

Mailing Date: AUG 02 2007

[Appeal](#)

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 05-2197
LIQUOR CONTROL ENFORCEMENT	:	
	:	
v.	:	Incident No. W01-306725
	:	
FALLS BENEFICIAL ASSN.	:	
460 NORTH 2 ND ST.	:	LID - 942
PHILADELPHIA PA 19123-4210	:	
	:	
	:	
	:	
PHILADELPHIA COUNTY	:	
LICENSE NO. CC-1421	:	

APPEARANCES:

FOR THE BUREAU OF ENFORCEMENT:

ERIK SHMUKLER, ESQ.

FOR THE LICENSEE:

EDWARD B. McHUGH, ESQ.

BEFORE: JUDGE WRIGHT

ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation that was issued on October 31, 2005, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter "Bureau") against Falls Beneficial Assn., License Number CC-1421 (hereinafter "Licensee").

An Administrative hearing was held on Thursday, October 26, 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 Sections 401(b) and 406(a)(1) of the Liquor Code, 47 P.S. Sections 4-401(b) and 4-406(a)(1), in that on May 7 and September 9, 2005, Licensee, by its servants, agents or employes, sold alcoholic beverages to nonmembers.

FINDINGS OF FACT:

1. Officer D. Collins is employed as an officer for the Bureau of Enforcement and at the time of the hearing had been so employed for approximately three years. On May 7, 2005, he was on duty as an Enforcement officer (N.T. 6).

2. On May 7, 2005 at approximately 10:30 p.m., he visited the licensed premises. Upon approaching the door, he was met by two doorpersons, one searched him for weapons and asked for identification. Officer Collins was directed to an Asian female to whom he paid a ten-dollar cover charge and received a blue wristband. The officer proceeded to the bar and purchased one Corona beer paying \$3.00 for the purchase (N.T. 7).

3. Officer Collins is not a member of the licensed club (N.T. 7).

4. The officer observed no food on the premises. He was not there as a part of any catered event or as a guest. He saw no indication that any catered event was taking place. He saw no dishes of food and no decorations, which would imply a celebration (N.T. 7-8).

5. The officer indicated that there were approximately three persons at the bar. There were a number of people in various locations on the premises (N.T. 9).

6. The officer paid three dollars for his Corona beer (N.T. 9).

7. The officer departed the premises at 11:00 p.m. (N.T. 9).

8. On September 9, 2005, the officer returned to the licensed premises at approximately 11:30 p.m. that evening. Again he was met by a doorperson who requested identification. After his identification was checked, he and Officer Burns, another officer from the

Bureau who accompanied him, were given a purple armband and were directed to pay a cover charge of fifteen dollars each (N.T. 9-10).

9. Upon inquiry by the doorperson, the officers stated that they were not there with a party or group (N.T. 10).

10. There were from eighty to one-hundred patrons on the premises. Officer Collins purchased one Apple Smirnoff Cooler and Officer Burns purchased a Budweiser Light beer. Officer Collins paid three dollars for the Bud Light and six dollars for the Apple Smirnoff (N.T. 10).

11. Again Officer Collins was not a member of the licensed club. Officer Collins was served no food on the premises. To his knowledge there was no catered event and he was not there as part of any catered event (N.T. 10-11).

12. At no time during the visits of May 7, 2005 or September 9, 2005, was he asked if he was a member of the licensed club before being allowed to purchase alcoholic beverages (N.T. 11).

13. The officer used his own Pennsylvania driver's license to gain access to the premises on both occasions (N.T. 12).

14. The officer was asked to sign something on May 7, 2005 and provided a false name (N.T. 14-15).

15. The officer did not ask about food service on May 7, 2005 (N.T. 21-22).

16. The officer walked around and although it was crowded, he did note that there was no food (N.T. 22).

17. On September 9, 2005, the officer was told that there were three parties going on on the premises (N.T. 23).

18. The officer departed the premises on September 9, 2005 at approximately 11:59 p.m. (N.T. 23).

19. Chris Keisling is employed by the Bureau of Enforcement and at the time of the hearing, had been so employed for six and a half years. On August 17, 2005, he conducted a routine

inspection of the licensed premises. During this inspection, he reviewed records of the premises, which included catering records. During his review of the records, he did not find any catering records for May 2, 2005. The officer spoke to Joseph Dougherty, treasurer of the licensed premises and he provided him with the records. He indicated the records were dated the date of his inspection (N.T. 30-31).

20. Included in the records were attendance records for May 7, 2005 (N.T. 31).

21. Officer Keisling also had an opportunity to visit the licensed premises on September 9, 2005. The officer entered the premises accompanied by a second officer after two undercover officers had already been in the premises and had exited. The officers then approached the front door and identified themselves and explained to Mr. Dougherty that the two undercover officers had entered the premises earlier (N.T. 31-32).

22. Officer Keisling revisited the premises on October 17, 2005 at approximately 6:00 in the evening. At that time, the club was not open and was not operating. The officer did a complete inspection of the premises (N.T. 34-35).

23. Officer Keisling requested catering records for May 7, 2005. He inspected the records and found Officer Collins' fictitious name in the attendance records (N.T. 32 and 35-36).

CONCLUSIONS OF LAW:

On May 7 and September 9, 2005, Licensee, by its servants, agents or employees, sold alcoholic beverages to nonmembers, in violation of Sections 401(b) and 406(a)(1) of the Liquor Code, 47 P.S. Sections 4-401(b) and 4-406(a)(1).

PRIOR RECORD:

Licensee has been licensed since January 10, 1934, and since July 1, 1987, the date of establishment of the Office of Administrative Law Judge, has a record of prior violations as follows:

Citation No. 98-2480. \$1,000.00.

1. Sales to a minor.
May 23, 1998.

Citation No. 03-2008. \$1,300.00 fine.

1. Sales to nonmembers.
August 2, 15 and November 2, 2003.
2. Sales between 3:00 a.m. and 7:00 a.m. November 2, 2003.
3. Permitted patrons to possess and/or remove alcoholic beverages after 3:30 a.m.

November 2, 2003.

Citation No. 04-1003. \$1,000.00 fine.

1. Sales to nonmembers.

January 24, March 19 and May 14, 2004.

DISCUSSION:

Counsel for the Licensee argued that the Bureau of Enforcement did not meet its burden with regard to establishing that the person that was served on May 7, 2005 was not a member of the licensed club. The officer used his own identification to get into the club but actually signed in using a fictitious name. Licensee argues that that fictitious name could have been included among the names of the club members. Nevertheless, whether that name appeared on the guest list or on the membership roster, Officer Collins was not a member of the club on May 7 or September 9, 2005 and had not become a member of the club by any proper or appropriate means. Even if there was another David Collins listed among the members, this officer was not a member.

Officer Collins was served on two different occasions at the club. There was no indication that there was a catering event, on either date, which would have permitted his attendance and purchase of alcoholic beverages.

Under the circumstances, the Court finds that there was a violation in that this person was served at the licensed premises but was not a member of the licensed club. In that this is the third violation for sales to nonmembers, a \$500.00 penalty and one-day suspension shall be imposed.

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, Falls Beneficial Assn., License Number CC-1421, pay a fine of Five Hundred Dollars (\$500.00) 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 the Catering Club License of Falls Beneficial Assn., License Number CC-1421, be suspended for a period of one (1) day **BEGINNING** at 7:00 a.m. on Monday, October 29, 2007 and **ENDING** at 7:00 a.m. on Tuesday, October 30, 2007.

Licensee is directed on Monday, October 29, 2007 at 7:00 a.m. to place the enclosed placard of notice of suspension (identified as Form No. PLCB-1925 and as printed with red and black ink) in a conspicuous place on the outside of the licensed premises or in a window plainly visible from outside the licensed premises and to remove said license from the wall and place it in a secure location.

Licensee is advised if a replacement placard is needed for any reason they are available at all State Liquor Stores/Wine and Spirit Shoppes.

The "Bureau of Enforcement" is directed to visit and monitor the aforementioned licensed premises for compliance with this Order.

The Licensee is authorized on Tuesday, October 30, 2007 at 7:00 a.m. to remove the placard of suspension and return the license to its original wall location.

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 31st day of July, 2007.

Falls Beneficial Assn.
Citation No. 05-2197

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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