

Mailing Date: SEP 19 2006

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 06-0262
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W01-323770
v.	:	
	:	LID - 46350
DELILAH'S AT MARKET, INC.	:	
246 MARKET ST.	:	
1 <sup>ST</sup> & 2 <sup>ND</sup> FL.	:	
P.O. BOX 1256	:	
PHILADELPHIA, PA 19105-1256	:	
	:	
PHILADELPHIA COUNTY	:	
LICENSE NO. R-AP-SS-EHF-11351	:	

**BEFORE:** JUDGE THAU

APPEARANCES:

For Bureau of Enforcement  
Erik S. Shmukler, Esquire  
James E. Dailey, Esquire  
Pennsylvania State Police  
6901 Woodland Avenue  
Philadelphia, PA 19142

For Licensee  
John J. McCreesh, III, Esq.  
7053 Terminal Square  
Upper Darby, PA 19082

**ADJUDICATION**

BACKGROUND:

This proceeding arises out of a citation that was issued on February 14, 2006, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (Bureau) against Delilah's At Market, Inc. (Licensee), License Number R-AP-SS-EHF-11351.

The citation charges Licensee with a violation of Sections 491(1), 492(2) and 493(16) of the Liquor Code [47 P.S. §4-491(1), §4-492(2) and §4-493(16)]. The charge is that on January 4, 2006, Licensee, by servants, agents or employes, sold alcoholic beverages after its Restaurant Liquor License expired on October 31, 2005, and had not been renewed and/or validated.

An evidentiary hearing was conducted on August 7, 2006 at the Philadelphia State Office Building, 1400 West Spring Garden Street, Philadelphia, Pennsylvania.

After review of the transcript of that proceeding, the following Findings of Fact and Conclusions of Law are entered.

FINDINGS OF FACT:

1. The Bureau began its investigation on December 14, 2005 and completed it on January 4, 2006. (N.T. 7)
2. The Bureau sent a notice of an alleged violation to Licensee at the licensed premises by certified mail-return receipt requested on January 20, 2006. The notice alleged a violation as charged in the citation. (Commonwealth Exhibit No. B-1, N.T. 7)
3. The subject license expired on October 31, 2005. Licensee was open and in operation selling alcoholic beverages on January 4, 2006. (N.T. 5)

CONCLUSIONS OF LAW:

1. The notice requirements of Liquor Code Section 471 [47 P.S. §4-471] have been satisfied.
2. The citation is **sustained** as charged.

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1. Commonwealth Exhibit No. B-2, N.T. 7.

PRIOR RECORD:

Licensee has been licensed since August 16, 2000, and has had two prior violations:

Adjudication No. 04-0612. Fine \$250.00.  
Operated the licensed establishment without  
a valid health permit or license.  
March 12, 2004.

Adjudication No. 05-1590. Fine \$400.00.  
Operated the licensed establishment without  
a valid health permit or license.  
July 6, 2005.

PENALTY:

Section 471 of the Liquor Code [47 P.S. §4-471] prescribes a penalty of license suspension or revocation or a fine of not less than \$1,000.00 or more than \$5,000.00 or both for violations of the type found in this case.

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 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 establish 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 shall 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 he 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.

Accordingly, you are hereby notified that five points have been assigned to your record.

As Licensee now understands more clearly the requirements for renewal, I also impose a \$1,000.00 fine.

ORDER:

**Imposition of Fine**

THEREFORE, it is hereby ordered that Licensee pay a fine of \$1,000.00 within 20 days of the mailing date of this Order. In the event the aforementioned fine is not paid within 20 days from the mailing date of this Order, Licensee's license shall be suspended or revoked.

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, Pennsylvania 17110-9661

**Assessment of Points**

IT IS FURTHER ORDERED that five (5) points are hereby assessed against the record of Delilah's At Market, Inc., License No.R-AP-SS-EHF-11351, as required by 47 P.S. §4-479(b)(4).

**Retaining Jurisdiction**

Jurisdiction is retained to ensure compliance with this Adjudication.

Dated this 29<sup>th</sup> day of August, 2006.

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Felix Thau, A.L.J.

pm

**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.**