

Mailing Date: May 4 1999

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 97-2233
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W9-161797
v.	:	
	:	LID - 24235
ABJAC INC	:	
T/A THE SUPREME COURT	:	
RESTAURANT	:	
683 WALNUT STREET	:	
EASTON PA 18042-4440	:	
	:	
	:	
NORTHAMPTON COUNTY	:	
LICENSE NO. R-AP-14891	:	

BEFORE: JUDGE FLAHERTY

APPEARANCES:

For Bureau of Enforcement
Roy Harkavy, Esquire

For Licensee
Alexander J. Karam, Jr.,
Esquire

ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation that was issued on November 10, 1998, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter "Bureau") against ABJAC, INC., License Number R-AP-14891 (hereinafter "Licensee").

The citation contains three counts.

The first count charges Licensee with violation of Section 471 of the Liquor Code [47 P.S. §4-471] and Section 5513 of the Crimes Code [18 Pa.C.S. §5513] in that on July 25, 1997, Licensee, by its servants, agents or employes, possessed or operated gambling devices or paraphernalia or permitted gambling or lotteries, poolselling and/or bookmaking on the licensed premises.

The second count charges Licensee with violation of Section 493(1) of the Liquor Code [47 P.S. §4-493(1)] in that on July 25, 1997, Licensee, by its servants, agents or employes, sold, furnished and/or gave or permitted such sale, furnishing or giving of alcoholic beverages to a 19 year old female minor.

The third count charges Licensee with violation of Section 471 of the Liquor Code [47 P.S. §4-471] and Section 5503 of the Crimes Code [18 Pa.C.S. §5503] in that on May 3 and 16, 1997, the licensed establishment was operated in a noisy and/or disorderly manner.

The investigation which gave rise to the citation began on April 14, 1997 and was completed on September 20, 1997; and notice of the violation was sent to Licensee by Certified Mail on October 15, 1997. The notice of violation was received by Licensee on October 16, 1997.

An evidentiary hearing was held on this matter on March 30, 1999 in the U.S. Courthouse and Federal Building, Courtroom 4A, 504 West Hamilton Street, Allentown, Pennsylvania.

Upon review of the transcript of this hearing, we make the following Findings of Fact and reach the following Conclusions of Law:

FINDINGS OF FACT:

COUNTS 1 AND 2

1. On July 25, 1997, officers of the Bureau, a corporal of the Pennsylvania State Police and members of the Easton Police Department conducted an inspection of the licensed premises (Stipulation N.T. 4-5).
2. The officers obtained consent from Alexander Karam, corporate officer of Licensee, and opened a draw poker electronic video poker machine (Stipulation N.T. 5).
3. The machine was opened, and the officers found \$40.50 in currency and a payoff slip inside the machine (Stipulation N.T. 5).
4. The machine along with keys and money was seized by the officers (Stipulation N.T. 5).

5. On July 30, 1997, the machine was examined by an officer of the Bureau who found that the machine accepted several denominations of money and contained a knock off feature and a video accounting feature (Stipulation N.T. 6).

6. While on the licensed premises on July 25, 1997, an officer of the Bureau discovered a 19 year old female patron in possession of a 12-ounce bottle of Coors Light beer. This minor had not been required to fill out a Declaration of Age Card, and no photocopy of her photo identification had been kept by Licensee (Stipulation N.T. 6).

COUNT 3

7. On May 3, 1997 at 1:01 a.m., an officer of the Easton Police heard loud music emanating from the licensed premises. He went into the premises and spoke to the manager. He advised the manager of the complaint and asked him to turn the music down (Stipulation N.T. 6-7).

8. On May 16, 1997, an officer of the Easton Police Department heard loud screaming coming from the doorway of the licensed premises (Stipulation N.T. 7).

9. Upon approaching the doorway, the officer observed a physical altercation taking place between a husband and wife. The officer called for back up (Stipulation N.T. 7).

CONCLUSIONS OF LAW:

Counts 1 and 2 of the citation are **sustained**.

Count 3 of the citation is **dismissed**.

DISCUSSION:

Counsel for the Bureau and counsel for Licensee have stipulated to all of the facts presented in this case.

Although counsel for Licensee agrees that the stipulated facts establish violations with respect to Counts 1 and 2, he argues that no violation is established as to Count 3. I agree.

Count 3 of the citation charges Licensee with operating the licensed premises in a noisy and/or disorderly manner.

The original appellate court decisions dealing with noisy and disorderly operation of the licensed premises, and whether such operation constitutes "other sufficient cause" as that term is used in Section 471 of the Liquor Code [47 P.S. §4-471] were *Appeal of Ciro's Lounge*, 358 A.2d 141 (Pa.Cmwlth 1976) and *In re AJC, Inc.*, 401 A.2d 421 (Pa.Cmwlth 1979). These cases, which appear on their face to be inconsistent, were analyzed by Administrative Law Judge Thau in *Wendell and Woolridge, Inc.*, Citation No. 88-0608, Selected Opinions Volume IV, Page 145. Judge Thau concluded that the test which has evolved from these cases is: "... whether, taking all of the circumstances into consideration, the disturbance constitutes invasion of the public welfare, peace and morals and is indicative of the way in which Licensee operates his business." I agree with this analysis.

I am of the opinion that the two incidents of record in this case do not meet the aforementioned test. One incident involved loud music emanating from the licensed premises on a particular date. The other incident involved a single altercation on the licensed premises between two patrons who were husband and wife.

These incidents are unrelated in nature and cannot be said to give any meaningful indication of the way in which the licensed premises was operated. I, therefore, conclude that no violation has been established as to Count 3 and that count will be dismissed.

PRIOR RECORD:

Licensee has been licensed since April 20, 1989, and has had five prior violations, to wit:

Citation No. 92-0408. Fine \$1,000.00.

1. Minors frequenting. January 23, 1992.
2. Sales to minors. January 23, 1992.

Citation No. 93-2337. 4 days suspension.

1. Sales to minors. October 21, 1993.
2. Minors frequenting. October 21, 1993.

Citation No. 95-2690. Fine \$250.00 and 1 day suspension.

1. Permitted dancing without an Amusement Permit. September 15, 16, 29 and 30, 1995.
2. Used loudspeakers or devices whereby music could be heard outside. September 30, 1995.

Citation No. 95-3011. Fine \$50.00 and 2 days suspension.

1. Engaged in discrimination, in that you provided alcoholic beverages to female patrons at a reduced price while charging full price to male patrons. November 16, 1995.
2. Used loudspeakers or devices whereby music could be heard outside. November 19 and 26, 1995.

Citation No. 96-2382. 1 day suspension.

1. Sold liquor for consumption off premises. August 9 and 14, 1996.

PENALTY:

Section 471 of the Liquor Code [47 P.S. §4-471] 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 Count 1 of this case.

Section 471 of the Liquor Code [47 P.S. §4-471] prescribes a penalty of license suspension or revocation or a fine of not less than \$1,000.00 or more than \$5,000.00 or both for violations of the type found in Count 2 of this case.

Under the circumstances of this case, the penalty imposed shall be as follows:

- Count 1 - two days suspension.
- Count 2 - three days suspension
- Count 3 - dismissed.

ORDER

THEREFORE, IT IS HEREBY ORDERED that the restaurant liquor license of ABJAC, INC., License No. R-AP-14891 be suspended for a period of five days **BEGINNING** at 7:00 a.m. on Monday, June 21, 1999 and **ENDING** at 7:00 a.m. on Saturday, June 26, 1999.

Licensee is directed on June 21, 1999 at 7:00 a.m. to place the enclosed placard of notice of suspension (identified as Form No. PLCB-1925 and as printed with red and black ink) in a conspicuous place on the outside of the licensed premises or in a window plainly visible from outside the licensed premises and to remove said license from the wall and place it in a secure location.

Licensee is advised if replacement placards are needed for any reason they are available at all Pennsylvania Liquor Stores/Wine & Spirits Shoppes.

The Bureau is directed to visit and monitor the aforementioned licensed premises for compliance with this Order.

Licensee is authorized on June 26, 1999 at 7:00 a.m. to remove the placard of suspension and return his license to its original wall location.

IT IS FURTHER ORDERED that Count 3 of the citation be DISMISSED.

Dated this 27th day of April, 1999.

Daniel T. Flaherty, Jr., J.

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