

Mailing Date: MAR 17 2006

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 05-1316
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W01-311761
v.	:	
	:	LID - 46995
4100 V & B INC	:	
4100-02 N 8 <sup>th</sup> ST	:	
PHILADELPHIA PA 19140-2202	:	
	:	
	:	
PHILADELPHIA COUNTY	:	
LICENSE NO. R-AP-10924	:	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 July 5, 2005. There are four counts in the citation.

The first count alleges that Licensee violated §437 of the Liquor Code, 47 P.S. §4-437, and §5.41 of the Liquor Control Board Regulations, 40 Pa. Code §5.41, on May 21 and 31, 2005, by operating the licensed premises without a valid health permit or license.

The second count alleges that Licensee violated §5.41 of the Liquor Control Board Regulations, 40 Pa. Code §5.41, on May 21 and 31, 2005, by failing to display documentary evidence that the licensed premises meets all sanitary requirements for a public eating place.

The third count alleges that Licensee violated §102 of the Liquor Code, 47 P.S. §1-102, on May 21 and 31, 2005, on the basis that the licensed premises was not a *bona fide* restaurant because there were insufficient food items, eating utensils and dishes.

The fourth count alleges that Licensee violated §493(12) of the Liquor Code, 47 P.S. §4-493(12), on May 31, 2005, by failing to keep records in the licensed premises.

At the hearing scheduled for Tuesday, January 17, 2006, in Plymouth Meeting, Pennsylvania, there was no appearance for Licensee; therefore, the matter proceeded *ex parte*.

FINDINGS OF FACT:

1. The Bureau investigated Licensee during the period May 21 through May 31, 2005, and sent written notice of the results of its investigation to the licensed premises by certified mail on June 14, 2005 (N.T. 9-10, Exhibit B-1).
2. A copy of this citation was mailed to the licensed establishment by certified mail on July 5, 2005 (N.T. 10, 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 December 1, 2005.
4. Liquor Enforcement Officer Justin Clarke inspected the licensed premises on May 21, 2005, and found that licensee did not maintain any food, eating utensils or dishes. There was also no documentary evidence of a health permit in the premises (N.T. 4-6).
5. Officer Clarke repeated the inspection on May 31, 2005, and found the same conditions as he observed previously (N.T. 7-9).
6. Licensee's health permit expired on April 30, 2003, but the renewal bill was paid on June 20, 2005. There was no valid Preparing/Serving Food Licensee issued to licensee on May 21 and 31, 2005 (Exhibit B-3).

CONCLUSIONS OF LAW:

Sustained as charged.

PRIOR RECORD:

Licensee has been licensed since October 18, 2001, and has had one prior violation:

Citation No. 04-1316. \$700.00 fine. Fine not paid and Licensee suspended one day and thereafter until fine paid.

1. Loudspeakers 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.

NOTICE OF ASSESSMENT OF POINTS PURSUANT TO ACT 239 OF 2004

Section 479 of the Liquor Code, 47 P.S. §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 has been cited for a violation of §471 of the Liquor Code, 47 P.S. §4-471, on or after February 6, 2005, must have points assessed as of the date of the final adjudication. Points are in addition to other provisions of the Liquor Code regarding license transfer and renewal. Points are required to be assigned in addition to 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 §479.

Two points must be assessed for a violation of any requirement of the board or the city to obtain or maintain the license issued by the board, such as failure to operate as a *bona fide* restaurant in violation of §102 of the Liquor Code, 47 P.S. §1-102, as charged in this case.

Section 481(a), 47 P.S. §4-481(a) provides that when any license accumulates ten points or more, the administrative law judge must require the license holder to become compliant with and remain compliant with the provisions of §471.1, 47 P.S. §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. §4-481(b) provides that when any license accumulates fifteen points or more, the administrative law judge must 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 §471.1, two additional points will be removed from the license record.

Notwithstanding other provisions of the Act, §481(c), 47 P.S. §4-481(c), provides that when any license accumulates twenty or more points in more than one citation, the administrative law judge must revoke the license.

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. Penalties are assessed as follows:

- Count Nos. 1 and 2 (merged) – a fine of \$200.00.
- Count No. 3 – a fine of \$200.00 and two points
- Count No. – a fine of \$100.00.

ORDER

THEREFORE, it is hereby ORDERED that Licensee, 4100 V & B, Inc., License No. R-AP-10924, pay a fine of five hundred dollars (\$500.00) 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.

IT IS FURTHER ORDERED that two (2) points are hereby assessed against the record of Licensee, 4100 V & B, Inc., License No. R-AP-10924, as required by 47 P.S. §479(d)(9).

IT IS FURTHER ORDERED that Licensee shall, within 20 days of the mailing date of this order, submit verification in the form attached hereto that the premises now maintains sufficient food, dishes and eating utensils on hand to qualify as a *bona fide* restaurant; and a copy of a valid and current health permit. If Licensee fails to submit the verification and copy of the health permit within the time allowed, the penalty in this case will be modified to include a suspension of license, and for that purpose 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 13th day of March, 2006.

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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.**

**VERIFICATION**

Subject to the penalties contained in 18 Pa. C. S. §4904, relating to unsworn falsification to authorities, the undersigned officer verifies that the licensed premises contains sufficient food, eating utensils and dishes to accommodate at least thirty (30) persons.

Licensee acknowledges that sufficient food, cooking equipment, utensils, and dishes are to be maintained at all times this license is in operation.

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Corporate Officer's Signature

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Date

Submit this verification to:

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