

Mailing Date: MAY 21 2007

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 06-0082
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W01-323257
v.	:	
	:	LID - 54003
CIOCCA LLC	:	
T/A ADRIANO'S	:	
13023 BUSTLETON AVE	:	
PHILADELPHIA PA 19116-1672	:	
	:	
	:	
PHILADELPHIA COUNTY	:	
LICENSE NO. R-AP-15472	:	BEFORE: JUDGE SHENKLE

APPEARANCES:

For Bureau of Enforcement: Erik S. Shmukler, Esq.
For Licensee: no appearance

ADJUDICATION

BACKGROUND:

The Bureau of Liquor Control Enforcement of the Pennsylvania State Police issued this citation on January 30, 2006. The citation alleges that Licensee violated §§491(1), 492(2) and 493(16) of the Liquor Code, 47 P.S. §§4-491(1), 4-492(2) and 4-493(16), on December 7, 2005, by selling alcoholic beverages after its Restaurant Liquor License expired on October 31, 2005, and had not been renewed and/or validated.

At the hearing scheduled for Thursday, March 22, 2007, in Plymouth Meeting, Pennsylvania, there was no appearance by or on behalf of the Licensee; therefore, the matter proceeded *ex parte*.

FINDINGS OF FACT:

1. The Bureau investigated Licensee during the period December 7 through December 19, 2006, and sent written notice of the results of its investigation to the licensed premises by certified mail on December 28, 2005 (N.T. 7-8, Exhibit B-1).
2. A copy of this citation was mailed to the licensed establishment by certified mail on January 30, 2006 (N.T. 10, 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 2, 2007.

4. Liquor Enforcement Officer Justin Clarke visited the licensed premises at about 7:20 p.m. on December 7, 2005. He found the premises to be open and operating, and purchased a beer (N.T. 5-6).

5. Licensee did not possess a valid restaurant liquor license on December 7, 2005 (Exhibit B-3).

CONCLUSIONS OF LAW:

Sustained as charged.

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 March 16, 2005, 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 \$1,000.00 to \$5,000.00 range, or both, for violations of the type found in this case.

ORDER

THEREFORE, it is hereby ORDERED that Licensee, Ciocca, LLC, t/a Adriano's, License No. R-AP-15472, shall pay a fine of one thousand dollars (\$1,000.00) 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 five (5) points are hereby assessed against the record of Licensee, Ciocca, LLC, t/a Adriano's, License No. R-AP-15472, as required by 47 P.S. §479(b)(4).

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 10th day of May, 2007.

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.