

Mailing Date: DEC 19 2006

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 06-1906
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W01-329872
v.	:	
	:	LID – 24154
E J'S PLACE, INC.	:	
7605 ROOSEVELT BOULEVARD	:	
PHILADELPHIA, PA 19152-3917	:	
	:	
	:	
	:	
PHILADELPHIA COUNTY	:	
LICENSE NO. R-AP-SS-EHF-13616	:	

BEFORE: JUDGE THAU

APPEARANCES:

For Bureau of Enforcement
James E. Dailey, Esquire
Pennsylvania State Police
6901 Woodland Avenue
Third Floor
Philadelphia, PA 19142

For Licensee
Patrick M. McHugh, Esquire
Suite 214
8040 Roosevelt Boulevard
Philadelphia, PA 19152

ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation that was issued on August 14, 2006, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (Bureau) against E J's Place, Inc. (Licensee), License Number R-AP-SS-EHF-13616.

This citation¹ contains two counts.

The first count charges Licensee with a violation of Sections 406(a)(3.1) and 493(16) of the Liquor Code [47 P.S. §4-406(a)(3.1) and §4-493(16)]. The charge is that on July 16, 2006, Licensee, by servants, agents or employes, sold, furnished and/or gave alcoholic beverages on Sunday between 2:00 A.M. and 11:00 A.M.

The second count charges Licensee with a violation of Section 499(a) of the Liquor Code [47 P.S. §4-499(a)]. The charge is that on July 16, 2006, Licensee, by servants, agents or employes, permitted patrons to possess and/or remove alcoholic beverages from that part of the premises habitually used for the service of alcoholic beverages after 2:30 A.M.

An evidentiary hearing was conducted on November 6, 2006 at the Philadelphia State Office Building, 1400 West Spring Garden Street, 13th Floor, Room #2, Philadelphia, Pennsylvania.

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

FINDINGS OF FACT:

1. The Bureau began its investigation on March 24, 2006, and completed it on July 16, 2006. (Commonwealth Exhibit No.B-1, N.T. 52)

2. The Bureau sent a notice of alleged violations to Licensee at the licensed premises by certified mail-return receipt requested on July 26, 2006. The notice alleged violations as charged in the citation. (Commonwealth Exhibit No. B-1, N.T. 52)

Count Nos. 1 and 2:

3. A Bureau Enforcement Officer entered the licensed premises on July 16, 2006, at approximately 1:30 a.m. The Officer noticed the clock on the premises was ten minutes fast so that if his watch read 11:30, the clock in the premises indicated it was 11:40. (N.T. 45-47)

1. Commonwealth Exhibit No. B-2, N.T. 52.

4. The Officer ordered an alcoholic beverage before 2:00 a.m. At 2:05 a.m., there were two patrons present in addition to the Officer. The bartender served one of the patrons's a beer, taking no money for same. The bartender removed an upside down shot glass from the bar. At 2:10 a.m., two patrons entered the premises. They ordered and were served two bottles of beer. The bartender took money from them and returned the appropriate change. As the bartender was putting change on the bar, she remarked she was going to close the register soon and if the two wanted anything else that they had to order it at that time. One of the two patrons ordered an additional beer which the bartender served. (N.T. 48-50)

5. At 2:35 a.m., the bartender served the Officer a malt beverage which was rung up on the cash register. There were two undercover Enforcement Officers present in addition to a third patron. The Officers departed the premises at 2:50 a.m., with the one patron remaining, helping the bartender. (N.T. 50-51)

CONCLUSIONS OF LAW:

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

PRIOR RECORD:

Licensee has been licensed since May 4, 1981, and has had five prior violation(s) since July 1, 1987, the date of establishment of the Office of Administrative Law Judge, (Commonwealth Exhibit No. B-3, N.T. 37):

Adjudication No. 91-0405. \$1,000.00 fine.
Sales between 2:00 a.m. and 7:00 a.m.

Adjudication No. 92-0265. \$400.00 fine.

1. Permitted patrons to possess and/or remove liquor or malt or brewed beverages after 2:30 a.m.
2. Failed to require patrons to vacate the premises not later than one-half hour after the required time.

Adjudication Nos. 92-1878 and 92-2328 Consolidated. \$1,000.00 fine and three days suspension.

1. Failed to require patrons to vacate the premises not later than one-half hour after the required time.
2. Possessed or operated gambling devices or paraphernalia or permitted gambling or lotteries on the licensed premises.
3. Failed to maintain complete and truthful records covering the operation of the licensed business for a period of two years.

Adjudication No. 98-1743. \$500.00 fine.

Possessed or operated gambling devices or paraphernalia or permitted gambling or lotteries, poolselling and/or bookmaking on the licensed premises.
June 3 and 30, 1998.

Adjudication No. 00-1835. Fine \$2,000.00.

1. Sales between 2:00 A.M. and 7:00 A.M.
October 7, 2000.
2. Permitted patrons to possess and/or remove liquor or malt or brewed beverages after 2:30 A.M.
September 30 and October 7, 2000.

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 \$1,000.00 or more than \$5,000.00 or both for violations of the type found in Count No. 1 and 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 No. 2 in this case.

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 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 five points have been assigned to your record.

The Officer made three prior undercover visits and found no violations. Further, as Licensee advises the barmaid involved has since been fired. I impose:

Count Nos. 1 and 2 – merged - \$1,500.00 fine.

ORDER:

Imposition of Fine

THEREFORE, it is hereby ordered that Licensee pay a fine of \$1,500.00 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 five (5) points are hereby assessed against the record of EJ's Place, Incorporated, License No. R-AP-SS-EHF-13616, as required by 47 P.S. §4-479(b)(4).

Retaining Jurisdiction

Jurisdiction is retained to ensure compliance with this Adjudication.

Dated this 12th day of December, 2006.

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.