

Mailing Date: JUL 11 2007

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 05-1051
LIQUOR CONTROL ENFORCEMENT	:	
	:	
v.	:	Incident No. W01-307925
	:	
4100 V & B INC.	:	
4100-02 N. 8 TH ST.	:	LID - 46995
PHILADELPHIA PA 19140-2202	:	
	:	
	:	
	:	
PHILADELPHIA COUNTY	:	
LICENSE NO. R-AP-10924	:	

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 May 31, 2005, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter "Bureau") against 4100 V & B, Inc., License Number R-AP-10924 (hereinafter "Licensee").

An Administrative hearing was held on Tuesday, July 25, 2006, 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 three counts.

The first count charges Licensee with violation of Sections 406(a)(2) and 493(16) of the Liquor Code, 47 P.S. Sections 4-406(a)(2) and 4-493(16), in that on April 10 and 17, 2005, Licensee, by its servants, agents or employees, sold, furnished and/or gave alcoholic beverages on Sunday after 2:00 a.m.

The second count charges Licensee with violation of Sections 401(a) and 406(a)(1) of the Liquor Code, 47 P.S. Sections 4-401(a) and 4-406(a)(1), in that on April 10, 17 and 30, 2005, Licensee, by its servants, agents or employees, sold, furnished or gave liquor for consumption off premises.

The third count charges Licensee with violation of Section 5.32(a) of the Liquor Control Board Regulations, 40 Pa. Code Section 5.32(a), in that on April 30, 2005, Licensee, by its servants, agents or employees, used, or permitted to be used on the inside of the licensed premises, a loudspeaker or similar device whereby the sound of music or other entertainment, or the advertisement thereof, could be heard outside.

COUNT NOS. 1, 2 AND 3

FINDINGS OF FACT:

1. The Bureau of Enforcement conducted an investigation of the licensed premises, which began on March 18, 2005 and concluded on April 30, 2005. A notice of violation letter dated May 10, 2005 was sent to the licensed premises by certified mail, return receipt requested. That mailing was returned unclaimed. A citation dated May 31, 2005 was sent to the licensed premises by certified mail, return receipt requested. That mailing was signed as received on June 2, 2005. A citation hearing notice was sent to the licensed premises by the Office of Administrative Law Judge on June 9, 2006 by certified mail, return receipt requested and by first class mail. The certified mailing was signed as received (N.T. and Exhibits B-1 and B-2).

2. Officer Davis is employed by the Bureau of Enforcement and has been so employed for four years. On Sunday, April 10, 2005, he conducted an investigation of the licensed premises. Officer Davis arrived at approximately 6:50 p.m. (N.T. 5-6).

3. When Officer Davis arrived at the premises, he observed four patrons and one male bartender. Before the officer departed, he asked the bartender if he could have a vodka and cranberry juice to go. He gave the officer a clear plastic cup with a little bit of ice in it and poured vodka and cranberry juice inside the cup. The officer was charged \$2.50 for this purchase. He left the premises in full view of both bartenders (N.T. 6-7).

4. On Sunday, June 17, 2005, Officer Davis went to the licensed premises. On this occasion, he could hear loud music coming from the establishment from distances of approximately forty feet north and south on 8th Street at approximately 7:30 p.m. (N.T. 8).

5. Once inside the premises, Officer Davis heard the same music inside that he had heard outside. He noted that there was a jukebox, which was turned up. However, there was a disc jockey booth located in another section of the bar where there was also a pool table. The disc jockey played music, which was electronically amplified with several speakers throughout the premises (N.T. 8-9).

6. Before the officer departed, he ordered liquor "to go" and asked for a vodka and cranberry juice. He paid \$3.00 for the purchase. The drink was placed in a plastic cup and Officer Davis left the premises in full view of the bartender (N.T. 9-10).

7. The officer left the premises at approximately 8:35 p.m. He could still hear music playing inside the premises in the outside of the premises, as he departed (N.T. 10-11).

8. On April 30, 2005 at approximately 9:45 p.m., the officer arrived in the area of the licensed premises and heard music coming from the establishment. He paced off a distance of about twenty feet south and north of 8th Street where he could still hear music (N.T. 11).

9. When the officer entered the premises, there were approximately fifteen patrons inside. He also observed a jukebox, which was turned off. However, there was a disc jockey in the disc jockey booth who was amplifying music electronically through several speakers located throughout the premises. On this occasion, the front door was open (N.T. 11-12).

10. Before the officer departed, he ordered a Bacardi Lime and cranberry juice from the bartender. It was served to him in a clear plastic cup with a little ice. On this occasion, he paid \$6.00 for the drink. The officer left the premises with the drink in his hand as he had done on the two prior dates (N.T. 12-13).

11. Certified records of the Pennsylvania Liquor Control Board indicate that the Licensee did not possess a Sunday Sales Permit on April 10, 2005 and April 17, 2005 (Exhibit B-3).

CONCLUSIONS OF LAW:

All statutory prerequisites for notice to the Licensee were satisfied.

Count No. 1 - On April 10 and 17, 2005, Licensee, by its servants, agents or employes, sold, furnished and/or gave alcoholic beverages on Sunday after 2:00 a.m., in violation of Sections 406(a)(2) and 493(16) of the Liquor Code, 47 P.S. Sections 4-406(a)(2) and 4-493(16).

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Count No. 2 - On April 10, 17 and 30, 2005, Licensee, by its servants, agents or employes, sold, furnished or gave liquor for consumption off premises, in violation of Sections 401(a) and 406(a)(1) of the Liquor Code, 47 P.S. Sections 4-401(a) and 4-406(a)(1).

Count No. 3 - On April 30, 2005, Licensee, by its servants, agents or employes, used, or permitted to be used on the inside of the licensed premises, a loudspeaker or similar device whereby the sound of music or other entertainment, or the advertisement thereof, could be heard outside, in violation of Section 5.32(a) of the Liquor Control Board Regulations, 40 Pa. Code Section 5.32(a).

PRIOR RECORD:

Licensee has been licensed since October 18, 2001, and has a record of prior violations as follows:

Citation No. 04-1316. \$700.00 fine.

1. Used loudspeakers or devices whereby music could be heard outside.
May 8, 9, 21, 22, July 3 and 4, 2004.
2. Sold liquor for consumption off premises.
May 9 and 22, 2004.

Citation No. 05-0534. \$1,200.00 fine.

1. Sunday sales after 2:00 a.m.
November 21, 2004.

DISCUSSION:

On April 10 and April 17, 2005, Officer Davis visited the licensed premises. Both of those dates were Sundays. There were patrons on the premises and he was able to purchase alcoholic beverages. On April 10, 17 and 30, 2005, the officer purchased alcoholic beverages and removed those alcoholic beverages from the premises in full view of the bartenders. The premises did not have a Sunday Sales Permit and therefore not permitted to sell alcoholic beverages on April 10 and 17, 2005. Under no circumstances were they permitted to sell liquor for consumption off the premises.

The citation also charges that on April 30, 2005, the officer heard music outside the premises. His testimony was that he also heard music on other dates, however, the licensed premises is charged only with a violation on April 30, 2005.

It was noted that the Licensee was also charged in 2004 with use of loudspeakers whereby music could be heard and off premises consumption, and in 2005 for Sunday sales after 2:00 a.m. Under the circumstances, monetary penalties 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.

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 five 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 Count Nos. 2 and 3 of this case.

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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 \$1,000.00 or more than \$5,000.00, or both, for violations of the type found in Count No. 1 of this case.

Therefore, penalties shall be assessed as follows:

Count No. 1 - \$1,800.00.
Count No. 2 - \$250.00.
Count No. 3 - \$250.00.

Accordingly, we issue the following

ORDER:

THEREFORE, it is hereby Ordered that Licensee, 4100 V & B, Inc., License Number R-AP-10924, pay a fine of Two Thousand Three Hundred Dollars (\$2,300.00) 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 five (5) points are hereby assessed against the record of Licensee, 4100 V & B, Inc., License Number R-AP-10924, as required by 47 P.S. Section 4-479(b)(4).

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 6th day of June, 2007.

Tania E. Wright, J.

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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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