

Mailing Date: OCT 26 2006

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 05-1760
LIQUOR CONTROL ENFORCEMENT	:	
	:	
v.	:	Incident No. W01-315509
	:	
2842 J & K INC.	:	
2842 W. GIRARD AVE.	:	LID - 49720
PHILADELPHIA PA 19130-1215	:	
	:	
	:	
PHILADELPHIA COUNTY	:	
LICENSE NO. R-SS-14165	:	

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 September 6, 2005, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter "Bureau") against 2842 J & K, Inc., License Number R-SS-14165 (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 July 28, 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. On July 28, 2005, Enforcement Officer B. Hendrzak visited the licensed premises in order to conduct an investigation on behalf of the Bureau of Enforcement. The officer arrived at approximately 1:20 p.m. and conducted a routine inspection of the premises. When the officer entered the premises, it was open and operating (N.T. 5-6).

2. The officer noted that there was an enclosure with one person behind it. He noted approximately nine chairs in the open room. The officer also noted one or two tables. There were patrons going in and out of the premises during his visit (N.T. 6-7).

3. The officer identified himself to a Mr. Yim who appeared to be in charge of the licensed premises. He informed Mr. Yim that he was there to conduct a routine inspection. The officer inspected all licensed areas of the premises except for the basement, because it was not accessible (N.T. 7-8).

4. When the officer inspected the first floor and the second floor, he noted that there was only one extra table on the premises. Mr. Yim informed the officer that there is additional seating on the second floor. Mr. Yim unlocked the door which led to the second floor. When he went up the stairs, the steps were full of debris, trash and cases of soda and beer. He proceeded up the steps to what Mr. Yim called the serving area on the second floor (N.T. 8-9).

5. The officer saw tables set up in this room, along with cases of beer, soda and food (N.T. 10).

6. There was also a bed stored in this area (N.T. 10).

7. The officer had determined which areas were licensed prior to coming to the premises. He reviewed the district file (N.T. 11-12).

8. The upstairs bedroom was designated as a serving area, but was clearly being used for storage (N.T. 12).

9. The officer determined that there were nine chairs accessible (N.T. 13).

10. The officer saw a room larger than either one of those designated areas, one large room with dimensions of approximately that of both of the rooms indicated in the records of the Bureau (N.T. 19).

11. The officer saw an indentation in the wall in the larger room, however there was no door (N.T. 21).

12. Jake Yim is the owner of the licensed premises and has been for approximately three years. When he purchased the premises it had a seating area, two restrooms and a storage area on the second floor. He stated that there was a separate storage area across from the seating area (N.T. 25-26).

13. Mr. Yim claims that there were over 31 seats in the serving area. There were two separate areas when he purchased the premises and there are still two separate areas for serving and storage (N.T. 27).

14. Mr. Yim stated that the licensed premises includes a cellar with a walk in box (N.T. 28-29).

15. Mr. Yim denies that there is a bed on the second floor (N.T. 29).

16. Mr. Yim stated that patrons go to the second floor to eat and drink on a daily basis (N.T. 29).

17. Mr. Yim indicated that there are five tables and eleven chairs in the second floor serving area (N.T. 29-30 and Exhibit L-2).

18. Mr. Yim indicated that there are twenty-one chairs and three tables on the first floor (N.T. 29).

19. Mr. Yim stated that he has had food (N.T. 33).

#### CONCLUSIONS OF LAW:

On July 28, 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 October 8, 2002, and has no record of prior violations.

DISCUSSION:

The Court finds the officer credible and believes that he did a thorough examination of the second floor. The space which was shown to the officer was clearly unsuitable for service of food and alcohol and there was no other seating. Under the circumstances, the Court finds that the Licensee was in violation the day of the officer's visit. The Court will accept Licensee's photographs and trust that they are now in compliance. It would behoove Licensee to continue to maintain this serving area and other adequate seating on the premises.

In that Licensee has no prior violations, a \$300.00 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.

2842 J & K, Inc.  
Citation No. 05-1760

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, 2842 J & K, Inc., License Number R-SS-14165, pay a fine of Three Hundred Dollars (\$300.00) 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, 2842 J & K, Inc., License Number R-SS-14165, 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 19<sup>th</sup> day of October, 2006.

---

Tania E. Wright, J.

2842 J & K, Inc.  
Citation No. 05-1760

**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.

mm