

Mailing Date: OCT 26 2006

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation Nos. 05-1014
LIQUOR CONTROL ENFORCEMENT	:	& 05-1627
	:	(Consolidated for Hearing
	:	Purposes Only)
	:	
v.	:	Incident Nos. W01-310000
	:	& W01-314939
YONG'S PLACE INC.	:	
5937 MARKET ST.	:	LID - 24220
PHILADELPHIA PA 19139-3119	:	
	:	
	:	
	:	
	:	
PHILADELPHIA COUNTY	:	
LICENSE NO. R-SS-14561	:	

APPEARANCES:

FOR THE BUREAU OF ENFORCEMENT:

JAMES E. DAILEY, ESQ.

FOR THE LICENSEE:

THOMAS NOCELLA, ESQ.

BEFORE: JUDGE WRIGHT

ADJUDICATION

BACKGROUND:

This proceeding arises out of citations that were issued on May 25, 2005 and August 16, 2005, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter "Bureau") against Yong's Place, Inc., License Number R-SS-14561 (hereinafter "Licensee").

An Administrative hearing was held on Thursday, October 20, 2005, pursuant to requisite and appropriate hearing notice. The parties stipulated to the service and receipt of the notice letter and the citation.

The citations are as follows:

Citation No. 05-1014

The citation charges Licensee with violation of Section 102 of the Liquor Code, 47 P.S. Section 1-102, in that on April 22, 2005, the licensed premises was not a bona fide restaurant in that Licensee, by its servants, agents or employes, maintained insufficient food items, and insufficient seating.

Citation No. 05-1627

The citation charges Licensee with violation of Section 102 of the Liquor Code, 47 P.S. Section 1-102, in that on July 18, 2005, the licensed premises was not a bona fide restaurant in that Licensee, by its servants, agents or employes, maintained insufficient food items and seating.

CITATION NO. 05-1014

FINDINGS OF FACT:

1. Officer Hendrzak is employed by the Bureau of Enforcement and was so employed on April 22, 2005 when he visited the licensed premises in conjunction with an investigation by the Bureau of Enforcement. Officer Hendrzak entered the premises at approximately 3:00 p.m. in order to conduct a routine inspection of the premises (N.T. 6-7).

2. Officer Hendrzak indicated that if he walked into the premises on the left hand side he saw food and seating arrangements. As he kept walking, he faced bulletproof glass and a cashier area where he could purchase items. The premises was open and operating and alcoholic beverages were available for sale. There were approximately four patrons in the premises when the officer entered. Officer Hendrzak identified himself to Mr. Wook, who was behind the bulletproof glass (N.T. 7-8).

3. Officer Hendrzak informed Mr. Wook that he would be conducting a routine inspection of the premises. After inspecting the premises, Officer Hendrzak determined which areas were licensed. Those areas included the basement and the first floor. The basement could not be accessed because there were cases of beer stacked in front of the door (N.T. 8-9).

4. In order to get to the basement area, you must go through a caged door. Mr. Wook unbolted the case to allow the officer to enter. There was also a bulletproof glass door, which was not bolted, but was wedged tight. They pushed the door open to allow the officer to enter that area (N.T. 9-10).

5. The officer noted that there was booth seating, which could accommodate approximately twenty-four patrons. He estimated that he could sit three people on each side of the table. The officer observed food on the premises, but it was in the nature of small items, such as beef jerky. Mr. Wook indicated to the officer that they had no food other than snacks. There were only enough snacks to serve five or six people (N.T. 11-14 and 16).

6. The officer observed a grill in the area of the kitchen. It appeared that the kitchen was under construction. The grill had things on top of it and was not in use. Mr. Wook put the officer on the phone with Mr. Yong, the president and owner of the licensed premises (N.T. 13).

7. Mr. Yong confirmed that there was no other food on the premises. He also informed him there were no other seating arrangements (N.T. 13).

8. Mr. Yong provided the officer with financial figures (N.T. 15).

9. The officer inquired as to whether there were any other seating arrangements on the premises (N.T. 16).

10. The officer entered a walk-in refrigerator, which was approximately eight by twenty feet. The refrigerator contained boxes of pudding and beer. There was another refrigerator on the premises with only ice inside of it (N.T. 23-24).

11. The officer noted that there was flat type in a large kitchen area. There was a cold cut tray but it contained no cold cuts (N.T. 28).

12. There was no additional seating behind the counter (N.T. 29).

13. There were no patrons in possession of food (N.T. 30).

14. Yong Hong is the president of the licensed premises. He was the president in April of 2005 when the Bureau conducted an investigation of the licensed premises. He recalls receiving a phone call from Mr. Wook telling him that the Bureau officer was inspecting the premises (N.T. 32-33).

15. At that time, Mr. Yong spoke to the officer regarding income at the premises. Mr. Yong indicated that there was a total of \$7,000.00 in sales, which included \$3,000.00 in food sales and \$4,000.00 in sales of all other items at the licensed premises. He also discussed seating with the officer and claims that he explained that there were 32 chairs and food, but that the officer did not listen to him. Mr. Yong indicated that he was fixing some of the 32 chairs (N.T. 32-35).

16. According to Mr. Yong, when he left the premises earlier in the day, he counted a table that he had fixed and 24 chairs and an additional new table and six chairs making thirty on the premises (N.T. 35).

17. Mr. Yong presented photographs of the premises which were taken the twenty-fifth day of September, 2005 showing seating at the premises (N.T. 35-36).

18. Mr. Yong claims that those tables and chairs would have been visible and that they were behind the walk in refrigerator (N.T. 37-38).

19. Mr. Yong further claims that there were two five pound boxes of hot sausages and ten bricks of American cheese inside the walk in. In addition, Mr. Yong claimed that there chicken wings and a four case of steak (N.T. 41).

20. Mr. Yong indicates that there were cooking oils and bread products on the premises (N.T. 42-43).

21. Mr. Yong claimed that the grill was turned on that day (N.T. 43).

22. However, Mr. Yong also indicated that he was not on the premises on the day of the officer's visit, but was there the night before (N.T. 43-44).

23. Mr. Yong stated that Mr. Wook was on the premises and that English is not his first language and that he does not speak English well (N.T. 44).

24. Mr. Wook is responsible for taking orders, both beer and food (N.T. 45).

25. The officer did not return to the premises during the course of this investigation and no other violations were found (N.T. 18).

26. Certified records of the Liquor Control Board indicate the licensed premises consists of a first floor serving area with a seating capacity of thirty, a serving area, a kitchen and a basement storage area (N.T. 16-17 and Exhibit B-3).

CONCLUSIONS OF LAW:

On April 22, 2005, the licensed premises was not a bona fide restaurant in that Licensee, by its servants, agents or employes, maintained insufficient food items, and insufficient seating, in violation of Section 102 of the Liquor Code, 47 P.S. Section 1-102.

CITATION NO. 05-1627

FINDINGS OF FACT:

1. Officer Hendrzak visited the licensed premises on July 18, 2005 at approximately 1:40 p.m. Officer Hendrzak originally inspected the premises on April 22, 2005. The officer informed the Licensee that the deficiencies needed to be corrected within 90 days and that he would be back for a compliance check. Officer Hendrzak identified himself to the person who appeared to be in charge and told him that he would be conducting a routine compliance check. Officer Hendrzak indicated that on his first visit, he could not get into the basement and had the same problem on his second visit. In order to get into the basement, he had to proceed through a cage that was locked from the inside in a bulletproof glass door. There were two cases of beer that were stacked in front of the door (N.T. 49-51).

2. Officer Hendrzak indicated that there were wooden pallets on the floor with numerous cases of beer on them (N.T. 51).

3. Officer Hendrzak observed a grill in an area where he presumed they make sandwiches or hoagies. The grill was off and there was a styrofoam container on top of it (N.T. 51-52).

4. Officer Hendrzak observed a walk in refrigerator and cases of beer. He indicated there was less beer than on his first visit. He walked in and looked inside. There were no food items in the walk in refrigerator. He searched the freezer. He could not identify the contents but was told that there was chicken and steak inside. Whatever meats were in there were not covered and were freezer burned (N.T. 52-54).

5. Officer Hendrzak searched the entire premises and found no other food (N.T. 54-55).

6. Mr. Yong and two Asian females accompanied the officer as he inspected the premises (N.T. 55).

7. The full seating was present but one booth had been broken so there were three less available chairs (N.T. 56).

8. The officer estimated that there were approximately twenty-three seats available on the premises and approximately four tables. There was no other freestanding seating (N.T. 56).

9. The officer inspected all the licensed areas (N.T. 57 and Exhibit B-3).

10. The officer completed an inspection report which indicated that there was only freezer burned chicken and hamburgers and food that was not consumable on the premises. The Licensee signed the inspection report (N.T. 60 and Exhibit B-4).

11. Officer Hendrzak checked the freezer twice to make sure that there was no other food in it (N.T. 63).

12. Mr. Yong indicated that he was able to thaw his meat out and slice it and that it thaws in approximately one hour (N.T. 67).

CONCLUSIONS OF LAW:

On July 18, 2005, the licensed premises was not a bona fide restaurant in that Licensee, by its servants, agents or employes, maintained insufficient food items and seating, in violation of Section 102 of the Liquor Code, 47 P.S. Section 1-102.

PRIOR RECORD:

Licensee has been licensed since March 20, 1991, and has a record of prior violations as follows:

Citation No. 91-2300. \$150.00 fine and one day suspension with thereafter conditions.

1. Not a bona fide restaurant in that chairs at tables were insufficient.
2. Operated another business on the licensed premises without Board approval. (Withdrawn by Bureau)

Citation No. 99-1815. \$50.00 fine.

1. Issued worthless checks in payment for malt or brewed beverages.
August 26, 1999.

DISCUSSION:

The Court found Officer Hendrzak's testimony to be credible and reliable. The Licensee indicates that there may have been problems of communication with a non-English speaking person or that Officer Hendrzak spoke to someone other than him over the telephone. It is clear that Officer Hendrzak made an inspection of the premises inspecting all licensed areas. There was no grill in use, there was inadequate seating, there was food that could not be readily consumed or consumed at all in that it appeared that whatever was there was freezer burned and not edible.

It would behoove Licensee to make some substantial changes in the operation of the premises so as to have adequate seating and edible foodstuff. The Licensee will be required to submit a Verification indicating that they are now in compliance. It is understandable that with the Market Street construction that no one may be coming in to buy food. However, if they continue to sell alcohol, food must be available.

Under the circumstances, a 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.

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 four points have been assigned to your record.

Yong's Place, Inc.
Citation No. 05-1014

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.

Therefore, penalties shall be assessed as follows:

Citation No. 05-1014
Count No. 1 - \$250.00.

Citation No. 05-1627
Count No. 1 - \$350.00.

Accordingly, we issue the following

ORDER:

THEREFORE, it is hereby Ordered that Licensee, Yong's Place, Inc., License Number R-SS-14561, pay a fine of Six Hundred Dollars (\$600.00) 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 four (4) points are hereby assessed against the record of Licensee, Yong's Place, Inc., License Number R-SS-14561, as required by 47 P.S. Section 4-479(d)(9).

IT IS ALSO ORDERED that Licensee, Yong's Place, Inc., License Number R-SS-14561, submit a Verification indicating that the licensed premises is a bona fide restaurant, in that they now maintain sufficient food items and sufficient seating. Said documentation must be submitted within twenty (20) days from the mailing date of this Order. If said documentation is not submitted within twenty (20) days from the mailing date of this Order, Licensee's license will be suspended for one (1) day and **continuing thereafter** until such documentation is received.

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:

Yong's Place, Inc.
Citation No. 05-1014

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.

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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VERIFICATION

I/We, Yong's Place, Inc., License No. R-SS-14561, do hereby affirm that the licensed premises contains sufficient seating accommodations for at least thirty (30) persons at tables. Yong's Place, Inc. has _____ (number) chairs at tables.

I/We, Yong's Place, Inc., also affirm that there are _____ (number) tables, and the dimensions of the tables are as follows: _____.

I/We, Yong's Place, Inc., further affirm that food is served on the premises (attach menu or list of items offered for sale) as of _____ (date).

I/We, Yong's Place, Inc., acknowledge that thirty (30) seats at tables are to be maintained at all times pursuant to this license.

Subject to the penalties contained in 18 Pa. C.S. Section 4904, relating to unsworn falsification to authorities, the undersigned officer(s) verifies that I/We are signing and executing this document as the authorized act and deed of the licensee. I/We hereby certify that the foregoing is true and correct.

Corporate Officer's Signature

Corporate Officer's Signature

Date

Date

NOTE: Mail Verification and accompanying documents to:

PLCB – OFFICE OF ADMINISTRATIVE LAW JUDGE
Brandywine Plaza
2221 Paxton Church Road
Harrisburg, Pennsylvania 17110-9661