

Mailing Date: MAR 28 2007

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 06-1646C
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W01-331966
v.	:	
	:	LID - 46621
2421 SELAM INC	:	
2421 S 62 <sup>nd</sup> ST	:	
PHILADELPHIA PA 19142-3217	:	
	:	
	:	
PHILADELPHIA COUNTY	:	
LICENSE NO. R-AP-SS-OPS-6799	:	BEFORE: JUDGE SHENKLE

APPEARANCES:

For Bureau of Enforcement: Erik 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 July 12, 2006. The citation alleges that Licensee violated §493(1) of the Liquor Code, 47 P.S. §4-493(1), on May 18, 2006, by selling, furnishing, and/or giving or permitting such sale, furnishing or giving of alcoholic beverages to one female minor, twenty years of age.

A hearing was held on Thursday, February 1, 2007, in Plymouth Meeting, Pennsylvania. The parties stipulated to the timely service of the notice letter and the citation.

FINDINGS OF FACT:

On May 18, 2006, a woman whose birth date was February 10, 1986, entered the licensed premises and ordered a Bacardi Apple malt beverage. The bartender went away for five minutes, then returned and said she didn't have any; would the woman prefer a Bacardi Silver malt beverage? The young woman agreed. The bartender asked for identification, and the young woman displayed her genuine Pennsylvania identification card, proving that she was twenty years old. The bartender looked at it and then served the alcoholic beverage the young woman had requested (N.T. 6-10).

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 September 12, 2000, and has had five prior violations:

Citation No. 01-0043. \$1,100.00 fine.

1. Sales between 2:00 a.m. and 7:00 a.m. November 11, 2000.
2. The sole corporate officer consumed alcoholic beverages while tending bar. November 11, 2000.
3. Failed to clean coils at least once every 7 days. Between November 3 and December 15, 2000.

Citation No. 01-1098. \$400.00 fine.

1. Operated without a valid health permit or license.  
February 15, March 1, 10, May 4 and 8, 2001.
2. Not a *bona fide* restaurant (insufficient chairs at tables). May 8, 2001.

Citation No. 02-1859. \$500.00 fine and one day suspension.

1. Not a *bona fide* restaurant (insufficient food). September 27, 2002.

Citation No. 03-0275. One day suspension.

1. Loudspeakers could be heard outside. January 24, 2003.

Citation No. 03-1021. \$1,000.00 fine and 4 days suspension.

1. Sold alcoholic beverages while liquor license suspended. May 19, 2003.
2. Failed to post notice of suspension. May 19, 2003.

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 \$1,000.00 to \$5,000.00 range, or both, for violations of the type found in this case.

ORDER

THEREFORE, it is hereby ORDERED that Licensee, 2421 Selam, Inc., License No. R-AP-SS-OPS-6799, shall pay a fine of twelve hundred fifty dollars (\$1,250.00) 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. Jurisdiction is retained.

IT IS FURTHER ORDERED that five (5) points are hereby assessed against the record of Licensee, 2421 Selam, Inc., License No. R-AP-SS-OPS-6799, as required by 47 P.S. §479(b)(1).

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. Within thirty (30) days after the mailing date of this adjudication, Licensee shall contact the Bureau of Alcohol Education, Pennsylvania Liquor Control Board (toll free telephone: 1-866-275-8237; Web Site: [www.lcb.state.pa.us](http://www.lcb.state.pa.us)) in order to receive assistance in the compliance process. Licensee must receive certification within ninety (90) days after the mailing date of this adjudication. Licensee must remain in compliance for a period of one year from the date such certification is issued.

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).

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 21<sup>st</sup> day of March, 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.**