

Mailing Date: MAR 13 2015

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	IN RE Citation No.: 14-1349
LIQUOR CONTROL ENFORCEMENT	:	
	:	BLCE Incident No.: W08-473846
v.	:	
	:	
JOSEPH W. TROUTMAN SR.	:	PLCB LID No.: 63618
T/A HOTEL HOLLEY	:	
153 MAIN ST.	:	PLCB License No.: H-AP-SS-6232
BRADFORD, PA 16701-2171	:	
	:	
MCKEAN COUNTY	:	
	:	
	:	

BEFORE: JUDGE RICHARD O'NEILL EARLEY
BLCE COUNSEL: NADIA VARGO, ESQUIRE
LICENSEE: GREGORY A. HENRY, ESQUIRE

ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation that was issued on July 14, 2014, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter Bureau) against Joseph W. Troutman Sr., t/a Hotel Holley, License Number H-AP-SS-6232, (hereinafter Licensee).

The citation contains two counts.

Count one of the citation charges Licensee with violation of the Liquor Code at 47 P.S. § 4-493(34), alleging that on May 30 and June 14, 2014, Licensee, by its servants, agents or employees, used, or permitted to be used on the inside of your licensed premises, a loudspeaker or similar device whereby the sound of music or other entertainment, or the advertisement thereof, could be heard beyond the Licensee's property line.

Count two of the citation charges Licensee with violation of the Liquor Code at 47 P.S. § 4-471 and the Clean Indoor Air Act (CIAA) at 35 P.S. § 637.6(a)(1), alleging that on May 3,

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30, and June 14, 2014, Licensee, by its servants, agents or employees, failed to post signage as required by the CIAA.

Licensee has executed a Statement of Admission, Waiver and Authorization in which Licensee: admits to the violation(s) charged in the citation, agrees that the Bureau complied with the applicable investigatory and notice requirements of the Liquor Code, authorizes the Administrative Law Judge to enter an Adjudication without a hearing based on a summary of facts as provided by the Bureau and prior citation history, and waives the right to appeal this Adjudication.

Based upon the admission(s) of Licensee and the summary of facts provided by the Bureau, I make the following Findings of Fact and reach the following Conclusions of Law:

FINDINGS OF FACT:

Count Two

1. On May 3, 2014, at 6:20 p.m., a Liquor Enforcement Officer entered Licensee's premises and observed a bartender serving eight patrons. No CIAA signage was posted at the premises.
2. On May 30 and June 14, 2014, the Officer entered the premises and observed a bartender serving approximately 20 patrons on both occasions. No CIAA signage was posted at the premises.
3. On both dates Licensee possessed an exception from the Pennsylvania Department of Health (the Department) which permits Licensee to allow smoking on the licensed premises.

Count One

4. On May 30 and June 14, 2014, Licensee permitted a band to play using electronic amplification. The Officer noted the door was propped open during his visits, and the music could be heard at distances of 220 to 250 feet beyond Licensee's property line.
5. The area surrounding the premises is approximately 75% commercial and 25% residential.

CONCLUSION OF LAW:

Counts one and two: Sustained as charged.

DISCUSSION:

This case reveals an unusual situation that deserves comment. It is facially apparent that Licensee, as a holder of a hotel liquor license, does not possess the qualifications under the Liquor Code to entitle it to a CIAA exception. Ignoring the Liquor Code's definitions in administering the CIAA potentially threatens the integrity of the Board's licensing scheme by weakening clear distinctions between types of liquor licenses.¹

These are terms that the Board and members of this administrative tribunal are uniquely privileged to implement and interpret. Under Hyland Enterprises, Inc. v. PLCB, 631 A.2d 789 (Pa.CmwltH.Ct. 1993), the Department should be aware of how the Board interprets the liquor licenses specifically referenced in the CIAA. Thus, in this limited context where it is necessary to interpret the Liquor Code to apply the CIAA, I conclude I am permitted to offer my interpretation of the Liquor Code terms used in the CIAA without offending principles of deference.

The CIAA prohibits smoking in public places, including businesses licensed under the Liquor Code. However, the CIAA permits the Department to grant an exception to certain establishments. The provision relevant to Pennsylvania Liquor Control Board licensees is 35 P.S. § 637.2 where the CIAA describes the licensees eligible for exception as "Drinking Establishments." The CIAA Drinking Establishment exception is specifically limited to licensees operating "pursuant to an eating place retail dispenser's license, restaurant liquor license or retail dispenser's license under...the Liquor Code." Id.

The Board has never interpreted a "retail dispenser" to be merely a place that sells alcohol for on-premises consumption, or an "eating place retail dispenser" to be a place where patrons can eat and drink alcohol. A "retail dispenser" is defined under the Liquor Code as an establishment permitted to "engage in the retail sale of malt or brewed beverages for consumption on the premises of such licensee."² Retail dispensers are not permitted to sell liquor.³ In contrast, "retail liquor licensees" are permitted to sell liquor as well as malt or brewed beverages.⁴ However, the only type of retail liquor licensee permitted a CIAA exception is a restaurant liquor licensee, not a hotel liquor licensee.

Licensee is not a restaurant liquor licensee, and it is not a "retail dispenser" because those entities are prohibited from selling liquor. These are unambiguous distinctions the Board

¹ I note that the Department has not promulgated any rule or adjudication addressing whether hotel liquor licensees are entitled to a CIAA exception. While there is reason to suspect the Department has taken a position that hotel liquor licensees are eligible for an exception (Gus Genetti Hotel and Restaurant v. Department of Health, Bureau of Health Promotion and Risk Reduction, 1526 C.D. 2013, February 26, 2014 (memorandum opinion)) there is no indication such a position rises to the level of rule-making or was the result of an agency adjudication.

² §§ 1-102 and 4-432(f) of the Liquor Code.

³ Retail dispenser is a broad category of license that comes in various permutations, including "eating place retail dispenser," "hotel retail dispenser," and others. § 4-432(f) of the Liquor Code. The CIAA potentially excepts the entire category of retail dispenser.

⁴ §§ 1-102 and 4-401(a) of the Liquor Code.

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recognizes between a hotel liquor license and the varieties of licenses specifically entitled to a CIAA exception.

Nevertheless, for reasons that are unclear, Licensee possesses an exception. Despite the possible impropriety of Licensee possessing the exception, Licensee is currently entitled to the protections (and bound by the obligations) it affords because of the principles of estoppel.⁵ Now, though, this Licensee (and the Bureau) is aware it has reason to question its entitlement to a future CIAA exception, and should proceed with appropriate skepticism.

PRIOR RECORD:

Licensee has been licensed since August 1, 2010, and has had five prior violations:

IN RE:

Citation No. 11-1805. Fine \$1,500.00 and RAMP training mandated.

1. Sold malt or brewed beverages in excess of 192 fluid ounces for consumption off premises.
August 12, 2011.
2. Sales to visibly intoxicated persons.
August 18, 2011.

Citation No. 12-0346. Fine \$2,000.00 and RAMP training mandated.

1. Sales to a visibly intoxicated person.
November 24, 2011.

Citation No. 13-0621. Fine \$1,400.00, RAMP compliance mandated and 1 day suspension.

1. Sales to a minor.
January 1, 2013.

Citation No. 13-1424C. Fine \$1,400.00, RAMP compliance mandated and 1 day suspension.

1. Sales to a minor.
June 10, 2013.

Citation No. 13-1485. Fine \$3,000.00, RAMP compliance mandated 3 days suspension.

1. Sales to a visibly intoxicated person.
June 15, 2013.

⁵ *Commonwealth ex rel Corbett v. Griffin*, 946 A.2d 668, 678 n. 12 (Pa. 2008); *Appeal of McNelly*, 553 A.2d 472 (Pa.CmwltH.Ct. 1989), appeal denied, 581 A.2d 574 (Pa. 1990).

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PENALTY:

The Liquor Code prescribes a penalty of license suspension or revocation or a fine of not less than \$50.00 or more than \$1,000.00 or both for violations of the type found in this case (47 P.S. § 4-471).

In mitigation, some consideration shall be given to the fact that Licensee has admitted to the violation(s) as charged in this citation, and has waived the right to a hearing and appeal.

For the foregoing reasons, the following penalties shall be imposed: Count one - \$250.00, and count two - \$200.00.

ORDER:

THEREFORE, it is hereby ordered that Joseph W. Troutman Sr., t/a Hotel Holley, License Number H-6232, pay a fine of \$450.00 within 20 days of the mailing date of this Order. In the event the aforementioned fine is not paid within 20 days from the mailing date of this Order, Licensee's license shall be suspended or revoked.

Jurisdiction is retained.

Dated this 4TH day of MARCH, 2015.



Richard O'Neill Earley, J.

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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.

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Detach Here and Return Stub with Payment – Note Citation Number on Check

The fine must be paid by cashier's check, money order, or a check drawn on the account of an attorney licensed in Pennsylvania. **Personal and business checks are NOT acceptable unless bank certified.** Please make your guaranteed check payable to the Commonwealth of Pennsylvania and mail it, along with any required documentation to:

PLCB – Office of Administrative Law Judge
Brandywine Plaza
2221 Paxton Church Road
Harrisburg PA 17110-9661

Credit/debit cards may be used: visit www.lcb.state.pa.us scroll over LEGAL and then click on Office of ALJ for instructions..

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