

Mailing Date: MAY 26 2006

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 05-2089
LIQUOR CONTROL ENFORCEMENT	:	& 05-2663
	:	(consolidated for adjudication)
v.	:	
	:	
	:	
KONA KAI BAMBOO GRILL LLC	:	Incident Nos. W01-317219
10000 ROOSEVELT BLVD	:	W01-320247
PHILADELPHIA PA 19116-3901	:	
	:	LID - 51073
	:	
PHILADELPHIA COUNTY	:	
LICENSE NO. H-AP-507	:	BEFORE: JUDGE SHENKLE

APPEARANCES:

For Bureau of Enforcement: James E. Dailey, Esquire  
For Licensee: no appearance

**ADJUDICATION**

BACKGROUND:

The Bureau of Liquor Control Enforcement of the Pennsylvania State Police issued these citations on October 19 and December 27, 2005, respectively. The citations, which are consolidated for adjudication purposes only, allege as follows:

CITATION NO. 05-2089

This citation alleges that Licensee violated §437 of the Liquor Code, 47 P.S. §4-437, and §5.41 of the Liquor Control Board Regulations, 40 Pa. Code §5.41, on August 17 and September 3, 2005, by operating the licensed premises without a valid health permit or license, which expired on April 30, 2003.

CITATION NO 05-2663

This citation alleges that Licensee violated §15.62(a) of the Liquor Control Board Regulations, 40 Pa. Code §15.62(a), on October 17, 18, 25 and 26, 2005, by failing to post a Notice of Suspension in a conspicuous place on the outside of the licensed premises or in a window plainly visible from the outside of the premises.

At the hearing scheduled for March 28, 2006, in Plymouth Meeting, Pennsylvania, there was no appearance for Licensee; therefore, the matter proceeded *ex parte*.

FINDINGS OF FACT:

CITATION NO. 05-2089

1. The Bureau investigated Licensee during the period August 17 through September 5, 2005, and sent written notice of the results of its investigation to the licensed premises by certified mail on September 20, 2005 (N.T. 11, Exhibit B-1).
2. A copy of this citation was mailed to the licensed establishment by certified mail on October 19, 2005 (N.T. November 18, 2005, Exhibit B-2).
3. A Notice of Hearing was mailed to the licensed establishment by the Office of Administrative Law Judge, Harrisburg, PA, by certified and first class mail on February 17, 2006.
4. Liquor Enforcement Officer Seth Graham visited the licensed premises at 4:15 p.m. on August 17, 2005. There were about seven patrons in the dining area. The health permit posted in the bar area of the premises had expired in 2003 (N.T. 4-7).
5. Officer Graham inspected the premises again on September 3, 2003. The same expired health permit was posted (N.T. 8-10).
6. Licensee's food preparing/serving license expired on April 30, 2003, and it was never renewed (N.T. 12, Exhibit B-3).

CITATION NO. 05-2663

1. The Bureau investigated Licensee during the period October 14 through November 16, 2005, and sent written notice of the results of its investigation to the licensed premises by certified mail on November 23, 2005 (N.T. 15, Exhibit B-1).
2. A copy of this citation was mailed to the licensed establishment by certified mail on December 27, 2005 (N.T. 15-16, Exhibit B-2).
3. A Notice of Hearing was mailed to the licensed establishment by the Office of Administrative Law Judge, Harrisburg, PA, by certified and first class mail on February 17, 2006.
4. Liquor Enforcement Officer Hamilton Ringgold visited the licensed premises on October 26, November 4, and November 8, 2005. This was pursuant to my supplemental order in Citation No. 05-0314, which suspended this license indefinitely for at least one day, beginning at 7:00 a.m. on October 17, 2005, and directed Licensee to post a notice of suspension. On each of these visits, Officer Ringgold found the premises to be closed and locked, but there was no suspension placard posted (N.T. 13-15).

CONCLUSIONS OF LAW:

Citation 05-2089: the citation is sustained as charged.

Citation 05-2663: Licensee violated §15.62(a) of the Liquor Control Board Regulations, 40 Pa. Code §15.62(a), on October 26, November 4, and November 8, 2005, by failing to post a Notice of Suspension in a conspicuous place on the outside of the licensed premises or in a window plainly visible from the outside of the premises.

PRIOR RECORD:

Licensee has been licensed since October 21, 2003, and has had one prior violation:

Citation No. 05-0314. \$1,000.00 fine. Fine not paid. Licensee revoked.

1. Sales after liquor license expired on October 31, 2004. January 28, 2005.

PENALTY:

Section 471 of the Liquor Code, 47 P.S. §4-471, prescribes a penalty of license suspension or revocation or a fine in the \$50.00 to \$1,000.00 range, or both, for violations of the type found in this case.

This license was revoked as of March 6, 2006, and there has been no appeal of this order; therefore, the penalty for each of these citations will be revocation of the license.

ORDER

THEREFORE, it is hereby ORDERED that the hotel liquor license of Licensee, Kona Kai Bamboo Grill, LLC, License No. H-AP-507, is REVOKED.

Dated this 17<sup>th</sup> day of May, 2006.

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David L. Shenkle, J.

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**NOTICE: MOTIONS FOR RECONSIDERATION CANNOT BE ACTED UPON UNLESS THEY ARE IN WRITING AND RECEIVED BY THE OFFICE OF ADMINISTRATIVE LAW JUDGE WITHIN 15 DAYS AFTER THE MAILING DATE OF THIS ORDER, ACCOMPANIED BY A \$25.00 FILING FEE.**