

Mailing Date: MAR 02 2007

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 06-0202
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W01-323987
v.	:	
	:	LID - 51610
BOLA INC	:	
T/A ASHTON PUB	:	
9041-43 ASHTON RD	:	
PHILADELPHIA PA 19136-1030	:	
	:	
PHILADELPHIA COUNTY	:	
LICENSE NO. R-AP-SS-15646	:	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 February 8, 2006. There are two counts in the citation.

The first count 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 28 and 30, 2005, by selling alcoholic beverages after its Restaurant Liquor License expired on October 31, 2005, and had not been renewed and/or validated.

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 December 28 and 30, 2005, by operating the licensed premises without a valid health permit or license.

At the hearing scheduled for December 12, 2007, in Plymouth Meeting, Pennsylvania, there was no appearance for the Licensee; therefore, the case was heard *ex parte*.

FINDINGS OF FACT:

1. The Bureau investigated Licensee during the period December 16, 2005, through January 5, 2006, and sent written notice of the results of its investigation to the licensed premises by certified mail on January 17, 2006 (N.T. 9-10, Exhibit B-1).

2. A copy of this citation was mailed to the licensed establishment by certified mail on February 8, 2006 (N.T. 10-11, 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 October 27, 2006.

4. Liquor Enforcement Officer Julie Kohler entered the licensed premises at about 8:30 p.m. on December 28, 2005. A bartender was serving about twenty patrons. Officer Kohler purchased beer and left the premises at about 9:45 p.m., with patrons remaining who were still in possession of alcoholic beverages (N.T. 4-6).

5. On December 30, 2005, Officer Kohler inspected the licensed premises and found that the liquor license had expired and no health permit had ever been issued to Licensee (N.T. 7, Exhibit B-3).

6. This restaurant liquor licensed had expired on October 31, 2005, and Licensee did not have authority to operated on December 28 or 30, 2005 (Exhibit B-4).

#### 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 September 11, 2003, and has had one prior violation:

Citation No. 05-1312. \$350.00 fine.

1. Loudspeakers could be heard outside. June 4, 2005.

PENALTY:

Section 471 of the Liquor Code, 47 P.S. §4-471, prescribes a penalty of license suspension or revocation or a fine, or both, for violations of the type found in this case. For violations of the type found in Count No. 1, any fine must be in the \$1,000.00 to \$5,000.00 range. For violations of the type found in Count No. 2, any fine must be in the \$50.00 to \$1,000.00 range. Penalties are assessed as follows:

Count 1 – a fine of \$1,000.00 plus five points under Act 239.

Count 2 – a fine of \$300.00 plus proof of compliance

ORDER

THEREFORE, it is hereby ORDERED that Licensee, Bola, Inc., t/a Ashton Pub, License No. R-AP-SS-15646, shall pay fines totaling one thousand three hundred dollars (\$1,300.00) 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, Bola, Inc., t/a Ashton Pub, License No. R-AP-SS-15646, as required by 47 P.S. §479(b)(4).

IT IS FURTHER ORDERED that Licensee shall submit a true copy of a current and valid health permit within 20 days of the mailing date of this order. In the event the copy is not received within 20 days, Licensee's license will be suspended or revoked.

The fines 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 22<sup>nd</sup> day of February, 2007.

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David L. Shenkle, J.

**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.**