 13-2007
POLICE, BUREAU OF	:	
LIQUOR CONTROL ENFORCEMENT	:	BLCE Incident No. W01-465778
	:	
v.	:	PLCB LID No. 58571
	:	
26 YU, INC.	:	PLCB License No. R-AP-SS-20359
26 GARRETT RD.	:	
UPPER DARBY, PA 19082-2303	:	

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 October 8, 2013. The citation alleges that Licensee violated §102 of the Liquor Code, 47 P.S. §1-102, on August 19, 2013, on the basis that the licensed premises was not a *bona fide* restaurant because there were no food items.

A hearing was held on Tuesday, April 22, 2014, in Plymouth Meeting, Pennsylvania. The parties stipulated to the timely service of the notice letter and citation.

FINDINGS OF FACT:

1. The PLCB refused to renew this license for the two-year term commencing November 1, 2011. Licensee appealed to the Court of Common Pleas, which reversed the Board. The Board appealed to Commonwealth Court. In an order dated July 10, 2013, Commonwealth Court affirmed the decision of the Court of Common Pleas (No. 1907 C.D. 2012).

2. On August 19, 2013, a liquor enforcement officer entered the licensed premises at 12:25 p.m. and found that there was no food. He did not observe any customers, nor did he witness the sale or service of any alcoholic beverages (N.T. 5-8).

3. Counsel for Licensee had advised his client of the Commonwealth Court decision shortly after receiving a copy of it in the mail. The premises had been closed during the pendency of the appeal, which took almost a year. The people seen by the liquor enforcement officer during the inspection of August 19, 2013, were working to clean the establishment and prepare it for re-opening. There were no customers in the premises at the time (N.T. 13-19).

CONCLUSIONS OF LAW:

Licensee was not obliged to observe the requirements of 47 P.S. §1-102, on August 19, 2013, because it was not open for business, nor was it exercising its license in any way.

ORDER

THEREFORE, it is hereby ORDERED that Citation No. 13-2007 is DISMISSED.

Dated this 29TH day of MAY, 2014.



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.