

Mailing Date: APR 10 2006

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 05-1682
LIQUOR CONTROL ENFORCEMENT	:	
	:	
v.	:	Incident No. W01-313513
	:	
BARRY'S INC.	:	
2803 W. 3 RD ST.	:	LID - 41651
CHESTER PA 19013-2204	:	
	:	
	:	
DELAWARE COUNTY	:	
LICENSE NO. R-AP-SS-285	:	

APPEARANCES:

FOR THE BUREAU OF ENFORCEMENT:

JAMES E. DAILEY, ESQ.

FOR THE LICENSEE:

EX PARTE

BEFORE: JUDGE WRIGHT

ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation that was issued on August 26, 2005, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter "Bureau") against Barry's, Inc., License Number R-AP-SS-285 (hereinafter "Licensee").

An Administrative hearing was held on Tuesday, February 14, 2006, pursuant to requisite and appropriate hearing notice. Despite notice of the hearing having been sent to the Licensee, no one appeared. Therefore, this hearing proceeded *ex parte*.

The citation contains three counts.

The first count charges Licensee with violation of Section 493(12) of the Liquor Code, 47 P.S. Section 4-493(12), in that on June 22, 2005, Licensee, by its servants, agents or employes, failed to keep on the licensed premises and/or provide an authorized employee of the Enforcement Bureau access to, or the opportunity to copy, complete and truthful records covering the operation of the licensed business.

The second count charges Licensee with violation of Section 493(12) of the Liquor Code, 47 P.S. Section 4-493(12), in that Licensee, by its servants, agents or employes, failed to maintain complete and truthful records covering the operation of the licensed business for a period of two (2) years immediately preceding June 22, 2005.

The third count charges Licensee with violation of Section 5.52 of the Liquor Control Board Regulations, 40 Pa. Code Section 5.52, in that on June 22, 2005, Licensee, by its servants, agents or employes, failed to maintain coil cleaning records.

COUNT NOS. 1, 2 AND 3

FINDINGS OF FACT:

1. The Bureau of Enforcement conducted an investigation of the licensed premises which began June 22, 2005 and concluded July 14, 2005. A notice of violation letter dated July 22, 2005 was sent to the premises by certified mail, return receipt requested. The certified mailing was returned unclaimed. An amended Notice of Violation letter was sent to the licensed premises on August 5, 2005 restating a charge relative to failure to maintain complete and truthful records. That notice was sent by certified mail, return receipt requested and was signed as received on August 8, 2005. A citation dated August 26, 2005 was sent to the licensed premises by certified mail, return receipt requested. That mailing was signed as received on August 29, 2005. A citation hearing notice was sent to the licensed premises by the Office of Administrative Law Judge, dated January 5, 2006 by certified mail, return receipt requested and by first class mailing. That mailing was signed by Pat Stoner on January 7, 2006 (N.T. 14-16 and Exhibits B-1 and B-2).

2. Jamie Cooper is employed as an Enforcement officer and on June 22, 2005, she conducted an investigation of the licensed premises located in Chester, Pennsylvania. The officer went there to conduct a routine inspection of the premises. She arrived at approximately 4:00 p.m. accompanied by two other officers. The officer noted that the bar was located to the right. There were about twenty seats around the bar and some smaller tables to the left. Towards the back of the premises were small kitchen facilities. There was a storage area in the basement which Officer Cooper checked (N.T. 6-7).

3. When the officer arrived, there were three patrons on the premises. The bar was open and operating. There was a female bartender on the premises named Cynthia. The officers identified themselves and showed their badges. They told her that they were there to conduct a general inspection of the premises. She then introduced them to a man named Carl Porter who stated he was employed at the premises and that he would show them around so that she could continue waiting on customers (N.T. 7-8).

4. The officers inspected the kitchen and bar area. They found that there were beer taps, but no coil cleaning records (N.T. 8).

5. The officers asked for beer and liquor invoices receipts and coil cleaning records. Mr. Porter indicated that he would have to talk to his boss, Elwin Robinson, with regard to the records (N.T. 8-9).

6. The officer left Cynthia with a copy of a routine inspection report with his number on the top of it. He indicated the things that he needed for her to get from her manager and asked to have her manager call him within the next few days. Cynthia indicated that the manager usually comes in after 6:00 p.m. in the evening (N.T. 9-10 and Exhibit B-3).

7. The officer attempted to contact Mr. Robinson approximately six or seven times. He called on June 28, 2005 and left a message for him on July 5, 2005. The request for records was dropped off to the premises on July 8, 2005. The officer received a message on July 12, 2005 from the manager. He returned his call on July 12, 2005. On July 13, 2005 at 2:55 p.m., the manager (Mr. Robinson) left a message for the officer. The officer attempted to return the call shortly thereafter, but was unable to reach him, so the officer left a message that Mr. Robinson needed to respond by 6:00 p.m. on July 14, 2006, or a citation would be issued. The officer never received another call from Mr. Robinson (N.T. 12-13).

8. The officer was never provided with liquor and beer invoices (N.T. 13).

9. Officer Daniel Harris is employed by the Bureau of Enforcement. On July 8, 2005, he visited the licensed premises along with Officer Burns and presented a records request form to a female bartender who was there at the time. She was identified as Cynthia. After she signed the request, he gave her a copy and took another copy back to the office. No records were available on that date. She indicated that she would forward the request to the owner. The officers were looking for beer and liquor invoices and cleaning coils records (N.T. 17-18).

CONCLUSIONS OF LAW:

All statutory prerequisites for notice to the Licensee were satisfied.

Count No. 1 - On June 22, 2005, Licensee, by its servants, agents or employes, failed to keep on the licensed premises and/or provide an authorized employee of the Enforcement Bureau access to, or the opportunity to copy, complete and truthful records covering the operation of the licensed business, in violation of Section 493(12) of the Liquor Code, 47 P.S. Section 4-493(12).

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Count No. 2 - Licensee, by its servants, agents or employes, failed to maintain complete and truthful records covering the operation of the licensed business for a period of two (2) years immediately preceding June 22, 2005. The second count charges Licensee with violation of Section 493(12) of the Liquor Code, 47 P.S. Section 4-493(12).

Count No. 3 - On June 22, 2005, Licensee, by its servants, agents or employes, failed to maintain coil cleaning records, in violation of Section 5.52 of the Liquor Control Board Regulations, 40 Pa. Code Section 5.52.

PRIOR RECORD:

Licensee has been licensed since February 5, 1998, and has no record of prior violations.

DISCUSSION:

Licensee has no prior citation history, therefore, monetary penalties shall be imposed. Licensee did not appear at the hearing to defend or explain these charges. It is imperative that Licensee cooperate with Enforcement officers to avoid future enforcement action. Failure to have the coils cleaned can result in health related issues and can be a serious offense. Records of the coil cleaning must be kept on the premises along with other records concerning the operation of the premises.

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:

Count Nos. 1 and 2 (as merged) - \$250.00.
Count No. 3 - \$250.00.

Accordingly, we issue the following

ORDER:

THEREFORE, it is hereby Ordered that Licensee, Barry's, Inc., License Number R-AP-SS-285, 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.

In order to insure compliance with this Order, jurisdiction of this matter is retained.

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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 31st day of March, 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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