

Mailing Date: OCT 18 2006

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 05-1319
LIQUOR CONTROL ENFORCEMENT	:	
	:	
v.	:	Incident No. W01-309847
	:	
BARMAD INC.	:	
1500 S. BAILEY ST.	:	LID - 9540
PHILADELPHIA PA 19146-4414	:	
	:	
	:	
PHILADELPHIA COUNTY	:	
LICENSE NO. R-663	:	

APPEARANCES:

FOR THE BUREAU OF ENFORCEMENT:

**JAMES E. DAILEY, ESQ.**

FOR THE LICENSEE:

**ROBERT J. BARR, ESQ.**

**BEFORE: JUDGE WRIGHT**

ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation that was issued on July 5, 2005, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter "Bureau") against Barmad, Inc., License Number R-663 (hereinafter "Licensee").

An Administrative hearing was held on Thursday, March 2, 2006, pursuant to requisite and appropriate hearing notice. The parties stipulated to the service and receipt of the notice letter and the citation.

The citation charges Licensee with violation of Section 102 of the Liquor Code, 47 P.S. Section 1-102, in that on May 14, 2005, the licensed premises was not a bona fide restaurant in that Licensee, by its servants, agents or employees, maintained insufficient food items.

FINDINGS OF FACT:

1. Officer Viola is employed by the Bureau of Enforcement and was so employed on May 15, 2005. On May 15, 2005, Officer Viola conducted an investigation of the licensed premises. She arrived at the premises at approximately 12:15 a.m. The investigation by the Bureau was based upon a complaint from the Philadelphia Citywide Vice Unit and the Bureau of Licenses and Inspections (N.T. 6-7).

2. Members of the Citywide Vice Unit and Licenses and Inspections accompanied Officer Viola to the premises. When they entered the premises, Officer Viola noted that there were approximately twenty patrons present. There was a female bartender named Celeste Taylor rendering service of alcoholic beverages to the patrons (N.T. 7-8).

3. Officer Viola identified herself to Ms. Taylor and informed her that she was going to conduct a routine inspection of the premises. Officer Viola inspected the bar area on the first floor (N.T. 7-8).

4. Officer Viola questioned the female bartender with regard to food on the premises. The bartender showed her twelve small cans of tuna behind the bar (N.T. 9-10).

5. The female bartender indicated that there was no other food on the premises (N.T. 9-10).

6. The officer requested beer and liquor invoices for the licensed premises, however, the officer gave the Licensee a chance to present them at a later time. On June 7, 2005, the officer met with a Mr. Barr, who provided copies of the beer and liquor invoices on that date (N.T. 12-13).

7. On June 7, 2005, the officer returned to the premises to collect the receipts, but at that time noted that there was food on the premises in the nature of hot dogs and other items of that nature (N.T. 12-13).

8. On the June 7, 2005 visit, the officer inspected the basement of the premises (N.T. 13-14).

9. Kathleen Raven is employed at the licensed premises as the manager. At the time of the inspection, she was in charge of maintaining food on the premises. Ms. Raven indicated that food is kept upstairs at the bar and downstairs and that there are two refrigerators and a freezer and a storage room with a door. She stated that there were cans of food in the storage room (N.T. 15).

10. She indicated that in the basement there was a case of chicken wings in the freezer and three cases of Dinty Moore Stew on the shelves (N.T. 15).

11. Thomas Barr is the president of the licensed premises. He states that he buys the food. He recalls that on the date of inspection, there were thirty cans of Dinty Moore Stew in the basement, chicken wings in the freezer and cans of tuna fish upstairs (N.T. 22-23).

12. The premises was searched by Licenses and Inspections and they were cited for failing to have the proper exit signs (N.T. 24-25).

#### CONCLUSIONS OF LAW:

On May 14, 2005, the licensed premises was not a bona fide restaurant in that Licensee, by its servants, agents or employes, maintained insufficient food items or the food was not available upon request, in violation of Section 102 of the Liquor Code, 47 P.S. Section 1-102.

#### PRIOR RECORD:

Licensee has been licensed since October 7, 1967, 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. 2194, 1980. \$250.00 fine.

1. Gambling, gambling devices, paraphernalia and/or lotteries.

Citation No. 86-1779. Three days suspension and thereafter until conditions corrected. Licensee's appeal to Common Pleas Court affirmed Board's Order as to Averment #1, reversed Order as to Averment #2 and modified penalty to \$350.00 fine.

1. Not a bona fide restaurant in that there were insufficient seating accommodations at tables.
2. Offered and/or gave things of value as an inducement to purchase alcoholic beverages.

Citation No. 87-1442. \$400.00 fine.

1. Possessed or operated gambling devices or paraphernalia or permitted gambling or lotteries on the licensed premises.

Citation No. 93-1170. \$350.00 fine.

1. Possessed or operated gambling devices or paraphernalia or permitted gambling or lotteries on the licensed premises.

Citation No. 94-2204. \$1,200.00 fine.

1. Sales to minors.
2. Minors frequenting.
3. Not a bona fide restaurant in that chairs at tables were insufficient.

Citation No. 95-2294. One day suspension.

1. Not a bona fide restaurant in that chairs at tables were insufficient.

Citation No. 96-1805. One day suspension.

1. Failed to keep records on the licensed premises.
2. Not a bona fide restaurant in that eating utensils, cooking utensils, dishes and glasses were insufficient.

Citation No. 97-0479. \$400.00 fine and one day suspension.  
OALJ reconsidered and vacated the \$400.00 fine.

1. Not a bona fide restaurant in that they failed to provide food upon request.

Citation No. 02-2000. \$600.00 fine.

1. Sold, furnished or gave liquor for consumption off premises.  
June 13, July 19, 20 and August 18, 2002.

#### DISCUSSION:

Counsel argued that two people familiar with the bar indicated that there was food on the premises. He stated that the officer did not inspect the basement when he was inside of the licensed premises. He stated that food was stored in the freezer. Bureau counsel indicated that on March 21, 2006, Officer Viola gave the bartender several opportunities to provide food, but the bartender did not show her any other food on the premises.

In order for a premises to be a bona fide restaurant, licensees or their employees must be able to provide food upon request. With regard to food being in the basement, if the bartender could not produce food for an officer from the Bureau of Enforcement, then surely the bartender would have been unable to produce it for a customer. Even if the Court believed that there was food in the basement, it was not available upon request.

The Licensee has a rather lengthy prior record. They have had no violations since 2002. Licensee has in the past been cited on numerous occasions for failure to provide food upon request. Under the circumstances, a monetary penalty shall be imposed, however, the Licensee is warned that future violations will be treated with much greater severity.

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 two points have been assigned to your record.

Barmad, Inc.  
Citation No. 05-1319

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, Barmad, Inc., License Number R-663, pay a fine of Five Hundred Dollars (\$500.00) 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 two (2) points are hereby assessed against the record of Licensee, Barmad, Inc., License Number R-663, 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 11<sup>th</sup> day of October, 2006.

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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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