

Mailing Date: FEB 15 2007

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 06-1767
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W01-334332
v.	:	
	:	LID - 12433
NEW JANIE'S LOUNGE, INC.	:	
1841-43 POPLAR ST.	:	
PHILADELPHIA, PA 19130	:	
	:	
	:	
PHILADELPHIA COUNTY	:	
LICENSE NO. R-AP-SS-6866	:	

**BEFORE:** JUDGE THAU

APPEARANCES:

For Bureau of Enforcement  
Erik S. Shmukler, Esquire  
Pennsylvania State Police  
6901 Woodland Avenue  
Philadelphia, PA 19142

For Licensee  
Ex-Parte

**ADJUDICATION**

BACKGROUND:

This proceeding arises out of a citation that was issued on August 1, 2006, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (Bureau) against New Janie's Lounge, Inc. (Licensee), License Number R-AP-SS-6866.

This citation<sup>1</sup> contains three counts.

The first count charges Licensee with a violation of Section 493(12) of the Liquor Code [47 P.S. §4-493(12)]. The charge is that on June 8, 2006, Licensee, by servants, agents or employes, failed to keep records on the licensed premises.

The second count charges Licensee with violations of Section 493(12) of the Liquor Code [47 P.S. §4-493(12)]. The charge is that Licensee, by servants, agents or employes, failed to maintain complete and truthful records covering the operation of the licensed business for a period of two (2) years immediately preceding June 28, 2006.

The third count charges Licensee with violations 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 June 8 and 28, 2006, Licensee, by servants, agents or employes, operated its licensed establishment without a valid health permit or license, which expired on April 30, 2004.

An evidentiary hearing was conducted on January 8, 2007 at the Philadelphia State Office Building, 1400 West Spring Garden Street, 13<sup>th</sup> Floor, Room #1, Philadelphia, Pennsylvania. Licensee did not appear personally or have any representation.

After review of the transcript of that proceeding, the following Findings of Fact and Conclusions of Law are entered.

FINDINGS OF FACT:

1. A citation hearing notice was mailed by the Office of Administrative Law Judge on November 30, 2006 to Licensee by both certified receipt-return mail and first-class mail to the licensed premises. The notice notified Licensee of the date, time and place of the hearing. On December 6, 2006, I issued a Pre-Hearing Order by first class mail directing Licensee to submit its pre-hearing memorandum to this office. That Order reiterated the date, time and place of hearing. (N.T. 4)

2. The Bureau began its investigation on June 8, 2006 and completed it on June 28, 2006. (Commonwealth Exhibit No. B-1, N.T. 6)

3. The Bureau sent a notice of alleged violations to Licensee at the licensed premises by certified mail-return receipt requested on July 5, 2006. The notice alleged violations as charged in the citation. (Commonwealth Exhibit No. B-1, N.T. 6)

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1. Commonwealth Exhibit No. B-2, N.T. 6.

Count Nos. 1 and 2:

4. On June 8, 2006, a Bureau Enforcement Officer originally entered the licensed premises in an undercover capacity requesting a beer to go. The bartender refused service. The Officer subsequently identified herself to the bartender. The Officer advised the bartender that she intended to conduct a routine inspection. Licensee maintained no records on the premises. (N.T. 7-9)

5. The Officer returned to the premises on June 28, 2006, arriving at approximately 5:00 p.m. The Officer found virtually no records. (N.T. 18-24)

Count No. 3:

6. On the dates charged, Licensee operated its licensed establishment without a valid health permit which expired on April 30, 2004. (Commonwealth Exhibit No. B-3)

CONCLUSIONS OF LAW:

1. The notice requirements of Liquor Code Section 471 [47 P.S. §4-471] have been satisfied.
2. Count Nos. 1, 2 and 3 are **sustained** as charged.

PRIOR RECORD:

Licensee has been licensed since June 17, 1987, and has had two prior violation(s) since July 1, 1987, the date of establishment of the Office of Administrative Law Judge, (Commonwealth Exhibit No. B-4, N.T. 29):

Adjudication No. 92-1307. Fine \$400.00.

1. Unlawfully possessed and/or transported liquor within this Commonwealth.
2. Unlawfully possessed liquor obtained from a source other than a Pennsylvania State Store.

Adjudication No. 05-2163. Fine \$300.00.

1. Used loudspeakers or devices whereby music could be heard outside.  
August 12, 18 and September 12, 2005.
2. Sold liquor for consumption off premises.  
August 18, September 12 and 15, 2005.

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 shall 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.

Accordingly, you are hereby notified that two points have been assigned to your record.

PENALTY:

Section 471 of the Liquor Code [47 P.S. §4-471] prescribes a penalty of license suspension or revocation or a fine of not less than \$50.00 or more than \$1,000.00 or both for violations of the type found in Count Nos. 1, 2 and 3 in this case.

As Licensee has failed to obey process and failed to appear at the hearing without any explanation, I impose:

Count No. 1 - \$1,000.00 fine.

Count No. 2 - \$1,000.00 fine.

Count No. 3 - \$1,000.00 fine.

ORDER:

**Imposition of Fine**

THEREFORE, it is hereby ordered that Licensee pay a fine of \$3,000.00 within 20 days of the mailing date of this Order. In the event the aforementioned fine is not paid within 20 days from the mailing date of this Order, Licensee's license shall be suspended or revoked.

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, Pennsylvania 17110-9661

**Assessment of Points**

IT IS FURTHER ORDERED that two (2) points are hereby assessed against the record of New Janie's Lounge, Inc., License No.R-AP-SS-6866, as required by 47 P.S. §4-479(d)(9).

**Retaining Jurisdiction**

Jurisdiction is retained to ensure compliance with this Adjudication.

Dated this 7th day of February, 2007.

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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.**