

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. 05-1805
LIQUOR CONTROL ENFORCEMENT	:	
	:	
v.	:	Incident No. W01-316076
	:	
SIT DOWN CORP.	:	
2200 N. BROAD ST.	:	LID - 42309
PHILADELPHIA PA 19132-4501	:	
	:	
	:	
PHILADELPHIA COUNTY	:	
LICENSE NO. E-SS-4219	:	

APPEARANCES:

FOR THE BUREAU OF ENFORCEMENT:

**JAMES E. DAILEY, ESQ.**

FOR THE LICENSEE:

**JOONG K. SONG  
PRO SE**

**BEFORE: JUDGE WRIGHT**

ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation that was issued on September 13, 2005, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter "Bureau") against Sit Down Corp., License Number E-SS-4219 (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 August 5, 2005, the licensed premises was not a bona fide eating place in that Licensee, by its servants, agents or employes, maintained insufficient seating.

FINDINGS OF FACT:

1. The Bureau of Enforcement conducted an investigation which began on August 5, 2005 and ended on the same date. By way of notice of violation letter dated August 22, 2005 mailed to the licensed premises by certified mail, return receipt requested, the Bureau gave notice to the Licensee of the pending violation. The return receipt was signed as received on August 25, 2005. A citation dated September 13, 2005 was sent to the licensed premises by certified mail, return requested. The mailing was signed as received on September 16, 2005. Notice of this hearing was sent to the Licensee by the Office of Administrative Law Judge in Harrisburg on February 17, 2006 by certified mail, return receipt requested as well as by first class mail. The Licensee received notice and was present and represented himself at the hearing (N.T. 20-23 and Exhibits B-1 and B-2).

2. The Licensee, Joong K. Song, president of the licensed corporation, appeared with his son-in-law, an employee of the premises, Mr. Richard Kim. Mr. Song indicated that he did not speak a lot of English and wished to communicate through his son-in-law, Mr. Kim. Mr. Kim was sworn in as an interpreter and also testified as a witness (N.T. 6-10).

3. Mr. Kim indicated that he could speak Korean and English and that his father-in-law, Mr. Song, was Korean speaking and that he would interpret for him (N.T. 6-10).

4. Officer Hendrzak is employed by the Bureau of Enforcement and was so employed on August 5, 2005 when he conducted an investigation of the licensed premises. Officer Hendrzak arrived at the premises at 2:45 p.m. and conducted a routine inspection and compliance check (N.T. 12).

5. The officer indicated that when he arrived at the premises, he was greeted by a Mr. Sy. The officer believed that the gentleman who was identified in Court as Mr. Joong Song had identified himself that day as Mr. Sy and was able to communicate with the officer in English (N.T. 14-15).

6. When the officer first approached the glass, he saw an Asian gentleman and identified himself to him as an officer. The Asian gentleman in turn called the person who was identified in Court as Mr. Joong Song (N.T. 15-16).

7. The officer observed three booths with approximately twelve chairs available (N.T. 16).

8. The officer asked Mr. Song if there was any other seating. He was told that there was seating in the basement. As he approached the stairwell, there were boxes stacked in the stairwell as well as trash. The officer was unable to go to the downstairs. There were empty forty-ounce beer boxes on the stairwell (N.T. 17-18).

9. Mr. Song admitted that there were no chairs in the downstairs area (N.T. 18).

10. Mr. Song indicated that he told the officer that there were chairs downstairs. Mr. Song indicated that during a previous investigation there were eighteen chairs (N.T. 25-26).

11. During the course of this investigation, the officer noted that there was more seating on the first floor than on an earlier visit (N.T. 25-26).

12. On an earlier visit, there were twelve chairs accessible upstairs and eighteen chairs downstairs. However, they were behind a locked door so the officer cited them for being inaccessible. On this occasion, he was unable to examine the downstairs (N.T. 26-27).

13. Mr. Song indicated that he now has tables upstairs which are sufficient for patrons indicating that since this is a bad area, that he has made more available downstairs but keeps it locked (N.T. 27).

14. Kay Thompson indicated that there are extra tables and chairs downstairs but they are very seldom used. The Licensee presented photographs of the downstairs area. The Licensee indicated that the pictures had been taken in mid September and the premises remains in similar conditions as of the date of the hearing (N.T. 29-30 and Exhibits L-1 and L-2).

15. Kay Thompson has been in the neighborhood for approximately thirty-five years and is the block captain (N.T. 30-31).

#### CONCLUSIONS OF LAW:

On August 5, 2005, the licensed premises was not a bona fide eating place 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 1, 1999, and has a record of prior violations as follows:

Sit Down Corp.  
Citation No. 05-1805

Citation No. 04-0664. \$1,200.00 fine.

1. Sales to minors.  
March 17, 2004.
2. Sold malt or brewed beverages in excess of 192 fluid ounces in a single sale to one person for consumption off premises.  
March 17, 2004.
3. Minors frequenting.  
March 17, 2004.

Citation No. 04-0924. \$1,500.00 fine.

1. Sales to a minor.  
April 22, 2004.

Citation No. 05-0493. \$2,500.00 fine and three days suspension.

1. Sales to minors.  
February 3, 2005.
2. Minors frequenting.  
February 3, 2005.

#### DISCUSSION:

Licensee indicated that their liquor license was acquired in 1999 and the establishment always adequate seating, but because of the changes in the neighborhood, they keep the area locked downstairs. The premises has acquired a take-out permit. Licensee indicated that it's a neighborhood business and that people come in and most of them take out food, but do not eat in. Licensee indicated they do not deny anyone a seat if they want to eat in.

Licensee will not be required to submit further proof at this time that they have sufficient seating and that they presented photographs at the hearing. However, at the time of the officer's visit, clearly there was either no seating or the seating was totally inaccessible. The officer could not get down the stairs because of the trash and the debris. The Court understands the Licensee's safety issue but that does not change the requirements of the Liquor Code in terms of the number of available seats.

After careful consideration of the facts and the prior history of the Licensee, a \$400.00 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 **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, Sit Down Corp., License Number E-SS-4219, 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, Sit Down Corp., License Number E-SS-4219, 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 28<sup>th</sup> day of February, 2007.

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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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Sit Down Corp.  
Citation No. 05-1805