

Mailing Date: OCT 26 2006

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 05-1230
LIQUOR CONTROL ENFORCEMENT	:	
	:	
v.	:	Incident No. W01-306910
	:	
HARDING & HARDING 111 INC.	:	
T/A SILVY'S CAFE	:	LID - 16162
510-516 WEST PIKE STREET	:	
PHILADELPHIA PA 19140-3317	:	
	:	
	:	
PHILADELPHIA COUNTY	:	
LICENSE NO. R-AP-13495	:	

APPEARANCES:

FOR THE BUREAU OF ENFORCEMENT:

JAMES E. DAILEY, ESQ.

FOR THE LICENSEE:

GREGORY QUIGLEY, ESQ.

BEFORE: JUDGE WRIGHT

ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation that was issued on June 21, 2005, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter "Bureau") against Harding & Harding 111, Inc., t/a Silvy's Cafe, License Number R-AP-13495 (hereinafter "Licensee").

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An Administrative hearing was held on Thursday, December 1, 2005, pursuant to requisite and appropriate hearing notice. The parties stipulated to the service and receipt of the notice letter and the citation, and as to the facts as set forth in the Bureau's Pre-Hearing Memorandum. The Licensee presented one witness.

The citation contains five counts.

The first count charges Licensee with violation of Section 493(1) of the Liquor Code, 47 P.S. Section 4-493(1), in that on February 20, 2005, Licensee, by its servants, agents or employes, sold, furnished and/or gave or permitted such sale, furnishing or giving of alcoholic beverages to one (1) male minor, twenty (20) years of age.

The second 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 February 20, 2005, Licensee, by its servants, agents or employes, sold, furnished and/or gave alcoholic beverages on Sunday after 2:00 a.m.

The third count charges Licensee with violation of Section 499(a) of the Liquor Code, 47 P.S. Section 4-499(a), in that on February 20, 2005, Licensee, by its servants, agents or employes, failed to require patrons to vacate that part of the premises habitually used for the service of alcoholic beverages not later than one-half hour after the required time for the cessation of the service of alcoholic beverages.

The fourth count charges Licensee with violation of Section 499(a) of the Liquor Code, 47 P.S. Section 4-499(a), in that on February 20, 2005, Licensee, by its servants, agents or employes, permitted patrons to possess and/or remove alcoholic beverages from that part of the premises habitually used for the service of alcoholic beverages after 2:30 a.m.

The fifth count charges Licensee with violation of Sections 491(1), 492(2) and 493(16) of the Liquor Code, 47 P.S. Sections 4-491(1), 4-492(2) and 4-493(16), in that on February 20, 2005, Licensee, by its servants, agents or employes, sold alcoholic beverages after the Restaurant Liquor License expired on October 31, 2004 and had not been renewed and/or validated.

COUNT NOS. 1, 2, 3, 4 AND 5

FINDINGS OF FACT:

1. Officer H. Ringgold, Jr. from the Bureau of Enforcement began an investigation of the licensed premises as a result of receiving reports from the Philadelphia Police Department with respect to a police investigation at the licensed premises on Sunday, February 20, 2005. Certified records of the Pennsylvania Liquor Control Board indicate that the liquor license had expired on October 31, 2004 and had not been renewed and validated as of February 20, 2005 and the liquor license had not been placed in safekeeping as of February 20, 2005. The premises did not have an Extended Hours Food Permit on February 20, 2005 (N.T. 8-9 Exhibit B-3).

2. On Sunday, February 20, 2005 at approximately 3:50 a.m., Philadelphia Police Officer Douglas Jones arrived at the licensed premises. Officer Jones was investigating the premises due to possible Philadelphia Department of Licenses and Inspections violations in reference to a cease work/operations order issued by Licenses and Inspections dated January 21, 2005. The officer observed an individual believed to be named George Silvy, the apparent owner of the premises, selling alcohol to patrons at the bar. Upon entry, the officer observed twenty to thirty patrons, most of who were in possession of alcoholic beverages, or had alcoholic beverages in their vicinity. The bottles had various labels on them, identifying them as alcoholic beverages. Several patrons were observed running out a side door upon the officer's arrival. George Silvy was arrested by Officer Jones at this time (Exhibit B-3).

3. On Sunday, February 20, 2005 at approximately 4:50 a.m., Philadelphia Police Officer Stacey Valentine visited the licensed premises. He observed a minor, later identified as A. O., twenty years of age, born June 25, 1984. A. O. was in possession of a Long Island Iced Tea, a mixed alcoholic beverage. A. O. visited the licensed premises during the early morning hours of February 20, 2005 and ordered, was served and consumed alcoholic beverages inside the premises. The minor indicated that he informed the door person that he was only twenty years of age, however, he was still permitted to enter the premises and was served alcoholic beverages. He was not required to sign a declaration of age card. A. O. informed the officer that he was only twenty years of age. A. O. was arrested for violation of PCC 6308(a), underage drinking (Exhibit B-3).

4. George Harding indicated he was sole proprietor of the licensed premises. He stated that the premises is approximately one hundred feet from his residence. Mr. Harding was aware that the city of Philadelphia issued a cease and desist upon the business on January 21, 2005 and that the license expired on October 31, 2004 and had not been renewed (N.T. 10-11).

5. Mr. Harding indicated that a few years ago, he did not renew the license and shut down the premises because he had no one to run the business. It was closed for approximately three years. In August of 2004, Mr. Harding met with his attorney to discuss how he was going to renew his liquor license (N.T. 19-21).

6. The Licensee indicates that on January 21, 2005, the premises was shut down and it was his understanding that he could go into the property and do whatever repairs he needed, but was not to operate (N.T. 12).

7. After Licenses and Inspections issued a cease and desist order, Mr. Harding indicated that he closed the property using security gates and an alarm system (N.T. 13-14).

8. Mr. Harding indicated that there is a code to the alarm system and that he retains the keys to access the property (N.T. 14-15).

9. Mr. Harding indicated that the keys to the property are maintained in his home (N.T. 15).

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10. In January of 2005, his son, George Harding, aka George Silvy, who is twenty-nine years old, had access to his residence. His son is not an officer of the corporation and is not authorized to operate the business. Mr. Harding said his son was unlawfully in the premises on February 20, 2005 and was there without his permission (N.T. 15-16).

11. Mr. Harding indicated that he did not give him keys to the building, but that the alarm code is his son's birthday (N.T. 16-17).

12. Mr. Harding was in a wheelchair on February 20, 2005 and was also in a wheelchair the day of the hearing (N.T. 17).

13. On February 20, 2005, Mr. Harding indicated that he was in bed and had been there prior to midnight (N.T. 17).

14. One of his friends came by his house and knocked on the door during the early morning hours of February 20, 2005 to tell him that there was a party going on in the licensed establishment. He indicated that the individual's name was "Tony" and that he had previously used Tony to clean the licensed premises (N.T. 21-22).

15. Mr. Harding indicated that he called the police and prepared to go to the premises (N.T. 22-23).

16. Mr. Harding claims to have called the police sometime around 3:00-4:00 a.m. (N.T. 31).

17. Mr. Harding stated that he went to the premises and the door was closed and he could not get in. The police were at the premises when he arrived (N.T. 23-24).

18. Approximately fifteen to twenty people were still at the premises when Mr. Harding arrived. "Tony" resealed the premises for Mr. Harding (N.T. 24).

19. Mr. Harding's son's name is George Harding but is called "Silvy." The corporation's name is Harding and Harding III, Inc. The Harding refers to George Harding, Sr. and the third refers to his son (N.T. 25-26).

20. Mr. Harding indicated that the trade name, Silvy's Café, was the same prior to his taking over ownership (N.T. 26).

21. Mr. Harding claims that his son has no ownership rights in the premises (N.T. 27).

22. The police arrested his son under the name of George Silvy, born May 17, 1976 (N.T. 28).

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23. His son, George Harding, also known as George Silvy, was not in the premises on January 21, 2005 nor was he operating the premises when the cease and desist order was issued (N.T. 29-31).

24. Harding and Harding, III is the corporation who owns the building (N.T. 31).

CONCLUSIONS OF LAW:

Count No. 1 - On February 20, 2005, Licensee, by its servants, agents or employes, sold, furnished and/or gave or permitted such sale, furnishing or giving of alcoholic beverages to one (1) male minor, twenty (20) years of age, in violation of Section 493(1) of the Liquor Code, 47 P.S. Section 4-493(1).

Count No. 2 - On February 20, 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).

Count No. 3 - On February 20, 2005, Licensee, by its servants, agents or employes, failed to require patrons to vacate that part of the premises habitually used for the service of alcoholic beverages not later than one-half hour after the required time for the cessation of the service of alcoholic beverages, in violation of Section 499(a) of the Liquor Code, 47 P.S. Section 4-499(a).

Count No. 4 - On February 20, 2005, Licensee, by its servants, agents or employes, permitted patrons to possess and/or remove alcoholic beverages from that part of the premises habitually used for the service of alcoholic beverages after 2:30 a.m., in violation of Section 499(a) of the Liquor Code, 47 P.S. Section 4-499(a).

Count No. 5 - On February 20, 2005, Licensee, by its servants, agents or employes, sold alcoholic beverages after the Restaurant Liquor License expired on October 31, 2004 and had not been renewed and/or validated, in violation of Sections 491(1), 492(2) and 493(16) of the Liquor Code, 47 P.S. Sections 4-491(1), 4-492(2) and 4-493(16).

PRIOR RECORD:

Licensee has been licensed since June 9, 1980, and since July 1, 1987, the date of establishment of the Office of Administrative Law Judge, has a record of prior violations as follows:

Citation No. 97-0768. \$1,000.00 fine.

1. Sold alcoholic beverages after the Restaurant Liquor License expired and had not been renewed.
2. Operated the licensed establishment without a valid health permit or license.

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3. Sold liquor for consumption off premises.
4. Possessed or operated gambling devices or paraphernalia or permitted gambling or lotteries on the licensed premises.

DISCUSSION:

Counsel for the Licensee argues that his client is not liable for the violations, in that Mr. Harding's son was in the premises without his permission. Counsel argues that it was Mr. Harding who called the police because he feared that it was either his son on the premises or that someone had broken into the establishment. The Bureau argues that the police were there doing an independent investigation.

After careful consideration, the Court finds the Licensee in violation of the Liquor Code. Licensee did not give the son his specific authorization to be on the premises. However, knowing the son's proclivity towards irresponsibility, he still allowed him access to the premises in that he had accessibility to the keys and to the code. Here is implied permission, if not specific permission. All things considered, the name of the premises, father/son relationship, the accessibility to the keys and the knowledge of the code, all speak to implied authority to be on the premises.

The officer, in his stipulated testimony, states that George Silvy is the apparent owner of the premises. He was running a full bar and not seemingly concerned with who knew it. The bar was operating contrary to the cease and desist order and it had no current liquor license. Mr. Silvy, aka George Harding, III, was arrested related to the incident.

A review of the prior history indicates that the Licensee has one prior violation, however, the violations in 2005 were extensive, and also included operating with an expired license and after hours, amongst other very serious charges.

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 fifteen 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. 3 and 4 of this case.

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 Nos. 1, 2 and 5 of this case.

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Therefore, penalties shall be assessed as follows:

Count No. 1 - \$1,200.00.
Count No. 2 - \$1,200.00.
Count Nos. 3 and 4 (as merged) - \$600.00.
Count No. 5 - \$1,200.00.

Accordingly, we issue the following

ORDER:

THEREFORE, it is hereby Ordered that Licensee, Harding & Harding 111, Inc., t/a Silvy's Café, License Number R-AP-13495, pay a fine of Four Thousand Two Hundred Dollars (\$4,200.00) 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 fifteen (15) points are hereby assessed against the record of Licensee, Harding & Harding 111, Inc., t/a Silvy's Café, License Number R-AP-13495, as required by 47 P.S. Section 4-479(b)(1) and 479(b)(4).

In the event that this license is not active as of the date of Adjudication, it shall be so Ordered that when and if the license is renewed, it would remain in safekeeping for sale only. When this license is issued, it shall be placed in safekeeping and there remain until it is sold according to the provisions of Section 481(b).

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 19th day of October, 2006.

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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