

Mailing Date: SEP 15 2006

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

|                              |   |                         |
|------------------------------|---|-------------------------|
| PENNSYLVANIA STATE           | : |                         |
| POLICE, BUREAU OF            | : | Citation No. 06-0360C   |
| LIQUOR CONTROL ENFORCEMENT   | : |                         |
|                              | : | Incident No. W01-326131 |
| v.                           | : |                         |
|                              | : | LID - 51580             |
| 6850, INC.                   | : |                         |
| 6850 ELMWOOD AVE.            | : |                         |
| PHILADELPHIA, PA 19142-2127  | : |                         |
|                              | : |                         |
|                              | : |                         |
|                              | : |                         |
| PHILADELPHIA COUNTY          | : |                         |
| LICENSE NO. R-AP-SS-EHF-1245 | : |                         |

**BEFORE:** JUDGE THAU

APPEARANCES:

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

For Licensee  
Ex-Parte

**ADJUDICATION**

BACKGROUND:

This proceeding arises out of a citation that was issued on March 1, 2006, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (Bureau) against 6850, Inc. (Licensee), License Number R-AP-SS-EHF-1245.

This citation<sup>1</sup> contains two counts.

The first count charges Licensee with a violation of Section 493(1) of the Liquor Code [47 P.S. §4-493(1)]. The charge is that on January 26, 2006, Licensee, by servants, agents or employes, sold, furnished and/or gave or permitted such sale, furnishing or giving of alcoholic beverages to one (1) male minor, eighteen (18) years of age.

The second count charges Licensee with a violation of Section 407(b)(1) of the Liquor Code [47 P.S. §4-407(b)(1)]. The charge is that on January 26, 2006, Licensee, by servants, agents or employes, sold malt or brewed beverages for consumption off premises.

An evidentiary hearing was conducted on August 7, 2006 at the Philadelphia State Office Building, 1400 West Spring Garden Street, Philadelphia, Pennsylvania. Licensee did not appear personally or by representation.

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

FINDINGS OF FACT:

1. A citation hearing notice was mailed by the Office of Administrative Law Judge on June 27, 2006 to Licensee by both certified receipt-return mail and first-class mail to the licensed premises. The notice notified Licensee of the date, time and place of the hearing. The Notice, sent by certified mail, was returned as being marked unclaimed. On July 7, 2006, I issued a Pre-Hearing Order directing Licensee to submit its Pre-Hearing Memorandum to this Office. That Order, reiterated the date, time and place of hearing.
2. The Bureau began and ended its investigation on January 26, 2006. ( N.T. 43)
3. The Bureau sent a notice of alleged violations to Licensee at the licensed premises by certified mail-return receipt requested on February 6, 2006. The notice alleged violations as charged in the citation. (Commonwealth Exhibit No. B-3, N.T. 48)

Count Nos. 1 and 2:

4. Pursuant to the Age Compliance Program conducted in accordance with 18 Pa. C.S.A. Sections 6108 and 6310 [18 Pa. C.S.A. §6108 and §6310] and regulations adopted pursuant thereto, a nineteen year old (born January 31, 1987) entered the premises at approximately 8:00 p.m. He requested beer to go from a bartender. The bartender served the minor the requested beer. The minor left the facility with his purchases. (N.T. 22-39)

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1. Commonwealth Exhibit No. B-4, N.T. 48

5. The Bureau notified Licensee of the compliance failure on January 27, 2006 (Commonwealth Exhibit No. B-2, N.T. 44).

CONCLUSIONS OF LAW:

1. The notice requirements of Liquor Code Section 471 [47 P.S. §4-471] have been satisfied.
2. The statutory and regulatory requirements of the Age Compliance Program have been met.
3. Count Nos. 1 and 2 are **sustained** as charged.

PRIOR RECORD:

Licensee has been licensed since September 23, 2003, and has had one prior violation: (Commonwealth Exhibit No. B-5):

Adjudication No. 04-2256. Fine \$1,000.00 and 2 days  
Suspension.

1. Sales on a portion of the premises not covered by the license.  
September 5 and 25, 2004.
2. Sales on Sunday between 2:00 A.M. and 11:00 A.M.  
September 5, 2004.
3. Sales between 2:00 A.M. and 7:00 A.M.  
September 25, 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 Count No. 1 and a penalty of license suspension or revocation or a fine of not less than \$50.00 or more than \$1,000.00 or both for violations of the type found in Count No. 2 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 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.

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

I also impose:

Count No. 1 - \$2,000.00 fine and five points.  
Count No. 2 - \$500.00 fine.

I also order Licensee to comply with the requirements set forth in Liquor Code Section 471.1 [47 P.S. §4-471.1], pertaining to Responsible Alcohol Management, for a period of one year.

ORDER:

**Imposition of Fine**

THEREFORE, it is hereby ordered that Licensee pay a fine of \$2,500.00 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

**R.A.M.P. Requirements**

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. Licensee is directed to initiate contact with The Bureau of Alcohol Education, Pennsylvania Liquor Control Board (Toll Free Telephone No.: 1-866-275-8237; Web Site: [www.lcb.state.pa.us](http://www.lcb.state.pa.us); Email Address: [LBEducation@state.pa.us](mailto:LBEducation@state.pa.us)), within 30 days of the mailing date of this Adjudication for assistance in the compliance process. Licensee must receive Certification within 90 days of the mailing date of this Adjudication. Licensee must remain in compliance for a period of one year from the date such Certification was issued. The Bureau of Liquor Control Enforcement is further directed to monitor compliance with this Adjudication.

**Assessment of Points**

IT IS FURTHER ORDERED that five (5) points are hereby assessed against the record of 6850, Inc., License No.R-AP-SS-EHF-1245, as required by 47 P.S. §4-479(b)(1).

**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.**