

Mailing Date: DEC 21 2007

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 06-0403
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W01-323190
v.	:	
	:	LID - 42557
1707 DAVIS CORP	:	
1707 CECIL B MOORE AVE	:	
P O BOX 489	:	
PHILADELPHIA PA 19121	:	
	:	
PHILADELPHIA COUNTY	:	
LICENSE NO. R-AP-SS-EHF-1212	:	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 March 7, 2006. There are three counts in the citation.

The first count alleges that Licensee violated §493(1) of the Liquor Code, 47 P.S. §4-493(1), on January 13, 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 male minor and one female minor, eighteen and nineteen years of age.

The second count alleges that Licensee violated §493(14) of the Liquor Code, 47 P.S. §4-493(14), on January 13, 2006, and on divers other occasions within the past year, by permitting three male minors and one female minor, eighteen to nineteen years of age, to frequent its licensed premises.

The third count alleges that Licensee violated §102 of the Liquor Code, 47 P.S. §1-102, on January 13, 2006, on the basis that the licensed premises was not a *bona fide* restaurant because there was insufficient food items.

At the hearing scheduled for October 25, 2007, in Plymouth Meeting, Pennsylvania, there was no appearance for the Licensee; therefore, the matter was heard *ex parte*.

FINDINGS OF FACT:

1. The Bureau investigated Licensee during the period December 5, 2006, through January 23, 2007, and sent written notice of the results of its investigation to the licensed premises by certified mail on January 31, 2006 (N.T. 6, Exhibit B-1).

2. A copy of this citation was mailed to the licensed establishment by certified mail on March 7, 2007 (N.T. 7, Exhibit B-2).

3. A Notice of Hearing was mailed to Licensee by the Office of Administrative Law Judge, Harrisburg, PA, by certified and first class mail on September 7, 2007.

4. Liquor Enforcement Officer Justin Clark entered the licensed premises at about 11:45 p.m. on January 13, 2006, and saw a nineteen year old woman in possession of a bottle of malt liquor (N.T. 4-9, Exhibit B-3).

5. On the same date Officer Clark inspected the premises and found that the only food present was some moldy nacho cheese dip and a piece of freezer-burned meat (N.T. 14-15).

CONCLUSIONS OF LAW:

Licensee violated §493(1) of the Liquor Code, 47 P.S. §4-493(1), on January 13, 2006, by selling, furnishing, and/or giving or permitting such sale, furnishing or giving of alcoholic beverages to one female minor, nineteen years of age.

There was no evidence that Licensee violated §493(14) of the Liquor Code, 47 P.S. §4-493(14), by permitting minors to frequent its licensed premises.

Licensee violated §102 of the Liquor Code, 47 P.S. §1-102, on January 13, 2006, on the basis that the premises was not a *bona fide* restaurant because there was insufficient food .

PRIOR RECORD:

Licensee has been licensed since March 12, 1999, and has had one prior violation:

Citation No. 05-2483. \$200.00 fine.

1. Sold liquor for consumption off premises.
July 20, 23, 28, August 11, 27 and October 22, 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, f 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. 3, any fine must be in the \$50.00 to \$1,000.00 range. Penalties are as follows:

Count 1 – a fine of \$1,250.00.

Count 2 – dismissed.

Count 2 – a fine of \$500.00 plus verification of compliance.

ORDER

THEREFORE, it is hereby ORDERED that Licensee, 1707 Davis Corp., License No. R-AP-SS-EHF-1212, shall pay fines totaling one thousand seven hundred fifty dollars (\$1,750.00) 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 submit verification in the form attached hereto that the premises now has sufficient food, as required by §102 of the Liquor Code. In the event the verification is not received within 20 days from the mailing date of this order, Licensee's license will be suspended or revoked.

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. The Licensee is directed to contact 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>>) within thirty (30) days of the mailing date of this adjudication in order to receive assistance in the compliance process. Licensee must receive certification within ninety (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 is issued. The Bureau of Liquor Control Enforcement is further directed to monitor compliance with this adjudication.

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).

Dated this 11th day of December, 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.

Detach Here and Return Stub with Payment

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 PA 17110-9661

VERIFICATION

Subject to the penalties contained in 18 Pa. C. S. §4904, relating to unsworn falsification to authorities, the undersigned officer verifies that the licensed premises now has sufficient food, utensils and dishes to accommodate people.

Licensee acknowledges that sufficient food, cooking equipment, utensils, and dishes are to be maintained at all times this license is in operation.

Corporate Officer's Signature

Date

Submit this verification to:

PLCB-Office of Administrative Law Judge
Brandywine Plaza
2221 Paxton Church Road
Harrisburg PA 17110-9661