

Mailing Date: OCT 22 2014

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

PENNSYLVANIA STATE	:	In re Citation No. 13-2041
POLICE, BUREAU OF	:	
LIQUOR CONTROL ENFORCEMENT	:	BLCE Incident No. W01-461069
	:	
v.	:	PLCB LID No. 14917
	:	
NEW THIRD WORLD, INC.	:	PLCB License No. R-AP-SS-EHF-11390
4901 CATHERINE STREET	:	
PHILADELPHIA, PA 19143-2007	:	Philadelphia County

JUDGE SHENKLE
BLCE COUNSEL: Erik S. Shmukler, Esq.
LICENSEE COUNSEL: Richard Maurer, Esq.

ADJUDICATION

BACKGROUND:

The Bureau of Liquor Control Enforcement of the Pennsylvania State Police issued this citation on October 8, 2013. There are two counts in the citation.

The first count alleges that Licensee violated the Liquor Code, 47 P.S. §§4-406(a)(2) and 4-493(16), on August 18, 2013, by selling, furnishing and/or giving alcoholic beverages on Sunday between 2:00 a.m. and 11:00 a.m.

The second count alleges that Licensee violated the Liquor Code, 47 P.S. §4-499(a), on August 18, 2013, by permitting patrons to possess alcoholic beverages in and/or remove them from that part of the premises habitually used for the service of alcoholic beverages after 2:30 a.m.

A hearing was held on August 13, 2014, in Plymouth Meeting, Pennsylvania. The parties stipulated to the timely service of the notice letter and citation.

FINDINGS OF FACT:

1. Noel Karasanyi is Licensee's sole corporate officer, and also the manager of this licensed premises. His sister died on August 14, 2013. Mr. Karasanyi arranged for his nephew Michael to manage the premises in his absence, and flew to Uganda on August 15 to attend her funeral. Other family members in America who could not travel to Africa held a memorial service in Washington, D.C. on Saturday, August 17, 2013. Michael drove to Washington to attend that service, intending to return to Philadelphia in the late afternoon in order to manage the premises for his uncle. However, his automobile broke down and he was unable to return (N.T. 29-30, 64-66).

2. During August of 2013, Licensee's usual operating hours were on Wednesdays through Saturdays, from about 9:00 p.m. until about 3:00 a.m. the next day (N.T. 82, 89, 91).

3. Mr. Karasanyi's daughter, Simona Lovette, received a call in which she learned that Michael was unable to return to Philadelphia. She therefore went to the licensed premises at about 1:45 a.m. on Sunday, August 18, 2013. Tatiana Bethea was tending bar that evening. Rosa Scott was not present (N.T. 32-33, 49).

4. Ms. Lovette did not see any service of alcoholic beverages during the time she was in the premises that evening, from about 1:45 until about 3:45 a.m. Licensee does not allow customers to possess the glass bottles that malt or brewed beverages come in, for safety reasons. When customers purchase these beverages they are poured into plastic cups, and the container is kept behind the bar (N.T. 33-34, 50-51).

5. Rosa Scott had last been employed as Licensee's bartender at least two, and possibly as many as four months previously. She does not resemble Tatiana Bethea (N.T. 49-50, 64-65).

CONCLUSIONS OF LAW:

The credible evidence did not prove that Licensee violated the Liquor Code, 47 P.S. §§4-406(a)(2) and 4-493(16), on August 18, 2013, by selling, furnishing and/or giving alcoholic beverages on Sunday between 2:00 a.m. and 11:00 a.m.

The credible evidence did not prove that Licensee violated the Liquor Code, 47 P.S. §4-499(a), on August 18, 2013, by permitting patrons to possess alcoholic beverages in and/or remove them from that part of the premises habitually used for the service of alcoholic beverages after 2:30 a.m.

DISCUSSION:

The Bureau presented the testimony of two liquor enforcement officers in its case in chief. The first officer who testified was the Bureau's investigating officer in this case. After the investigation commenced, on May 6, 2013, he made several undercover visits to the premises, but did not observe any violations of the law.

The second officer who testified said that Rosa Scott, whom he identified from her JNET photograph, was tending bar. All of Licensee's evidence tells me that this was not so, and that Tatiana Bethea, whom Ms. Scott does not resemble, was tending bar that night. This officer also testified that he purchased two bottles of beer, which were given to him in the bottle.

I am persuaded by three credible witnesses that Licensee's firm policy does not allow customers to take possession of beer bottles, and that no such bottles were given to this officer. For this reason I do not give credit to any of the Bureau's evidence.

In my mind this decision does not depend upon the eight photographs Licensee offered in evidence, and therefore I find it unnecessary to rule upon the Bureau's objection to their admission. In brief, this evidence makes it clear that some person or people trashed Licensee's premises sometime after 3:45 a.m. on August 18, 2013. The liquor stock was destroyed. A cash register was damaged. Empty beverage bottles were left on tables in the serving area.

I do not have sufficient evidence to allow me to blame these crimes on the Bureau of Liquor Control Enforcement, and I do not do so.

All that can be said about the matter is that, when Ms. Lovette left the premises at 3:45 a.m. there were no customers and no other employees, only liquor enforcement officers. When she returned later in the day, after sleeping, she found the premises in the condition shown in the photographs.

As its officers were clearly the last people inside the premises before this damage occurred, the circumstances demanded that the Bureau rebut the implication of the evidence. I expected this to occur, and the Bureau's failure to present rebuttal evidence was a significant factor in my assessment of credibility in this case.

ORDER

THEREFORE, it is hereby ORDERED that Citation No. 13-2041 is DISMISSED.

Dated this 8TH day of OCTOBER, 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.