

Mailing Date: MAR 06 2007

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 05-1636
LIQUOR CONTROL ENFORCEMENT	:	
	:	
v.	:	Incident No. W01-314778
	:	
LAM'S 4836 DELI INC.	:	
T/A SUNNY'S BROAD DELI	:	LID - 45287
4834-36 N. BROAD ST.	:	
PHILADELPHIA PA 19141-2108	:	
	:	
	:	
PHILADELPHIA COUNTY	:	
LICENSE NO. R-SS-2835	:	

APPEARANCES:

FOR THE BUREAU OF ENFORCEMENT:

JAMES E. DAILEY, ESQ.

FOR THE LICENSEE:

JOHN J. McCREESH, III, ESQ.

BEFORE: JUDGE WRIGHT

ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation that was issued on August 22, 2005, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter "Bureau") against Lam's 4836 Deli, Inc., t/a Sunny's Broad Deli, License Number R-SS-2835 (hereinafter "Licensee").

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An Administrative hearing was held on Tuesday, May 16, 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 July 13, 2005, the licensed premises was not a bona fide restaurant in that Licensee, by its servants, agents or employees, maintained insufficient seating.

FINDINGS OF FACT:

1. Edward Mullen is employed by the Bureau of Enforcement and was so employed as an Enforcement officer on July 13, 2005. On that date, he investigated the licensed premises arriving at 1:35 p.m. (N.T. 5-6).

2. Officer Mullen was accompanied by Officers Gall, Rowe and Hendrzak, also from the Bureau of Enforcement. The officers were present to conduct a routine inspection of the premises (N.T. 6).

3. When the officer entered the premises, he entered on Broad Street. He noted that this was a seating area with two tables and eight chairs. Specifically, he saw two booths and eight chairs (N.T. 7).

4. The officer also noted a bulletproof glass with a cash register behind it. There were a few patrons on the premises seated to the right as you walk in. The premises was in fact open and operating (N.T. 7).

5. The officer identified himself to a Mr. Ayv who indicated he was an employee on the premises. He told me Ayv that he was going to conduct a routine inspection of the premises. The officer then proceeded to inspect the liquor license as well as other licensed areas of the premises, which included the basement and back kitchen area and the storage room where they found approximately thirty chairs. Officer Mullen saw only eight chairs and one of the eight chairs was broken. He counted seven functioning chairs and two booths (N.T. 8-9).

6. Based upon the other officer's observations, he compiled the inspection report (N.T. 9).

7. Officer Mullen indicated that he believes that this property was once two properties, i.e. 3834-3836 (N.T. 10-11).

8. The officer indicated that according to the records on file at the district office, the first floor is a fifteen-foot by sixty-two foot area and on the first floor there is a serving area of forty feet by eight feet and a kitchen of eight feet by eight feet. She indicated that the remaining portion of that serving area would have been behind the locked door (N.T. 13 and Exhibits B-3 and B-4).

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9. Mr. Ayv took a key from behind the bulletproof glass and opened the storage area. Officer Mullen did not inspect that area but one of the other officers did (N.T. 14).

10. Officer Gall was working as an Enforcement officer on July 13, 2005 in the company of Officer Mullen and his investigation of the premises. The officer looked for seating in the immediate area and saw only eight seats, some of which were broken (N.T. 16-17).

11. This officer did not check the basement area. Upon request by Officer Hendrzak, one of the employees's opened a locked area of the premises, which was near the storage area. There were approximately thirty plus chairs in that area and some tables. The officer saw approximately 100 cases of beer (N.T. 17-18).

12. There were no patrons in this locked area (N.T. 19).

13. Geoffrey Lam is the corporate owner of the licensed premises. The officer found that the licensed establishment is comprised of two buildings, which are approximately fifteen feet by sixty-two feet long. He confirmed that there were approximately eight chairs in the front area and that one chair was broken (N.T. 20-21).

14. Mr. Lam indicated that behind the locked door, there are approximately twenty-three chairs combined with the chairs from the other room there are approximately thirty-one chairs (N.T. 21).

15. Mr. Lam indicated that when patrons come in, they sit on the right hand side and if they ever have more than eight patrons, they would open up the other side (N.T. 22).

16. They have now moved all the seats from the left side to the right side. There are now thirty seats available (N.T. 23).

CONCLUSIONS OF LAW:

On July 13, 2005, the licensed premises was not a bona fide restaurant in that Licensee, by its servants, agents or employes, maintained insufficient seating, in violation of Section 102 of the Liquor Code, 47 P.S. Section 1-102.

PRIOR RECORD:

Licensee has been licensed since December 20, 1999, and has no record of prior violations.

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DISCUSSION:

The officer stated that this was not a bona fide restaurant in that the Licensee had insufficient seating on July 13, 2005. The seating that the officer saw in an open area of the premises consisted of only seven usable seats. Behind a locked portion of the premises, which was completely inaccessible to the public, there was additional seating, however, that seating was commingled with a storage area. It appeared to be primarily used as a storage area and according to the officer's observation was not conducive to a dining area. The Licensee has indicated that they have now corrected the problem. Therefore, no Verification will be required.

After careful review in noting that there is no prior record, a \$400.00 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.

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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.

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, Lam's 4836 Deli, Inc., t/a Sunny's Broad Deli, License Number R-SS-2835, pay a fine of Four Hundred Dollars (\$400.00) 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, Lam's 4836 Deli, Inc., t/a Sunny's Broad Deli, License Number R-SS-2835, 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 28th day of February, 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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