

Mailing Date: JUL 17 2007

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 06-1958
LIQUOR CONTROL ENFORCEMENT	:	
	:	
v.	:	Incident No. W01-329962
	:	
W. G. M. L. INC.	:	
T/A WINSTON'S RESTAURANT AND	:	LID - 34066
LOUNGE	:	
1812 W. CHELTENHAM AVE.	:	
PHILADELPHIA PA 19126-1547	:	
	:	
PHILADELPHIA COUNTY	:	
LICENSE NO. R-AP-SS-EHF-868	:	

APPEARANCES:

FOR THE BUREAU OF ENFORCEMENT:

**ERIK S. SHMUKLER, ESQ.**

FOR THE LICENSEE:

**EX PARTE**

**BEFORE: JUDGE WRIGHT**

ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation that was issued on August 22, 2006, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter "Bureau") against W.G.M.L., Inc., t/a Winston's Restaurant and Lounge, License Number R-AP-SS-EHF-868 (hereinafter "Licensee").

W.G.M.L., Inc.  
t/a Winston's Restaurant and Lounge  
Citation No. 06-1958

An Administrative hearing was held on Wednesday, January 31, 2007, pursuant to requisite and appropriate hearing notice. Despite notice of the hearing having been sent to the Licensee, the Licensee failed to appear. Therefore, the hearing proceeded *ex parte*.

The citation charges Licensee with violation of Section 493(12) of the Liquor Code, 47 P.S. Section 4-493(12), in that on July 10, 2006, Licensee, by its servants, agents or employees, failed to keep on the licensed premises and/or provide an authorized employee of the Enforcement Bureau access to, or the opportunity to copy, complete and truthful records covering the operation of the licensed business.

FINDINGS OF FACT:

1. The Bureau of Enforcement conducted an investigation of the licensed premises began on March 27, 2006, which ended on July 12, 2006. A notice of violation letter was sent to the licensed premises on August 1, 2006 by certified mail, return receipt requested. The mailing was signed as received. A citation dated August 22, 2006 was sent to the licensed premises by certified mail, return receipt requested. The return receipt card was signed as received. A citation hearing notice was sent to the licensed premises on December 13, 2006 by the Office of Administrative Law Judge. That mailing was sent by certified mail, return receipt requested and by first class mail. The mailing was returned unclaimed (N.T. 10-13 and Exhibits B-1 and B-2).

2. Enforcement Officer Christopher Keisling is employed by the Bureau of Enforcement and has been employed for approximately six and a half years. They received an anonymous complaint with regard to sales after hours, loudspeakers and an undisclosed pecuniary interest. As a result, Officer Keisling was assigned to investigate this premises. The first step of his investigation, he contacted the two complainants in April of 2006. He was unable to reach the first complainant on April 11, 2006 and contacted the second one on April 19, 2006 (N.T. 5-6).

3. Officer Kareem Davis of the Bureau of Enforcement visited the premises in May of 2006 but found no violations (N.T. 6).

4. As a part of the officer's investigation, he prepared a Licensee's Request for Records. He requested certain items for the Licensee to present (N.T. 7 and Exhibit B-3).

5. The officer gave the Licensee approximately two weeks to produce the records. The records were returnable by Monday, July 10, 2006. The records requested were cash receipts and disbursement books, payroll records, bills and invoices, deed of property or lease of property, insurance policy, list of current officers and employees, bank books, checkbooks and cash register receipts (N.T. 8 and Exhibit B-3).

6. The officer states that the records were requested for the period July, 2004 to July, 2006 and that the records must be available to be picked up on July 10, 2006 (N.T. 8 and Exhibit B-3).

W.G.M.L., Inc.  
t/a Winston's Restaurant and Lounge  
Citation No. 06-1958

7. On July 10, 2006, the officer made a visit to the premises to pick up the records. He went in and saw a female bartender on the premises and also one patron. He asked the female bartender if there was a manager or was the Licensee available. She stated that the Licensee was not there. He then asked her if the Licensee had left the records and all the paperwork that he needed to pick up. The officer identified himself to the bartender and informed her that he was there to pick up the records. She stated that there was nothing left for him at that time (N.T. 9).

8. The officer asked if there were any records on the premises. She stated there were not (N.T. 9).

9. Officer Ringgold is employed by the Bureau of Enforcement and has been so employed for approximately five years. Officer Ringgold took part in the investigation of the licensed premises in that he made a visit to the premises on June 26, 2006. As he entered the premises, there was a female bartender who he approached and identified himself and handed her the request for records form at which time she signed the records request. He explained it to her and departed the premises (N.T. 13-14 and Exhibit B-3).

10. The bartender signed her name as Tia Creary (N.T. 15).

11. There was also a telephone number entered on the request for records so that if more time was needed to collect the information, they could call the district office (N.T. 15 and Exhibit B-3).

#### CONCLUSIONS OF LAW:

All statutory prerequisites for notice to the Licensee were satisfied.

On July 10, 2006, Licensee, by its servants, agents or employes, failed to keep on the licensed premises and/or provide an authorized employee of the Enforcement Bureau access to, or the opportunity to copy, complete and truthful records covering the operation of the licensed business, in violation of Section 493(12) of the Liquor Code, 47 P.S. Section 4-493(12).

#### PRIOR RECORD:

Licensee has been licensed since August 24, 1994, and has a record of prior violations as follows:

Citation No. 00-0219. \$2,800.00 fine, Verification conditions corrected and payment for lost state store profit and taxes.

1. Used loudspeakers or similar devices whereby music could be heard outside.  
September 18, 19 and October 3, 1999.

W.G.M.L., Inc.  
t/a Winston's Restaurant and Lounge  
Citation No. 06-1958

2. Permitted patrons to possess and/or remove alcoholic beverages after 2:30 a.m.  
September 19, 1999.
3. Sales on Sunday between 2:00 a.m. and 11:00 a.m.  
September 19, 1999.
4. Permitted entertainment during prohibited hours.  
September 19, 1999.
5. Fortified, adulterated and/or contaminated liquor.  
November 20, 1999.
6. Refilled liquor bottles.  
November 20, 1999.
7. Not a bona fide restaurant in that food items, eating utensils, dishes and chairs at tables were insufficient.  
November 20, 1999.
8. Operated the licensed establishment without a valid health permit or license.  
November 20, 1999.
9. Unlawfully possessed liquor obtained from a source other than a Pennsylvania State Store.  
November 20, 1999.
10. Possessed or operated gambling devices or paraphernalia or permitted gambling or lotteries, poolselling and/or bookmaking on the licensed premises.  
November 20, 1999.

Citation No. 00-1399. \$300.00 fine.

1. Operated the licensed establishment without a valid health permit or license.  
July 27, 2000.

Citation No. 03-0435. \$300.00 fine.

1. Used loudspeakers or similar devices whereby music could be heard outside.  
January 25, 2003.

Citation No. 03-2017. \$100.00 fine.

1. Issued worthless checks in payment for malt or brewed beverages.  
October 3, 2003.

W.G.M.L., Inc.  
t/a Winston's Restaurant and Lounge  
Citation No. 06-1958

Citation No. 04-0703. \$200.00 fine. Fine not paid and license suspended 1 day and thereafter until fine paid.

1. Issued worthless checks in payment for malt or brewed beverages.  
January 23, 2004.

Citation No. 04-1497. \$900.00 fine and Verification conditions corrected. Fine not paid and license suspended 1 day and thereafter until fine paid.

1. Not a bona fide restaurant in that food items were insufficient.  
July 21, 2004.
2. Operated the licensed establishment without a valid health permit or license.  
July 21, 2004.
3. Failed to maintain coil cleaning records.  
July 21, 2004.
4. Failed to clean coils at least once every 7 days.  
July 21, 2004.
5. Failed to keep records on the licensed premises.  
July 21, 2004.

Citation No. 05-1951, \$2,200.00 fine and five points assessed.

1. Sold alcoholic beverages during a time when the Restaurant Liquor License was suspended.  
July 20 and August 12, 2005.
2. Failed to post in a conspicuous place on the outside of the licensed premises, a Notice of Suspension.  
July 18, 20, 25 and August 12, 2005.

#### DISCUSSION:

After a request for records was submitted to the premises on June 26, 2006, with specific instructions for providing records to the Bureau on or before July 10, 2006, no records were received by the Bureau. Licensees are required to keep records on the premises and to have them available at the request of an authorized employee of the Bureau of Enforcement to review them or to copy them. The information covering the operation of the licensed premises should be on the premises and available at all times.

Under the circumstances, a \$400.00 penalty shall be imposed.

W.G.M.L., Inc.  
t/a Winston's Restaurant and Lounge  
Citation No. 06-1958

PENALTY:

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

Accordingly, we issue the following

ORDER:

THEREFORE, it is hereby Ordered that Licensee, W.G.M.L., Inc., t/a Winston's Restaurant and Lounge, License Number R-AP-SS-EHF-868, pay a fine of Four Hundred Dollars (\$400.00) within twenty (20) days of the mailing date of this Order. In the event the aforementioned fine is not paid within twenty (20) days from the mailing date of this Order, licensee's license shall be suspended or revoked.

**In order to insure compliance with this Order, jurisdiction of this matter 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, along with any required documentation, to:

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

Dated this 12<sup>th</sup> day of July, 2007.

---

Tania E. Wright, J.

**NOTE:** 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.

mm

W.G.M.L., Inc.  
t/a Winston's Restaurant and Lounge  
Citation No. 06-1958