

Mailing Date: SEP 07 2007

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation Nos. 06-0264
LIQUOR CONTROL ENFORCEMENT	:	& 06-0435
	:	(consolidated)
v.	:	
	:	Incident Nos. W01-323259
COGNAC CORNER INC	:	W01-325257
1415 S 21 ST ST	:	
PHILADELPHIA PA 19146-4540	:	LID - 50672
	:	
	:	
PHILADELPHIA COUNTY	:	
LICENSE NO. R-6759	:	BEFORE: JUDGE SHENKLE

APPEARANCES:

For Bureau of Enforcement: James E. Dailey, Esquire
For Licensee: Lori J. Hahn Maslin, Esquire

ADJUDICATION

BACKGROUND:

The Bureau of Liquor Control Enforcement of the Pennsylvania State Police issued these citations on February 14 and March 7, 2006, respectively. The citations allege as follows:

CITATION NO. 06-0264

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

CITATION NO. 06-0435

There are three counts in this 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 January 14, 2006, 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 §493(1) of the Liquor Code, 47 P.S. §4-493(1), on January 14, 2006, and on divers other occasions within the past year, by selling, furnishing, and/or giving or permitting such sale, furnishing or giving of alcoholic beverages to one female and one male minor, eighteen and twenty years of age.

The third count alleges that Licensee violated §493(14) of the Liquor Code, 47 P.S. §4-493(14), on January 14, 2006, and on divers other occasions within the past year, by permitting two female and four male minors, eighteen to twenty years of age, to frequent its premises.

A hearing was held on March 22, 2007, in Plymouth Meeting, Pennsylvania. There was no appearance for Licensee, and the Bureau presented evidence in support of Citation No. 06-0435 only. Since a witness needed for Citation No. 06-0264 was unavailable, that case was continued.

An adjudication of Citation No. 06-0435 was mailed on June 12, 2007. Within the time allowed by law, present counsel appeared for Licensee and requested reconsideration. In response, I vacated the adjudication of Citation No. 06-0435 for the purpose of reconsideration.

A hearing was held to receive evidence concerning Citation No. 06-0264 on July 31, 2007, in Plymouth Meeting, Pennsylvania. The parties stipulated to the timely service of the notice letter and citation, and to a summary of facts.

Counsel for Licensee requested that the two citations be consolidated. As counsel for the Bureau has no objection, this motion is granted.

FINDINGS OF FACT:

CITATION NO. 06-0264

On December 30, 2005, Liquor Enforcement Officer D. Collins purchased beer in the licensed premises. Licensee was not authorized to dispense alcoholic beverages on that date.

CITATION NO. 06-0435

1. The Bureau investigated Licensee on January 13 and 14, 2006, and sent written notice of the results of its investigation to the licensed premises by certified mail on February 1, 2006 (N.T. 16-17, Exhibit B-1).

2. A copy of this citation was mailed to the licensed establishment by certified mail on March 7, 2007 (N.T. 17-18, 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. Officer Clarke visited the licensed premises at about 1:15 a.m. on January 14, 2006. He found six individuals who were under 21 years of age. Two of these had breath bearing the

odor of alcohol. One of those two was a woman born on August 28, 1987, who admitted that she had been drinking an apple martini (N.T. 8-14, Exhibit B-3).

5. The other minor who smelled of alcohol was a man born February 20, 1985, who admitted that he had consumed a couple of shots of cognac (N.T. 14-15, Exhibit B-4).

6. Philadelphia Police Officer Arthur Weston visited the licensed premises at about 1:40 a.m. on January 14, 2006. There were about one hundred patrons attended by three bartenders. He and his partner Officer Steve Harris purchased bottles of beer (N.T. 6-7).

7. Licensee did not have temporary or permanent authority to sell alcohol on January 14, 2006 (Attestation of Legal Custodian dated June 23, 2006).

CONCLUSIONS OF LAW:

Citation No. 06-0264 is sustained as charged.

Citation No. 06-0435 –

Count No. 1 – 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 January 14, 2006, by selling alcoholic beverages when it did not have authority to do so.

Count No. 2 – Licensee violated §493(1) of the Liquor Code, 47 P.S. §4-493(1), on January 14, 2006, by selling, furnishing, and/or giving or permitting such sale, furnishing or giving of alcoholic beverages to one female and one male minor, eighteen and twenty years old.

Count No. 3 – The evidence presented did not prove that Licensee violated §493(14) of the Liquor Code, 47 P.S. §4-493(14), by permitting minors to frequent its premises.

PRIOR RECORD:

Licensee has been licensed since April 7, 2003, and has had prior violations as follows:

Citation No. 04-1914. \$500.00 fine.

1. Loudspeakers could be heard outside.
August 5, 20, 21, September 8, October 2 and 3, 2004.
2. Sold, furnished or gave liquor for consumption off premises.
August 21, September 8 and October 3, 2004.
3. Permitted entertainment without an amusement permit.
August 5, 21, September 8 and October 3, 2004.

Citation No. 04-1951. \$600.00 fine and verification.

1. Failed to constantly and conspicuously expose license under a transparent substance. October 6, 2004.
2. Not a *bona fide* restaurant (insufficient food). October 6, 2004.
3. Failed to maintain coil cleaning records. October 6, 2004.
4. Failed to clean, coils, tap rods and connections at least once every 7 days. October 6, 2004.
5. Loudspeakers could be heard outside. October 6, 2004.

Citation No. 05-0672. \$200.00 fine.

1. Failed to clean coils, tap rods and connections at least once every 7 days. February 1, 2005.

Citation No. 05-1745. \$300.00 fine.

1. Loudspeakers could be heard outside. June 10 and 11, 2005.

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. Penalties are allocated as follows:

Citation No. 06-0264 and Count No. 1 of Citation No. 06-0435 (as consolidated) – a fine of \$1,000.00.

Citation No. 06-0435 –

- Count No. 2 – a fine of \$1,250.00 plus mandatory R.A.M.P. compliance.
- Count No. 3 – DISMISSED.

ORDER

THEREFORE, it is hereby ORDERED that Citation Nos. 06-0264 and 06-0435 are CONSOLIDATED.

IT IS FURTHER ORDERED that Licensee, Cognac Corner, Inc., License No. R-6759, shall pay fines totaling two thousand two hundred fifty dollars (\$2,250.00) within 20 days of the mailing date of this order. In the event the fines are not paid within 20 days, Licensee's license will be suspended or revoked. Jurisdiction is retained.

IT IS FURTHER ORDERED that Licensee shall comply with the requirements set forth in Liquor Code Section 471.1, pertaining to Responsible Alcohol Management, in the following manner. Within thirty (30) days after the mailing date of this adjudication, Licensee shall contact the Bureau of Alcohol Education, Pennsylvania Liquor Control Board (toll free telephone: 1-866-275-8237; Web Site: www.lcb.state.pa.us) in order to receive assistance in the compliance process. Licensee must receive certification within ninety (90) days after the mailing

date of this adjudication. Licensee must remain in compliance for a period of one year from the date such certification is issued.

Failure to comply with this order will be grounds for modification of penalty in this case. Failure to comply may also constitute grounds for issuance of a new citation as authorized by Section 471(d) of the Liquor Code, 47 P.S. Section 4-471(d).

However, since this license is in the process of being transferred, the foregoing provision relating to mandatory compliance with Liquor Code Section 471.1, (Responsible Alcohol Management), is hereby **SUSPENDED** pending completion of the transfer. If the transfer is not completed within 90 days of the mailing date of this adjudication, I will review the matter for further appropriate action.

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 24th day of August, 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.