

Mailing Date: APR 05 2006

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 05-0779
LIQUOR CONTROL ENFORCEMENT	:	
	:	
v.	:	Incident No. W01-308229
	:	
DNJ ENTERPRISES INC.	:	
T/A EDDIE'S CAFE	:	LID - 42628
1100 MORTON AVE.	:	
CHESTER PA 19013-6331	:	
	:	
	:	
DELAWARE COUNTY	:	
LICENSE NO. R-10214	:	

APPEARANCES:

FOR THE BUREAU OF ENFORCEMENT:

**JAMES E. DAILEY, ESQ.**

FOR THE LICENSEE:

**EX PARTE**

**BEFORE: JUDGE WRIGHT**

ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation that was issued on April 27, 2005, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter "Bureau") against DNJ Enterprises, Inc., t/a Eddie's Cafe, License Number R-10214 (hereinafter "Licensee").

An Administrative hearing was held on Thursday, September 1, 2005, pursuant to requisite and appropriate hearing notice. Despite notice of the hearing having been sent to the Licensee, the Licensee failed to appear. Therefore, the hearing proceeded *ex parte*.

The citation contains two counts.

The citation charges Licensee with violation of Section 437 of the Liquor Code, 47 P.S. Section 4-437, and Section 5.41 of the Liquor Control Board Regulations, 40 Pa. Code Section 5.41, in that on March 23, 2005, Licensee, by its servants, agents or employes, operated the licensed establishment without a valid health permit or license, which expired on December 31, 2004.

The second count charges Licensee with violation of Section 102 of the Liquor Code, 47 P.S. Section 1-102, in that on March 23, 2005, the licensed premises was not a bona fide restaurant in that Licensee, by its servants, agents or employes, maintained insufficient food items and seating.

FINDINGS OF FACT:

1. A notice of violation letter dated April 7, 2005 was sent to the licensed premises by certified mail, return receipt requested. That mailing was signed as received on April 11, 2005. The notice set forth that the Bureau conducted an investigation which began on March 23, 2005 and ended March 30, 2005. A citation with a mailing date of April 27, 2005 was sent to the licensed premises by certified mail, return receipt requested. That mailing was signed as received. A citation hearing notice was sent to the licensed premises dated July 13, 2005 by certified mail, return receipt requested and by first class mail. That mailing was signed as received by Carol L. Anderson on July 19, 2005 (N.T. 11-12 and Exhibits B-1 and B-2).

2. Officer Libby Hess is employed by the Bureau of Enforcement and was so employed on March 23, 2005. On that date, she visited the licensed premises in Chester City, Delaware County at approximately 1:30 p.m. to conduct a routine inspection (N.T. 5-6).

3. On March 23, 2005, the premises was open and operating. When the officer entered the premises, she noted that there was a main bar room with a small kitchen area in the back. There were four patrons and one male bartender present when she arrived (N.T. 6).

4. Officer Hess identified herself to the bartender. The bartender was identified as John Fleming, the Board approved manager (N.T. 6-7).

5. Officer Hess inspected the licensed area which consisted of the first floor, kitchen and basement. Officer Hess noted that the premises had no food. The premises had a total of twenty chairs and no tables. There was no current health permit on the premises (N.T. 7).

6. The Bureau of Enforcement submitted a letter from the Bureau of Health, Director of Food Program for the city of Chester in response to a request for certification. The letter from Vito Alleva, the Bureau of Health Director of Food Program, did not contain a seal of the city but did indicate that Licensee had not paid for the current 2005 health permit (N.T. 9-10 and Exhibits B-3 and B-4).

7. The manager was questioned with regard to the current health license and indicated that they had not received a current health license because he had not gotten the premises inspected after he had completed some work (N.T. 9).

8. There was a health license on the premises, which indicated that it expired December 31, 2004 (N.T. 8-10).

CONCLUSIONS OF LAW:

All statutory prerequisites for notice to the Licensee were satisfied.

Count No. 1 - On March 23, 2005, Licensee, by its servants, agents or employes, operated the licensed establishment without a valid health permit or license, which expired on December 31, 2004, in violation of Section 437 of the Liquor Code, 47 P.S. Section 4-437, and Section 5.41 of the Liquor Control Board Regulations, 40 Pa. Code Section 5.41.

Count No. 2 - On March 23, 2005, the licensed premises was not a bona fide restaurant in that Licensee, by its servants, agents or employes, maintained insufficient food items and seating, in violation of Section 102 of the Liquor Code, 47 P.S. Section 1-102.

PRIOR RECORD:

Licensee has been licensed since July 8, 1998, and has a record of prior violations as follows:

Citation No. 00-1475. \$1,300.00 fine.

1. Sales between 2:00 a.m. and 7:00 a.m.  
August 5, 2000.
2. Failed to require patrons to vacate the premises not later than one-half hour after the required time.  
August 5, 2000.
3. Permitted patrons to possess and/or remove alcoholic beverages after 2:30 a.m.  
August 5, 2000.

Citation No. 02-1857. \$300.00 fine.

1. Not a bona fide restaurant in that food items were insufficient.  
September 4, 2002.

Citation No. 03-0772. \$500.00 fine and two days suspension.

1. Possessed or operated gambling devices or paraphernalia or permitted gambling or lotteries, poolselling and/or bookmaking on the licensed premises.  
March 19, 2003.
2. Not a bona fide restaurant in that food items, dishes, eating utensils and seating were insufficient.  
March 19, 2003.
3. Operated the licensed establishment without a valid health permit or license.  
March 6 and 19, 2003.
4. Sold, furnished or gave liquor for consumption off premises.  
March 6, 2003.

DISCUSSION:

Under the circumstances, in that there was no current health permit on the wall and the Licensee indicated that none had been received, there is sufficient evidence to conclude that the premises operated without a valid health permit or license. However, standing on its own, the letter from the city of Chester would have been insufficient. The letter contains no seal from the city and no certification as to its authenticity. Standing alone, the letter would not have been sufficient evidence to support the charge.

With regard to operating a bona fide restaurant, the Licensee had no food on the premises and insufficient seating. Barstools made up the bulk of the available seats but there were not enough. Licensee must submit a Verification stating that it has food on the premises, adequate seating and a current and valid health permit. Failure to timely submit these items will result in suspension of the license until the requirements are satisfied.

After careful review of the facts and Licensee's prior record, a fine of \$500.00 with regard to the licensed premises not being a bona fide restaurant and \$300.00 with regard to it not having a valid health permit shall be imposed.

PENALTY:

Section 471 of the Liquor Code, 47 P.S. Section 4-471, prescribes a penalty of suspension or revocation of license or imposition of 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.

DNJ Enterprises, Inc.  
t/a Eddie's Café  
Citation No. 05-0779

Therefore, penalties shall be assessed as follows:

Count No. 1 - \$300.00.  
Count No. 2 - \$500.00.

Accordingly, we issue the following

ORDER:

THEREFORE, it is hereby Ordered that Licensee, DNJ Enterprises, Inc., t/a Eddie's Cafe, License Number R-10214, pay a fine of Eight Hundred Dollars (\$800.00) within twenty (20) days of the mailing date of this Order. In the event the aforementioned fine is not paid within twenty (20) days from the mailing date of this Order, licensee's license shall be suspended or revoked.

IT IS FURTHER ORDERED that Licensee, DNJ Enterprises, Inc., t/a Eddie's Cafe, License Number R-10214, submit a Verification indicating that the premises is now a bona fide restaurant in that they maintain sufficient food items and seating. Licensee is also required to submit a copy of a current and valid health permit. Said documentation must be submitted within twenty (20) days from the mailing date of this Order. If said documentation is not submitted within twenty (20) days from the mailing date of this Order, Licensee's license shall be suspended for one (1) day and **continuing thereafter** until such documentation is received.

**In order to insure compliance with this Order, jurisdiction of this matter is retained.**

The fine must be paid by Treasurer's Check, Cashier's Check, Certified Check or Money Order. **Personal Checks, which include business-use personal checks, are not acceptable.** Please make your guaranteed check payable to the Commonwealth of Pennsylvania and mail, along with any required documentation, to:

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

Dated this 29<sup>th</sup> day of March, 2006.

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Tania E. Wright, J.

DNJ Enterprises, Inc.  
t/a Eddie's Café  
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**NOTE:** MOTIONS FOR RECONSIDERATION MUST BE RECEIVED WITHIN 15 DAYS OF THE MAILING DATE OF THIS ORDER TO 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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DNJ Enterprises, Inc.  
t/a Eddie's Café  
Citation No. 05-0779

## VERIFICATION

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I/We, DNJ Enterprises, Inc., t/a Eddie's Café, License No. R-10214, do hereby affirm that the licensed premises contains sufficient seating accommodations for at least thirty (30) persons at tables. DNJ Enterprises, Inc. has \_\_\_\_\_ (number) chairs at tables.

I/We, DNJ Enterprises, Inc., also affirm that there are \_\_\_\_\_ (number) tables, and the dimensions of the tables are as follows \_\_\_\_\_.

I/We, DNJ Enterprises, Inc., further affirm that food is served on the premises (attach menu or list of items offered for sales) as of \_\_\_\_\_ (date).

I/We, DNJ Enterprises, Inc., acknowledge that thirty (30) seats at tables are to be maintained at all times pursuant to this license.

Subject to the penalties contained in 18 Pa. C.S. Section 4904, relating to unsworn falsification to authorities, the undersigned officer(s) verifies that I/We are signing and executing this document as the authorized act and deed of the licensee. I/We hereby certify that the foregoing is true and correct.

\_\_\_\_\_  
Corporate Officer's Signature

\_\_\_\_\_  
Corporate Officer's Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

NOTE: Mail Verification and accompanying documents to:

PLCB – OFFICE OF ADMINISTRATIVE LAW JUDGE  
Brandywine Plaza  
2221 Paxton Church Road  
Harrisburg, Pennsylvania 17110-9661