

Mailing Date: MAR 6 2015

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

PENNSYLVANIA STATE	:	In re Citation No. 14-1748
POLICE, BUREAU OF	:	
LIQUOR CONTROL ENFORCEMENT	:	BLCE Incident No. W01-481989
	:	
v.	:	PLCB LID No. 49150
	:	
SUNEY, INC., T/A EL PARAISO RESTAURANT	:	PLCB License No. R-AP-SS-EHF-6671
457-459 E. WYOMING AVE.	:	
PHILADELPHIA, PA 19120-4532	:	Philadelphia County

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 September 2, 2014. The citation alleges that Licensee violated the Liquor Code, 47 P.S. §1-102, on July 30, 2014, on the basis that the licensed premises was not a *bona fide* restaurant because there were insufficient food items.

A hearing was held on January 20, 2015, in Plymouth Meeting, Pennsylvania. The parties stipulated to the timely service of the notice letter and citation.

FINDINGS OF FACT:

1. On July 30, 2014, a liquor enforcement officer, in uniform, entered the licensed premises at approximately 12:35 p.m. The only person inside the premises was a woman who was cleaning it. The officer told the woman he needed to speak with somebody in charge. The woman called Licensee's president on the telephone, and he came to the premises (N.T. 7).

2. Licensee's president has a limited understanding of English. The officer asked him if they had any food. He said they did. The officer asked where it was, and was taken to an upstairs area said to be the kitchen. The whole area appeared to be under construction. The officer asked again where the food was. Licensee's president said they didn't have any "at this time." (N.T. 7-8).

3. There were no patrons in the premises. The woman who was cleaning had told the officer the premises was open, but in fact they were not open; their hours begin every day at 4:30 p.m. The officer did not request service of food or an alcoholic beverage (N.T. 8-11).

CONCLUSIONS OF LAW:

The Bureau did not prove that Licensee violated the Liquor Code because the weight of the evidence requires the conclusion that the license was not being exercised at the time of the Bureau's inspection; therefore Licensee was not required to have food on the premises at that time.

DISCUSSION:

If the officer had made the same observations in the licensed premises at a time when it was open and dispensing alcoholic beverages, this citation would have been sustained. To do so on these facts, however, would be to base a decision entirely on speculation.

We cannot presume what might have been found if the Bureau had conducted an undercover investigation, or visited the premises at a time when the license was being exercised.

ORDER

THEREFORE, it is hereby ORDERED that Citation No. 14-1748 is DISMISSED.

Dated this 19TH day of FEBRUARY, 2015.



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.