

Mailing Date: APR 18 2007

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 05-1763
LIQUOR CONTROL ENFORCEMENT	:	
	:	
v.	:	Incident No. W01-315525
	:	
2358 SENG ENTERPRISES INC.	:	
2358 N. 15 <sup>TH</sup> ST.	:	LID - 54470
PHILADELPHIA PA 19132-3902	:	
	:	
	:	
	:	
PHILADELPHIA COUNTY	:	
LICENSE NO. R-6411	:	

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 2358 Seng Enterprises, Inc., License Number R-6411 (hereinafter "Licensee").

An Administrative hearing was held on Wednesday, March 29, 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. Officer Hendrzak visited the licensed premises on July 28, 2005 at approximately 1:55 p.m. The officer stated that as you walk in the front door, there is a small area with beer posters. The inside portion of the counter is made of wood and the upper portion is made of bulletproof glass. There was a porthole where money is exchanged (N.T. 9-11).

2. When the officer entered the door, he introduced himself to Mr. Tang who was behind the counter and informed Mr. Tang that he would be conducting a routine inspection of the premises. There was no seating in the area where the officer entered. After he identified himself to Mr. Tang, they proceeded to a bolted cage on the far wall. Mr. Tang unlocked the bolted cage and proceeded through it. When he unbolted it, there was a door, which he unlocked. The officer noted that there was an area with a beer cooler and a small kitchen (N.T. 13-14).

3. Patrons were coming in and out of the premises while the officer was inspecting it (N.T. 14).

4. When the customers made purchases, they walked to the porthole, asked for items and the items were retrieved and served through the porthole (N.T. 14).

5. When the officer proceeded through the door, Mr. Tang locked the door behind them. The officer inspected the kitchen area and asked Mr. Tang to show him the seating area. The only seating in the immediate area was one chair. Mr. Tang told the officer that his seating area was on the second floor (N.T. 15).

6. In order to get to the second floor, they went through a doorway, from which he pulled away two mattresses to get upstairs in the stairwell. The stair area used to access the second floor was behind the bolted door. In order to get upstairs, Mr. Tang had to pull away cases of beer and soda items. The officer and Mr. Tang went to a large room on the second floor. He observed different types of chairs at tables. There was booth seating and a small bench. There was adequate seating in this area (N.T. 16-17).

7. In the middle of all of these tables and chairs, there was a bed with covers on it. It had no headboard or footboard. The bed was on a frame and there was a box spring, mattress and pillow, sheet and blanket on the bed (N.T. 17-18).

8. The officer noted that there were ten tables although the seats were hard to count because they were stacked on top of each other and some were bench seating. The officer did conclude that there were definitely enough chairs to meet the minimum requirement of the Liquor Code (N.T. 18-19).

9. The officer completed a routine inspection report, which indicated there were chairs upstairs with mattresses/rubbish and bedding in the middle behind the bolted cage (N.T. 21-22 and Exhibit B-3).

10. Mary Seng is the president of the licensed premises. Peter Tang is her father. They made settlement on the property on July 15, 2005, when the Board approved the transfer of the license on April 18, 2005 (N.T. 23 and Exhibit L-2).

11. The Licensee indicated that they took possession approximately ten days before and did not change the premises in any way. They indicated that the second floor is two rooms with a large serving area and a back room. Mary Seng indicated that there were a number of things in the storage room at the time that they purchased the premises (N.T. 30-31).

12. The Licensee showed the Court pictures depicting the serving area, restroom, storage area and the private room in the back (N.T. 32-33 and Exhibit L-4).

13. The Licensee claimed that people use the second floor to eat and that changes were made on the first floor. Peter Tang indicated that on the date the officer was there, he was cleaning up the room and waiting for assistance to move the mattress (N.T. 38-40).

#### 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 April 18, 2005, and has no record of prior violations.

#### DISCUSSION:

From the officer's credible description of the licensed premises, it is highly unlikely anyone was using the second floor for dining. The Licensee claims that area consisted of two rooms, if there were two, neither was accessible. A Licensee had purchased the premises a short time prior to the officer's visit. Licensee was evidently not ready to open the premises. There was no way that the public could have immediate access or any access to the serving area. The officer went through extraordinary means to get to the area. The officer saw a mattress and cases of beverages blocking the stairwell.

There were usable seats on the second floor, however, there was also a room with a made up bed. None of that speaks to the operation of a restaurant. The Licensees explanation that they were moving the mattress is completely unsatisfactory in that the mattresses should have been moved or out of the way prior to the opening of the establishment.

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.

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, 2358 Seng Enterprises, Inc., License Number R-6411, 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 Licensee, 2358 Seng Enterprises, Inc., License Number R-6411 submit a Verification indicating that the premises now maintains 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 shall be suspended for one (1) day and **continuing thereafter** until such documentation is received.

IT IS FURTHER ORDERED that two (2) points are hereby assessed against the record of Licensee, 2358 Seng Enterprises, Inc., License Number R-6411, 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 11th day of April, 2007.

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Tania E. Wright, J.

2358 Seng Enterprises, Inc.  
Citation No. 05-1763

**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

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I/We, 2358 Seng Enterprises, Inc., License No. R-6411, do hereby affirm that the licensed premises contains sufficient seating accommodations for at least thirty (30) persons at tables. 2358 Seng Enterprises, Inc. has \_\_\_\_\_ (number) chairs at tables.

I/We, 2358 Seng Enterprises, Inc. also affirm that there are \_\_\_\_\_ (number) tables, and the dimensions of the tables are as follows:

\_\_\_\_\_  
\_\_\_\_\_.

I/We, 2358 Seng Enterprises, 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