

Mailing Date: OCT 04 2007

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 06-1342
LIQUOR CONTROL ENFORCEMENT	:	
	:	
v.	:	Incident No. W01-331326
	:	
JS5L INC.	:	
26 GARRETT ROAD	:	LID - 53333
UPPER DARBY TWP.	:	
UPPER DARBY PA 19082-2303	:	
	:	
	:	
DELAWARE COUNTY	:	
LICENSE NO. R-AP-SS-EHF-20359	:	

APPEARANCES:

FOR THE BUREAU OF ENFORCEMENT:

**JAMES E. DAILEY, ESQ.**

FOR THE LICENSEE:

**JOHN J. McCREESH, III, ESQ.**

**BEFORE: JUDGE WRIGHT**

ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation that was issued on June 7, 2006, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter "Bureau") against JS5L, Inc., License Number R-AP-SS-EHF-20359 (hereinafter "Licensee").

An Administrative hearing was held on Tuesday, December 19, 2006, pursuant to requisite and appropriate hearing notice. The parties stipulated to the service and receipt of the notice letter and the citation.

The citation contains four counts.

The first count charges Licensee with violation of Section 5.41 of the Liquor Control Regulations, 40 Pa. Code Section 5.41, in that on April 19, 2006, Licensee, by its servants, agents or employes, failed to display on the licensed premises documentary evidence that the premises meets all sanitary requirements for a public eating place.

The second count charges Licensee with violation of Section 493(12) of the Liquor Code, 47 P.S. Section 4-493(12), in that on April 19, 2006, Licensee, by its servants, agents or employes, failed to maintain coil cleaning records.

The third count charges Licensee with violation of Section 102 of the Liquor Code, 47 P.S. Section 1-102, in that on April 19, 2006, the licensed premises was not a bona fide restaurant in that Licensee, by its servants, agents or employes, maintained insufficient cooking and eating utensils.

The fourth count charges Licensee with violation of Section 493(12) of the Liquor Code, 47 P.S. Section 4-493(12), in that on April 19, 2006, Licensee, by its servants, agents or employes, failed to keep records on the licensed premises.

COUNT NOS. 1, 2, 3 AND 4

FINDINGS OF FACT:

1. Officer Steve Rowe is employed as an Enforcement officer and was employed on April 19, 2006 when he conducted an inspection of the licensed premises (N.T. 5).
2. On April 19, 2006, the officer visited the premises at approximately 11:00 p.m. There was a detail of various agencies present from Upper Darby and the Attorney General's office. The detail entered the premises at approximately 11:00 p.m. The premises was open and operating and a bartender was on duty and patrons were present (N.T. 6-7).
3. The Enforcement officer conducted a routine inspection of the premises after identifying himself to the doorman and the bartender (N.T. 7).
4. The Enforcement officer found that there was no health permit on the premises (N.T. 9-10).
5. The officer approached the bartender and one of the managers, Dae Young Chung, with regard to a valid health permit, but they could not produce one (N.T. 10).

6. The officer requested liquor and beer invoices, but no one on the premises was able to produce them (N.T. 10-11).

7. The officer requested coil cleaning records but, they were not able to produce any (N.T. 11).

8. The officer inspected the kitchen facilities and found some food but no eating utensils. He did not, however, find adequate food on the premises (N.T. 11-12).

9. The individuals who appeared to be in charge of the premises on that evening were presented with the licensee inspection report. However, they refused to sign it (N.T. 13).

10. When Mr. Chung was asked for financial records, he told them that if there were any records, they would be downstairs in the office. The officer had already searched the office and found no records (N.T. 17).

11. Dae Chung is the manager of the licensed premises but is not the Board certified manager. He was present on April 19, 2006. According to his recollection, approximately fifteen people came into the premises as a part of the detail (N.T. 25).

12. Mr. Chung indicates that he serves approximately twenty to thirty dishes a night and that there are utensils on the premises with which one can consume those items (N.T. 26).

13. Mr. Chung indicated that his health license is posted in the kitchen and that he is regularly inspected by the Upper Darby Township for the health permit (N.T. 26 and Exhibit L-1).

14. Mr. Chung indicated that on the night in question, the original health permit for the year 2006 was posted in the kitchen where the Upper Darby health officers posted it (N.T. 27).

15. Mr. Chung indicated that cleaning coil records are maintained at the bar on a shelf on the right hand side (N.T. 27 and Exhibit L-2).

16. Mr. Chung indicated that he attempted to show it to the officer at that time (N.T. 28).

17. Mr. Chung indicated that the financial records are kept in the basement office on the top shelf of the inventory (N.T. 29).

18. There was a gun removed from the office by one of the other officers (N.T. 29-30).

19. Mr. Chung arrived at the premises about fifteen or twenty minutes after the officers. He was there before Officer Rowe completed his inspection (N.T. 30-31).

20. Jong Su Lee is the corporate officer and stockholder of the licensed premises. He presented coil cleaning records in an earlier proceeding before the Office of Administrative Law Judge. Mr. Lee indicated that a health license was posted in the kitchen in April of 2006 (N.T. 30).

21. The Bureau of Enforcement verified that the Licensee had a validly issued health permit (N.T. 35).

CONCLUSIONS OF LAW:

Count No. 1 - There is insufficient evidence to conclude that on April 19, 2006, Licensee, by its servants, agents or employes, failed to display on the licensed premises documentary evidence that the premises meets all sanitary requirements for a public eating place, in violation of Section 5.41 of the Liquor Control Regulations, 40 Pa. Code Section 5.41.

Count No. 2 - There is insufficient evidence to conclude that on April 19, 2006, Licensee, by its servants, agents or employes, failed to maintain coil cleaning records, in violation of Section 493(12) of the Liquor Code, 47 P.S. Section 4-493(12).

Count No. 3 - There is insufficient evidence to conclude that on April 19, 2006, the licensed premises was not a bona fide restaurant in that Licensee, by its servants, agents or employes, maintained insufficient cooking and eating utensils, in violation of Section 102 of the Liquor Code, 47 P.S. Section 1-102.

Count No. 4 - On April 19, 2006, Licensee, by its servants, agents or employes, failed to keep records on the licensed premises, in violation of Section 493(12) of the Liquor Code, 47 P.S. Section 4-493(12).

PRIOR RECORD:

Licensee has been licensed since August 27, 2004, and has a record of prior violations as follows:

Citation No. 05-2624. \$150.00 fine.

1. Sales to a minor.  
November 5, 2005.
2. Minors frequenting.  
November 5, 2005.
3. Used loudspeakers or devices whereby music could be heard outside.  
November 5, 2005.
4. Failed to maintain coil cleaning records.  
November 6 and 8, 2005.

DISCUSSION:

The Licensee presented a current health certificate and validly issued health permits for the past three years. Licensee claims that the health permit was posted in the kitchen area. The Court will give Licensee the benefit of the doubt in that the officer may have overlooked the health permit because it was posted in the kitchen, as opposed to in the bar area. The Licensee presented coil cleaning records. The Court is not certain that those records were not manufactured at some point, however, Licensee claims to have presented them in an earlier proceeding. The Court will accept Licensee's explanation and will accept the coil cleaning records. However, Licensee should be aware that failing to keep the coils clean is a potential health issue and the records must be readily available upon request by an officer from the Bureau of Enforcement.

The Licensee was also cited for not having sufficient cooking and eating utensils. However, in and of itself that is not a violation of the Code. It is a violation of the Code if it is coupled with an inability to provide food service to the public. Not having eating utensils or cooking utensils is an indicia that food may not be sold, however, the officer did say that he saw food on the premises. The officer concluded that the food was *not adequate* and what foods were on the premises but offered no basis for his conclusion.

The Court finds the evidence insufficient to establish that the Licensee was not a restaurant, simply because they had no eating utensils. Once again, Licensee is cautioned that they must maintain adequate facilities, supplies, utensils, food, etc. in order to be able to provide food service to the public. Licensee should be aware that if they fail to provide food service upon requested, they will be cited and appropriately fined.

Finally, with regard to financial records, the officer testified that he examined the office and that there were no records in the office. The Licensee did not produce the records at a later date, nor did the Licensee produce any records for the Court. Under the circumstances, the Court finds the Licensee in violation for failing to have financial records on the premises.

Clearly, these officers were looking for drugs, drug paraphernalia and other such illegal items. If Licensee has any reason to believe that there is drug activity on the premises, they are under an obligation to take substantial affirmative steps to prevent such activities.

Under the circumstances, a \$250.00 penalty shall be imposed.

PENALTY:

Section 471 of the Liquor Code, 47 P.S. Section 4-471, prescribes a penalty of suspension or revocation of license or imposition of a fine of not less than \$50.00 or more than \$1,000.00, or both, for violations of the type found in this case.

Therefore, penalties shall be assessed as follows:

- Count No. 1 - DISMISSED.
- Count No. 2 - DISMISSED.
- Count No. 3 - DISMISSED.
- Count No. 4 - \$250.00.

Accordingly, we issue the following

ORDER:

THEREFORE, it is hereby Ordered that Licensee, JS5L, Inc., License Number R-AP-SS-EHF-20359, pay a fine of Two Hundred Fifty Dollars (\$250.00) within twenty (20) days of the mailing date of this Order. In the event the aforementioned fine is not paid within twenty (20) days from the mailing date of this Order, licensee's license shall be suspended or revoked.

**In order to insure compliance with this Order, jurisdiction of this matter is retained.**

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, along with any required documentation, to:

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

Dated this 1<sup>st</sup> day of October, 2007.

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Tania E. Wright, J.

**NOTE:** 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.

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