

Mailing Date: MAY 23 2007

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 06-0381
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W01-324881
v.	:	
	:	LID - 54355
TC VENTURES II, INC.	:	
6041 RISING SUN AVE.	:	
PHILADELPHIA, PA 19111-6008	:	
	:	
	:	
	:	
PHILADELPHIA COUNTY	:	
LICENSE NO. R-AP-SS-2188	:	

BEFORE: JUDGE THAU

APPEARANCES:

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

For Licensee
Edward A. Taraskus, Esquire
1530 Chestnut Street
Suite 603
Philadelphia, PA 19102

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 TC Ventures II, Inc. (Licensee), License Number R-AP-SS-2188.

This citation¹ contains two counts.

The first count charges Licensee with violations of Section 437 of the Liquor Code [47 P.S. §4-437] and Section 5.41 of the Pennsylvania Liquor Control Board Regulations [40 Pa. Code §5.41]. The charge is that on January 12 and 13, 2006, Licensee, by servants, agents or employes, operated its licensed establishment without a valid health permit or license.

The second 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 12, 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 and one (1) female minor, eighteen (18) and nineteen (19) years of age.

An evidentiary hearing was conducted on August 7, 2006 and continued and heard on April 23, 2007 at the Philadelphia State Office Building, 1400 West Spring Garden Street, 13th Floor, Room #1, 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 January 6, 2006 and completed it on January 23, 2006. (Commonwealth Exhibit No. B-1, N.T. 10)
2. The Bureau sent a notice of alleged violations to Licensee at the licensed premises by certified mail-return receipt requested on January 30, 2006. The notice alleged violations as charged in the citation. (Commonwealth Exhibit No. B-1, N.T. 10)

Count No. 1:

3. On January 12 and 13, 2006, one visit extending beyond midnight, Licensee was open and in operation selling alcoholic beverages but its health license wasn't current. (N.T. 9-25)

1. Commonwealth Exhibit No. B-2, N.T. 10.

Count No. 2:

4. An undercover Bureau Enforcement Officer entered the premises at 10:00 p.m., on January 12, 2006. Because there were patrons who appeared to be underage, an additional three Officers entered the premises. (N.T. 11-14)

5. The Officers discovered there were two minors present, age eighteen and nineteen (Commonwealth Exhibit No. B-3 and B-4). (N.T. 15-22)

6. The undercover Officer observed the two minors, identified in Commonwealth Exhibit Nos. B-4 and B-5, drinking beer. (N.T. 30-32)

CONCLUSIONS OF LAW:

1. The notice requirements of Liquor Code Section 471 [47 P.S. §4-471] have been satisfied.

2. Count Nos. 1 and 2 are **sustained** as charged.

PRIOR RECORD:

Licensee has been licensed since February 10, 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 of not less than \$50.00 or more than \$1,000.00 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 \$1,000.00 or more than \$5,000.00 or both for violations of the type found in Count No. 2 in this case.

That Section further provides for mandatory compliance with Liquor Code Section 471.1 [47 P.S. §4-471.1], pertaining to Responsible Alcohol Management when, as in this matter, Licensee has been found to have to have violated Section 493(1) as a first offense as it relates to sales to minors or sales to a visibly intoxicated patron.

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 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 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 - \$100.00 fine.
- Count No. 2 - \$1,200.00 fine.

ORDER:

Imposition of Fine

THEREFORE, it is hereby ordered that Licensee pay a fine of \$1,300.00 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; Email Address: 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.

Assessment of Points

IT IS FURTHER ORDERED that five (5) points are hereby assessed against the record of TC Ventures II, Inc., License No.R-AP-SS-2188, as required by 47 P.S. §4-479(b)(1).

Retaining Jurisdiction

Jurisdiction is retained to ensure compliance with this Adjudication.

Dated this 17th day of May, 2007.

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.