

Mailing Date: DEC 13 2006

[Appeal](#)

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 06-0624
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W01-322988
	:	
v.	:	LID - 15584
	:	
L.F.C., INCORPORATED	:	
4043 LANCASTER AVE.	:	
PHILADELPHIA, PA 19104-1753	:	
	:	
	:	
	:	
PHILADELPHIA COUNTY	:	
LICENSE NO. R-AP-12516	:	

BEFORE: JUDGE THAU

APPEARANCES:

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

For Licensee
Edward A. Taraskus, Esq.
1315 Walnut Street
Suite 1002
Philadelphia, PA 19107

ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation that was issued on March 28, 2006, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (Bureau) against L.F.C., Incorporated (Licensee), License Number R-AP-12516.

The citation¹ charges Licensee with a violation 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 December 28, 2005, Licensee, by servants, agents or employees, operated its licensed establishment without a valid health permit or license, which was revoked on November 21, 2005.

An evidentiary hearing was conducted on October 23, 2006 at the Philadelphia State Office Building, 1400 Spring Garden Street, 13th Floor, Room #1, Philadelphia, Pennsylvania. The parties agreed to the relevant facts.

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 2, 2005 and completed it on February 3, 2006. (Commonwealth Exhibit No. B-1, N.T. 24)
2. The Bureau sent a notice of an alleged violation to Licensee at the licensed premises by certified mail-return receipt requested on February 15, 2006. The notice alleged a violation as charged in the citation. (Commonwealth Exhibit No. B-1, N.T. 24)
3. On December 28, 2005, Licensee was open and in operation selling alcoholic beverages.
4. On that date, Licensee's Municipal Food Serving Permit that was hanging on the wall was valid insofar as the contents of the food serving permit indicated. However, the City of Philadelphia revoked that permit on November 21, 2005.

1. Commonwealth Exhibit No. B-2, N.T. 24.

CONCLUSIONS OF LAW:

1. The notice requirements of Liquor Code Section 471 [47 P.S. §4-471] have been satisfied.
2. Although the Bureau established Licensee was open and in operation selling alcoholic beverages at a time when it had no valid Municipal Health Permit, the matter must be dismissed as the Bureau has failed to establish that the City of Philadelphia provided notice to Licensee regarding the permit revocation.

DISCUSSION:

The fundamental prerequisites of Due Process are notice and opportunity to be heard. In this matter the Bureau has failed to establish these two elements.

The facts of this case are quite simple. At all relevant times, Licensee maintained in its premises a Health Permit that, on its face, was valid. The Bureau established that the municipality revoked that Health permit. The Bureau introduced a letter (Commonwealth Exhibit No. B-3) purportedly mailed to Licensee, by the appropriate municipal authority, to advise of the revocation. However, the Bureau failed to produce any evidence that the letter was actually mailed. That evidence was critical to establishing Due Process.

The Bureau argues it need not prove that the City of Philadelphia notified Licensee of the permit revocation, because such a requirement is not an element in the Bureau's case. I disagree. The Brief submitted by Bureau Counsel does not alter my view.

Reliance on Adjudication No. 05-1310 is misguided. There is nothing in the Findings of Fact that deals with a determination regarding health permit revocation. In fact, the Conclusion of Law entered into by Administrative Law Judge Shenkle makes no mention of health permit revocation. The Opinion of the Pennsylvania Liquor Control Board, regarding the same Adjudication on appeal, also makes no mention that the subject permit was revoked.

I am equally unimpressed with the Bureau's argument regarding the Due Process issue. The Brief agrees that notification to Licensee would be an element were the City of Philadelphia to bring an action but the Bureau is relieved of this burden.

The curative concept provided by the Bureau at the hearing is strict liability. Merely uttering those words cannot sweep away Constitutional protections. This matter is actually a case within a case. In so charging Licensee, the Bureau has "piggyback" the municipal matter.

ORDER:

NOW THEREFORE, it is ordered that Citation No. 06-0624 issued against L.F.C., Incorporated, License No. R-AP-12516, is DISMISSED.

Dated this 6th day of December, 2006.

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.