

Mailing Date: JUN 12 2007

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 06-1447
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W01-332669
v.	:	
	:	LID - 45966
3728 BROAD INC	:	
3724-3728 N BROAD ST	:	
PHILADELPHIA PA 19140-3608	:	
	:	
PHILADELPHIA COUNTY	:	
LICENSE NO. R-AP-15815	:	BEFORE: JUDGE SHENKLE

APPEARANCES:

For Bureau of Enforcement: James E. Daily, Esq.
For Licensee: no appearance

ADJUDICATION

BACKGROUND:

The Bureau of Liquor Control Enforcement of the Pennsylvania State Police issued this citation on June 21, 2006. There are three counts in the citation.

The first count alleges that Licensee violated §437 of the Liquor Code, 47 P.S. §4-437, and §5.41 of the Liquor Control Board Regulations, 40 Pa. Code §5.41, on May 5, 2006, by operating the licensed premises without a valid health permit or license.

The second count alleges that Licensee violated §102 of the Liquor Code, 47 P.S. §1-102, on May 5, 2006, on the basis that the licensed premises was not a *bona fide* restaurant because there were insufficient food items.

The third count alleges that Licensee violated §493(12) of the Liquor Code, 47 P.S. §4-493(12), on May 5, 2006, by failing to keep records on the licensed premises.

At the hearing scheduled for April 5, 2007, Plymouth Meeting, Pennsylvania, there was no appearance by for the Licensee; therefore, the case was heard *ex parte*.

FINDINGS OF FACT:

1. The Bureau investigated Licensee during the period May 5 through May 15, 2006, and sent written notice of the results of its investigation to the licensed premises by certified mail on May 24, 2006 (N.T. 7, Exhibit B-1).

2. A copy of this citation was mailed to the licensed establishment by certified mail on June 21, 2006 (N.T. 8, 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 February 20, 2007.

4. Liquor Enforcement Officer Hamilton Ringgold inspected the licensed premises on May 5, 2006, and found that there was no food, no health permit posted, and no business records (N.T. 4-6).

5. There was no food preparing/serving license for the premises in force on that date, but a bill for the same was paid on May 11, 2006 (Exhibit B-3).

CONCLUSIONS OF LAW:

Sustained as charged.

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 of 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 will 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.

PRIOR RECORD:

Licensee has been licensed since June 14, 2000, 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 in the \$50.00 to \$1,000.00 range, or both, for violations of the type found in this case. Penalties are assessed as follows:

- Count 1 – a fine of \$200.00 and two points under Act 239.
- Count 2 – a fine of \$200.00 and verification of compliance.
- Count 3 – a fine of \$100.00.

ORDER

THEREFORE, it is hereby ORDERED that Licensee, 3728 Broad, Inc., License No. R-AP-15815, shall pay a fine of five hundred dollars (\$500.00) within 20 days of the mailing date of this order. In the event the fine is not paid within 20 days, Licensee's license will be suspended or revoked.

IT IS FURTHER ORDERED that two (2) points are hereby assessed against the record of Licensee, 3728 Broad, Inc., License No. R-AP-15815, as required by 47 P.S. §479(d)(9).

IT IS FURTHER ORDERED that Licensee shall, within 20 days of the mailing date of this order, submit verification in the form attached hereto that the premises now maintains sufficient food on hand to qualify as a *bona fide* restaurant. If Licensee fails to submit the verification within the time allowed, the penalty in this case will be modified to include a suspension of license, and for that purpose jurisdiction 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 to:

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

Dated this 29th day of May, 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.

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