

Mailing Date: APR 18 2007

[Appeal](#)

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 05-1816
LIQUOR CONTROL ENFORCEMENT	:	
	:	
v.	:	Incident No. W01-316089
	:	
6643 GERMANTOWN INC.	:	
6643-45 GERMANTOWN AVE.	:	LID - 53294
PHILADELPHIA PA 19119-2253	:	
	:	
PHILADELPHIA COUNTY	:	
LICENSE NO. E-PSS-211	:	

APPEARANCES:

FOR THE BUREAU OF ENFORCEMENT:

JAMES E. DAILEY, ESQ.

FOR THE LICENSEE:

JOHN J. McCREESH, III, ESQ.

BEFORE: JUDGE WRIGHT

ADJUDICATION

BACKGROUND:

6643 Germantown, Inc.

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This proceeding arises out of a citation that was issued on September 19, 2005, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter "Bureau") against 6643 Germantown, Inc., License Number E-PSS-211 (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 4, 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. Officer B. Hendrzak visited the licensed premises and conducted an inspection on August 4, 2005. Officer Hendrzak arrived at the premises at approximately 4:30 p.m. The officer indicated that as you walked in the premises, there is an open area and a wall, which has bulletproof glass. In this area, he observed twenty-two chairs and approximately four tables (N.T. 5-6).

2. There were approximately four patrons on the premises who were consuming beer. One of the individuals also had a side of potato chips in front of him (N.T. 7).

3. Officer Hendrzak went through a door to the other side of the bulletproof glass and spoke with Mr. Hung. This area was a food preparation area and where the cashier was located. Beer was also served from this location (N.T. 8).

4. There was no seating for patrons behind the bulletproof glass. There was however, a stool for the cashier (N.T. 9).

5. The officer noted that this was just one room separated by bulletproof glass (N.T. 9).

6. Mr. Hung showed the officer other portions of the premises. He took him to the first floor but they did not go into the basement area nor did they go upstairs. He asked Mr. Hung to show him the seating arrangement, and he pointed to the chairs that the officer saw upon entering the premises (N.T. 9-10).

7. The licensed premises did have a health permit and kitchen facilities. The officer did not note any other violations other than insufficient seating (N.T. 10).

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8. Adam Xu, president of the licensed premises, purchased the premises in May of 2005. Mr. Xu indicated that the premises consisted of two buildings and that the eating area is approximately 450 feet. Mr. Xu indicated that he was not on the premises when the officer arrived (N.T. 15-16).

9. Mr. Xu indicated that there were twenty-two chairs. He indicated that he had other seating accommodations in that room (N.T. 16).

10. Mr. Xu indicated that there is bench seating and there are benches, which are meant to accommodate four people on each side. The total is eight additional people. He indicated that when he came in that night, the premises was set up that way (NT. 17-18).

11. Khun Lim works at the licensed premises and also indicated that there was bench seating in that room (N.T. 20).

12. Mr. Lim works at the premises as a cashier (N.T. 21).

CONCLUSIONS OF LAW:

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.

PRIOR RECORD:

Licensee has been licensed since March 9, 2005, and has no record of prior violations.

DISCUSSION:

It appears that the officer made a fairly thorough examination of the premises and certainly of the eating area. The officer saw no additional seating. The officer indicated that he counted all available seating. If the bench was there at the time the officer visited the premises, it should have been obvious. The Court finds the officer credible and finds that at the time of the officer's visit, there was seating for only twenty-two people.

Under the circumstances, a monetary penalty shall be imposed. The Court will accept Licensee's testimony that there is now sufficient seating on the premises.

NOTICE OF ASSESSMENT OF POINTS PURSUANT TO ACT 239, 2004

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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 4471.1 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

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ORDER:

THEREFORE, it is hereby Ordered that Licensee, 6643 Germantown, Inc., License Number E-PSS-211, pay a fine of Two Hundred Fifty Dollars (\$250.00) 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, 6643 Germantown, Inc., License Number E-PSS-211, as required by 47 P.S. Section 4479(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.

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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