

Mailing Date: APR 30 2007

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 05-1810
LIQUOR CONTROL ENFORCEMENT	:	
	:	
v.	:	Incident No. W01-316090
	:	
SEAFOOD AND ALE INC.	:	
6603 CHEW AVE.	:	LID - 45360
PHILADELPHIA PA 19119-2002	:	
	:	
	:	
PHILADELPHIA COUNTY	:	
LICENSE NO. E-SS-4684	:	

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 13, 2005, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter "Bureau") against Seafood and Ale, Inc., License Number E-SS-4684 (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 contains two counts.

The first count charges Licensee with violation of Section 102 of the Liquor Code, 47 P.S. Section 1-102, in that on August 4, 2005, the licensed premises was not a bona fide eating place in that Licensee, by its servants, agents or employes, maintained insufficient seating.

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 August 4, 2005.

COUNT NOS. 1 AND 2

FINDINGS OF FACT:

1. On August 4, 2005, Officer Brian Hendrzak conducted an investigation of the licensed premises. He arrived at approximately 5:10 p.m. to conduct a compliance check (N.T. 5-6).
2. The officer had been involved with a previous citation with this Licensee. The allegations for the premises was not a bona restaurant because they failed to have adequate seating. Therefore, he returned within a three month period to recheck the premises (N.T. 7).
3. When Officer Hendrzak returned to the premises, it was open and operating, and there were patrons waiting in line in front of him. The officer waited in line. The cashier area was surround by bulletproof glass. The area was approximately ten feet by six feet. To the left aisle he saw fabric softener, bread, milk and other kinds of grocery store items (N.T. 8).
4. The officer saw no seating in this area (N.T. 9).
5. The officer saw a person purchasing a pack of cigarettes; the exchange was made through a porthole in the bulletproof glass (N.T. 9-10).
6. The area behind the glass was not immediately accessible to patrons (N.T. 10).

7. The officer informed a Mr. Sang that he was from the Bureau of Enforcement and stated the reason for his visit. Mr. Sang came from behind the bulletproof glass, opened an accordion door and proceeded into another room, where he opened another accordion door and started pulling chairs out of a closet and stacking them. The officer told Mr. Sang to stop taking the chairs out of the closet so that he could inspect the premises as it was when he entered the doors. However, Mr. Sang continued to stack the chairs adjacent to the grocery store aisles (N.T. 11).

8. When Officer Hendrzak entered the room, he found only one table, which was full of boxes of hot fries, a snack food (N.T. 12-13).

9. In the other area, there were tables that were pinned against the closet. Mr. Sang was stacking the chairs on these tables that he was pulling from the closet. In some cases, he reached over the tables to get the chairs to pull them out (N.T. 13).

10. Mr. Sang stacked twenty-eight chairs (N.T. 13).

11. The officer checked the first floor. He also asked Mr. Sang if he had additional seating, but Mr. Sang indicated that he did not (N.T. 14).

12. Officer Hendrzak asked to see the beer and liquor invoices for the licensed premises. Mr. Sang handed him a dozen beer receipts. The officer asked him if he had any more and he told him that was all that he had kept. The twelve beer receipts were for the previous month, i.e. July (N.T. 19).

13. The officer did not leave a request for records because Mr. Sang indicated that he had no other records (N.T. 20).

CONCLUSIONS OF LAW:

Count No. 1 - On August 4, 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.

Count No. 2 - Licensee, by its servants, agents or employes, failed to maintain complete and truthful records covering the operation of the licensed business on August 4, 2005, in violation of Section 493(12) of the Liquor Code, 47 P.S. Section 4-493(12).

PRIOR RECORD:

Licensee has been licensed since December 6, 1999, and has a record of prior violations as follows:

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Citation No. 05-0883. \$350.00 fine. Verification conditions corrected and two points assessed.

1. Not a bona fide eating place in that seating was insufficient.

April 11, 2005.

DISCUSSION:

The Licensee was not a bona fide eating place in that they did not maintain sufficient available seating. Licensee was previously cited three months prior to this inspection for having inadequate seating. Pulling the chairs out of the closet at the time of the officer's arrival is not sufficient to establish that one is operating in accordance with its liquor license. The Licensee appeared to be operating more of a grocery business than an eating place.

While the Licensee produced only records for July, it is not true that Licensee did not maintain records, since in April of 2005 (three months prior), there were adequate records. However, at the time of the August inspection, Licensee could only produce July records. So, Licensee did keep records of the operation of the premises for the past 2 years, though he was not immediately able to produce all of the records for the past few months. In that this is a strict liability offense, Licensee is in violation. However, the minimum 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.

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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.

Therefore, penalties shall be assessed as follows:

Count No. 1 - \$500.00.
Count No. 2 - \$50.00.

Accordingly, we issue the following

ORDER:

THEREFORE, it is hereby Ordered that Licensee, Seafood and Ale, Inc., License Number E-SS-4684, pay a fine of Five Hundred Fifty Dollars (\$550.00) 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, Seafood and Ale, Inc., License Number R-SS-4684, as required by 47 P.S. Section 4-479(d)(9).

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IT IS ALSO ORDERED that Licensee, Seafood and Ale, Inc., License Number E-SS-4684 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.

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 24th day of April, 2007.

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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VERIFICATION

I/We, Seafood and Ale, Inc., License No. E-SS-4684, do hereby affirm that the licensed premises contains sufficient seating accommodations for at least thirty (30) persons at tables. Seafood and Ale, Inc. has _____ (number) chairs at tables.

I/We, Seafood and Ale, Inc., also affirm that there are _____ (number) tables, and the dimensions of the tables are as follows: _____
_____.

I/We, Seafood and Ale, 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