

Mailing Date: FEB 7 2006

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 05-0946
LIQUOR CONTROL ENFORCEMENT	:	
	:	
v.	:	Incident No. W01-309678
	:	
JUDE T. MEYERS LLC	:	
T/A WICKS TAVERN	:	LID - 50759
1352 E. LYCOMING ST.	:	
PHILADELPHIA PA 19124-5354	:	
	:	
	:	
PHILADELPHIA COUNTY	:	
LICENSE NO. R-AP-SS-7340	:	

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 March 11, 2005, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter "Bureau") against Jude T. Meyers, LLC, t/a Wicks Tavern, License Number R-AP-SS-7340 (hereinafter "Licensee").

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t/a Wicks Tavern
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An Administrative hearing was held on Tuesday, July 26, 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 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 April 20, 2005, Licensee, by its servants, agents or employes, operated the licensed establishment without a valid health permit or license, which was revoked on April 8, 2005.

FINDINGS OF FACT:

1. The Bureau of Enforcement conducted an investigation of the licensed premises, which began on April 18, 2005 and ended April 21, 2005. A notice of violation letter was sent to the licensed premises on April 27, 2005 by certified mail, return receipt requested. A citation was sent to the licensed premises dated May 20, 2005 by certified mail, return receipt requested. That mailing was signed as received on May 23, 2005. A notice of citation hearing was sent to the licensed premises on June 9, 2005 by the Office of Administrative Law Judge. The mailing was sent by certified mail, return receipt requested and by first class mail. That certified mailing was signed as received on June 13, 2005 (N.T. 4 and Exhibits B-1 and B-2).

2. Enforcement Officer Brian Hendrzak is employed by the Bureau and in conjunction with his employment, he conducted an investigation of the premises at 4:45 p.m. on April 20, 2005. When he entered the premises, it was open and operating. The officer noted a patron purchasing a Coors Lite Beer from a female bartender. There were approximately eight to ten patrons on the premises, most in possession of alcoholic beverages (N.T. 5-6).

3. The officer identified himself to the female bartender and told her that the purpose for his visit was to conduct an inspection of the premises. He found that the health permit had been revoked (N.T. 7).

4. Records from the Philadelphia Department of Licensing and Inspections indicate that Licensee's health license was revoked for failure to file or pay delinquent city business taxes (N.T. 7-8, 12-13 and Exhibits B-3 and B-5).

5. The officer noted that there was a health permit on the premises, which expired April 5, 2005. There was no current and valid health permit on the premises (N.T. 9-10).

6. The officer made attempts to obtain certification from the Philadelphia Licensing and Inspections with regard to the health license but was unable to obtain certification (N.T. 12-13 and Exhibit B-5).

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CONCLUSIONS OF LAW:

All statutory prerequisites for notice to the Licensee were satisfied.

On April 20, 2005, Licensee, by its servants, agents or employes, operated the licensed establishment without a valid health permit or license, which was revoked on April 8, 2005, 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.

PRIOR RECORD:

Licensee has been licensed since March 16, 2004, and has a record of prior violations as follows:

Citation No. 04-0963. \$200.00 fine.

1. Used loudspeakers or devices whereby music could be heard outside.
May 5 and 12, 2004.

DISCUSSION:

The city of Philadelphia was the complainant in this matter, but did not provide certification for the hearing to indicate that the license indeed had been revoked. In this matter, the Bureau had sufficient evidence in that there was no valid health permit at the premises and that the only permit in their possession had expired. However, in many other cases it is imperative that the city of Philadelphia timely provide the requested Certification if they wish the Bureau of Enforcement to go forward with complaints of this nature.

In accordance with 47 P.S. Section 4-479 of the Liquor Code, two points shall be imposed for this violation in that a health permit is essential for maintenance of a liquor license. In addition, a moderate monetary penalty shall be imposed.

NOTICE OF ASSESSMENT OF POINTS PURSUANT TO ACT 239, 2004

Section 479 of the Liquor Code, 47 P.S. Section 4-479 establishes a numerical system for use in cities of the first class. Every restaurant and eating place licensee in cities of the first class who have been cited for a violation of Section 471 of the Liquor Code, 47 P.S. Section 4-471, on or after February 6, 2005, shall have points assessed as of the date of the final Adjudication. Points are in addition to other provisions of this Act for license transfer and renewal. Points shall be assigned in addition to the imposition of a monetary penalty and/or suspension and/or revocation of the license by the Administrative Law Judge.

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An enhanced penalty violation requires that the Administrative Law Judge assign five to ten points, depending upon the circumstances surrounding the violation, to a license record for each and every enhanced penalty violation. The Board has, by regulation, established a point system ranging from one to five points for other violations of the Liquor Code and Regulations not specifically set forth in Section 479.

Section 481(a), 47 P.S. Section 4-481(a) provides that when any license accumulates ten points or more, the Administrative Law Judge shall require the license holder to become compliant with and remain compliant with the provisions of Section 471.1, 47 P.S. Section 4-471.1 relating to the Responsible Alcohol Management Program (R.A.M.P.). Failure to comply with such an Order within ninety days shall result in two additional points being assessed against the license record.

Section 481(b), 47 P.S. Section 4-481(b) provides that when any license accumulates fifteen points or more, the Administrative Law Judge shall place the license in safekeeping. The license can only be removed from safekeeping upon approval by the board of a transfer to a disinterested third party. Upon completion of the transfer, the points assigned to it will be reduced to ten. If, within ninety days of the transfer the new owner voluntarily becomes compliant with and remains compliant with the responsible alcohol management provisions of section 471.1, two additional points shall be removed from the license record.

Notwithstanding other provisions of this Act, Section 481(c), 47 P.S. Section 4-481(c), provides that when any license accumulates twenty or more points in more than one citation, the Administrative Law Judge shall revoke the license.

POINTS ASSESSED:

Accordingly, you are hereby notified that two points have been assigned to your record.

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.

Accordingly, we issue the following

ORDER:

THEREFORE, it is hereby Ordered that Licensee, Jude T. Meyers, LLC, t/a Wicks Tavern, License Number R-AP-SS-7340, pay a fine of Three Hundred Fifty Dollars (\$350.00) 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.

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IT IS FURTHER ORDERED that two (2) points are hereby assessed against the record of Licensee, Jude T. Meyers, LLC, t/a Wicks Tavern, License Number R-AP-SS-7340, as required by 47 P.S. Section 4-479(d)(9).

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 1st day of February , 2006.

Tania E. Wright, J.

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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