

Mailing Date: JUN 26 2006

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 05-2402
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W01-320605
v.	:	
	:	LID - 50374
6033 CASTOR INC	:	
6033 CASTOR AVE	:	
PHILADELPHIA PA 19149-3207	:	
	:	
PHILADELPHIA COUNTY	:	
LICENSE NO. E-SS-3016	:	BEFORE: JUDGE SHENKLE

APPEARANCES:

For Bureau of Enforcement: James E. Dailey, Esq.

For Licensee: John J. McCreesh, III, Esq.

ADJUDICATION

BACKGROUND:

The Bureau of Liquor Control Enforcement of the Pennsylvania State Police issued this citation on November 23, 2005. There are two counts in the citation.

The first count alleges that Licensee violated §102 of the Liquor Code, 47 P.S. §1-102, on October 19, 2005, on the basis that the licensed premises was not a *bona fide* restaurant because there was insufficient seating.

The second count 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 October 19, 2005, by operating the licensed premises without a valid health permit or license, which expired on April 30, 2005.

A hearing was held on Tuesday, May 9, 2006, in Plymouth Meeting, Pennsylvania. The parties stipulated to the timely service of the notice letter and the citation.

FINDINGS OF FACT:

1. Liquor Enforcement Officer Brian Hendrzak entered the licensed premises at 2:10 p.m. on October 19, 2005. He identified himself to John Ngov, president of Licensee, and informed Mr. Ngov that he would be conducting a routine inspection (N.T. 5-6).

2. The premises contained four booths, capable of seating a total of sixteen persons. The officer asked Mr. Ngov if he had any other seating arrangements, and Mr. Ngov stated that he had seating downstairs, although he was hesitant to allow the officer to see it. The officer insisted on going downstairs, where he found a pile of debris in which there may have been two chairs (N.T. 6-10, Exhibit B-3).

3. The officer asked to see a current health permit, and in response Mr. Ngov showed him a permit which had expired in April, 2005 (N.T. 13-14).

CONCLUSIONS OF LAW:

Sustained as charged.

DISCUSSION:

I did not believe the testimony presented by Licensee to the effect that there were additional booths not shown in Officer Hendrzak's photographs.

I accept, however, the representation of Licensee that the health permit has been renewed, and that a current health permit is now displayed in the licensed premises. I trust Licensee's officer understands that it is likely this premises will be inspected by the Bureau again in the future, and that continuous compliance with the Liquor Code and regulations is a requirement.

The basement area in which additional seating was allegedly stored is not licensed; nevertheless I wish to point out that the storage of debris in a portion of a building which contains premises subject both to city health laws and the Liquor Code is a bad idea.

NOTICE OF ASSESSMENT OF POINTS PURSUANT TO ACT 239 OF 2004

Section 479 of the Liquor Code, 47 P.S. §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 has been cited for a violation of §471 of the Liquor Code, 47 P.S. §4-471, on or after February 6, 2005, must have points assessed as of the date of the final adjudication. Points are in addition to other provisions of the Liquor Code regarding license transfer and renewal. Points are required to be assigned in addition to 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 §479.

Section 481(a), 47 P.S. §4-481(a) provides that when any license accumulates ten points or more, the administrative law judge must require the license holder to become compliant with and remain compliant with the provisions of §471.1, 47 P.S. §4-471.1, relating to the Responsible Alcohol Management Program (R.A.M.P.). Failure to comply with such an order within ninety days will result in two additional points being assessed against the license record.

Section 481(b), 47 P.S. §4-481(b) provides that when any license accumulates fifteen points or more, the administrative law judge must 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 §471.1, two additional points will be removed from the license record.

Notwithstanding other provisions of the Act, §481(c), 47 P.S. §4-481(c), provides that when any license accumulates twenty or more points in more than one citation, the administrative law judge must revoke the license.

PRIOR RECORD:

Licensee has been licensed since November 4, 2002, and has had no prior violations.

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.

On each count of this citation I will impose a fine of \$300.00.

ORDER

THEREFORE, it is hereby ORDERED that Licensee, 6033 Castor, Inc., License No. E-SS-3016, pay a fine of six hundred dollars (\$600.00) within 20 days of the mailing date of this order. In the event the fine is not paid within 20 days, Licensee's license will be suspended or revoked. Jurisdiction is retained.

IT IS FURTHER ORDERED that two (2) points are hereby assessed against the record of Licensee, 6033 Castor, Inc., License No. E-SS-3016, as required by 47 P.S. §479(d)(9).

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 to:

PLCB-Office of Administrative Law Judge
Brandywine Plaza
2221 Paxton Church Road
Harrisburg PA 17110-9661

Dated this 20th day of June, 2006.

David L. Shenkle, J.

jb

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.