

Mailing Date: MAY 21 2007

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

PENNSYLVANIA STATE :  
POLICE, BUREAU OF : Citation No. 06-1502  
LIQUOR CONTROL ENFORCEMENT :  
 : Incident No. W01-326882  
 :  
 v. :  
 : LID - 53755  
 :  
 63 CVA INC :  
 2501 N 31<sup>st</sup> ST :  
 PHILADELPHIA PA 19132-2925 :  
 :  
 PHILADELPHIA COUNTY :  
 LICENSE NO. E-SS-113 : BEFORE: JUDGE SHENKLE

APPEARANCES:

For Bureau of Enforcement: Erik S. Shmukler, Esq.  
For Licensee: John J. McCreesh, III, Esq.

**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 §442(a)(2) of the Liquor Code, 47 P.S. §4-442(a)(2), on April 24, May 18 and 20, 2006, by selling malt or brewed beverages for consumption off premises.

The second count alleges that Licensee violated §102 of the Liquor Code, 47 P.S. §1-102, on April 12, 24, May 18 and 20, 2006, on the basis that the licensed premises was not a *bona fide* restaurant because there was insufficient seating.

The third count alleges that Licensee violated §5.41 of the Liquor Control Board Regulations, 40 Pa. Code §5.41, on May 20, 2006, by failing to display on the licensed premises documentary evidence that it meets all sanitary requirements for a public eating place.

A hearing was held on Thursday, January 18, 2007, in Plymouth Meeting, Pennsylvania. The parties stipulated to the timely service of the notice letter and the citation.

FINDINGS OF FACT:

1. Liquor Enforcement Officer Tara Cook visited the licensed premises at 10:20 p.m. on April 12, 2006. She saw one patron at the counter, 15 chairs and three tables (N.T. 4-7).
2. Officer Cook visited the premises again at 6:20 p.m. on April 20, 2006, and again at 7:30 p.m. on May 18, 2006. She saw 15 chairs and three tables (N.T. 7).

3. Officer Cook inspected the premises on May 20, 2006, and saw the same seating as before. She asked to see a current health permit, but could not find one. She later determined that a current health permit was, in fact, in force, although it was not displayed (N.T. 8-9).

4. The second floor of the licensed premises was licensed for serving, but Officer Cook did not know that was the case at the time of her visits and inspection, since she did not examine the Bureau's files concerning the premises beforehand. She also did not inspect the basement, and she did not see a way to get to the second floor, which is why she did not think to inspect it (N.T. 11-12, Exhibit L-3).

5. At the times of Officer Cook's visits, Licensee's second floor was equipped with seating to accommodate 18 people at once (N.T. 14-15, Exhibit L-1).

6. Licensee paid for the renewal of the health permit, which expires on April 30 of each year, on April 1, 2006. The City had not provided the permanent certificate by May 20, 2006, but had provided a receipt intended to be used as a temporary permit. The receipt was on display on May 20, 2006, in the same way the previous owner had displayed it. Since then, the regular food preparing/serving license was obtained and is now on display (N.T. 17-22, Exhibits L-4, 5).

CONCLUSIONS OF LAW:

The first count was withdrawn by the Bureau (N.T. 5).

The second count will be dismissed because there was sufficient seating on April 12, 24, May 18 and 20, 2006.

The third count will be dismissed because Licensee displayed on the licensed premises documentary evidence that it meets all sanitary requirements for a public eating place on May 20, 2006.

ORDER

THEREFORE, it is hereby ORDERED that Citation No. 06-1502 is DISMISSED.

Dated this 14<sup>th</sup> day of May, 2007.

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David L. Shenkle, J.

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**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.**