

Mailing Date: MAR 6 2006

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 05-0804
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W01-302636
v.	:	
	:	LID - 35297
ARC TAVERNS INC	:	
2661-2663 E CUMBERLAND ST	:	
PHILADELPHIA PA 19125-3722	:	
	:	
	:	
	:	
PHILADELPHIA COUNTY	:	
LICENSE NO. R-AP-SS-4370	:	BEFORE: JUDGE SHENKLE

APPEARANCES:

For Bureau of Enforcement: James E. Dailey, Esq.
For Licensee: no appearance

ADJUDICATION

BACKGROUND:

The Bureau of Liquor Control Enforcement of the Pennsylvania State Police issued this citation on May 3, 2005. The citation alleges that Licensee violated §7.31(a) of the Liquor Control Board Regulations, 40 Pa. Code 7.31(a), by failing to return its Restaurant Liquor License and Wholesale Liquor Purchase Permit Cards to the Board after it had not been in operation for a period of fifteen consecutive days between March 7 and 24, 2005.

At the hearing scheduled for October 27, 2005, in Plymouth Meeting, Pennsylvania, there was no appearance for the Licensee; therefore, the matter proceeded *ex parte*.

FINDINGS OF FACT:

1. The Bureau investigated Licensee during the period December 13 through March 24, 2004, and sent written notice of the results of its investigation to the licensed premises by certified mail on April 8, 2005 (N.T. 12-13, Exhibit B-1).
2. A copy of this citation was mailed to Licensee's attorney by certified mail on May 10, 2005 (N.T. 13-14, Exhibit B-2).
3. A Notice of Hearing was mailed to the licensed establishment by the Office of Administrative Law Judge, Harrisburg, PA, by certified and first class mail on September 9, 2005. A copy of this notice was also mailed to Licensee's counsel by first class mail.

4. Liquor Enforcement Officer M.C. Zimmerman visited the licensed premises every day, at various times, between March 7 and 18, 2005. Liquor Enforcement Officer Libby Hess visited the premises on March 19, 2005. Liquor Enforcement Officer M. Nicholson visited the premises on March 20, 2005. Liquor Enforcement Officer Zimmerman visited the licensed premises every day, at various times, between March 21 and 24, 2005. On each of these visits, the officers found that the premises was closed, with the lights off and doors locked (N.T. 4-11).

5. Records of the Pennsylvania Liquor Control Board show that this license was not deposited for safekeeping during the time period covered by the preceding finding.

CONCLUSIONS OF LAW:

Sustained as charged.

PRIOR RECORD:

Licensee has been licensed since November 15, 1994, and has had seven prior violations:

Citation No. 97-0031. 1 day suspension.

1. Sales between 2:00 a.m. and 7:00 a.m. December 7, 1996.
2. Failed to require patrons to vacate the premises not later than one-half hour after the required time. December 7, 1996.
3. Permitted patrons to possess and/or remove alcoholic beverages after 2:30 a.m. December 7, 1996.

Citation No. 99-2137. \$400.00 fine. Fine not paid and license suspended for 1 day.

1. Not a *bona fide* restaurant in that food, eating utensils, dishes and chairs at tables were insufficient. November 20, 1999.
2. Failed to keep records on the licensed premises. November 20, 1999.
3. Failed to constantly and conspicuously expose restaurant liquor license on the licensed premises. November 20, 1999.

Citation No. 01-0865. 3 days suspension.

1. Failed to post a notice of suspension. March 26, 27 and 28, 2001.
2. Sold alcoholic beverages while liquor license was suspended. March 26, 2001.

Citation No. 01-1231. \$2,000.00 fine.

1. Sales to minors. April 21 and May 6, 2001.
2. Minors frequenting. April 21, May 6 and 7, 2001.
3. Sold an unlimited or indefinite amount of alcoholic beverages for a fixed price. February 14, 2001.

Citation No. 02-0698. \$300.00 fine and 3 days suspension.

1. Failed to require patrons to vacate the premises not later than one-half hour after the required time. February 16, 2002.

Citation No. 02-0885. 5 days suspension.

1. Sales to minors. March 7, 2002.
2. Minors frequenting. March 7, 2002.

Citation No. 02-1816. 10 days suspension.

1. Sales between 2:00 a.m. and 7:00 a.m. September 7, 2002.
2. Failed to require patrons to vacate the premises not later than one-half hour after the required time. September 7, 2002.
3. Permitted patrons to possess and/or remove alcoholic beverages after 2:30 a.m. September 7, 2002.
4. Permitted patrons to enter that portion of the premises habitually used for the service of alcoholic beverages between 2:30 a.m. and 7:00 a.m. without an extended hours food license. September 7, 2002.

PENALTY:

Section 471 of the Liquor Code, 47 P.S. §4-471, prescribes a penalty of license suspension or revocation or a fine in the \$50.00 to \$1,000.00 range, or both, for violations of the type found in this case.

ORDER

THEREFORE, it is hereby ORDERED that Licensee, ARC. Taverns, Inc., License No. R-AP-SS-4370, pay a fine of one thousand dollars (\$1,000.00) within 20 days of the mailing date of this order. In the event the fine is not paid within 20 days, Licensee's license will be suspended or revoked. Jurisdiction 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 to:

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

Dated this 23rd day of February, 2006.

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.