

Mailing Date: AUG 30 2007

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 06-1961
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W01-332050
v.	:	
	:	LID - 15584
L F C INCORPORATED	:	
4043 LANCASTER AVE	:	
PHILADELPHIA PA 19104-1753	:	
	:	
	:	
	:	
	:	
PHILADELPHIA COUNTY	:	
LICENSE NO. R-AP-12516	:	BEFORE: JUDGE SHENKLE

APPEARANCES:

For Bureau of Enforcement: James E. Dailey, Esq.  
For Licensee: Edward A. Taraskus, Esq.

**ADJUDICATION**

BACKGROUND:

The Bureau of Liquor Control Enforcement of the Pennsylvania State Police issued this citation on August 22, 2006. There are two counts in the citation.

The first count alleges that Licensee violated §7.31(a) of the Liquor Control Board Regulations, 40 Pa. Code 7.31(a), by failing to return its Restaurant Liquor License and Wholesale Liquor Purchase Permit Cards to the Board after the licensed establishment had not been in operation for a period of fifteen consecutive days between May 2 and July 10, 2006.

The second alleges that Licensee violated §471 of the Liquor Code, 47 P.S. §4-471, and §780-101, *et seq.*, of the Pennsylvania Controlled Substance, Drug, Device and Cosmetic Act, 35 P.S. §780-101, on May 1, 2006, by possessing and/or selling a controlled substance on the licensed premises or on premises contiguous or adjacent thereto or used in connection therewith.

A hearing was held on Tuesday, July 10, 2007, in Plymouth Meeting, Pennsylvania. The parties stipulated to the timely service of the notice letter and the citation.

FINDINGS OF FACT:

1. Philadelphia Police Detective William Seidel, along with Detectives Mullen and Crome, went to the licensed premises in the early morning hours of May 1, 2006. There was an extensive crime scene, with multiple shell casings from the front of the bar down to the corner.

They photographed, sketched and processed the outside scene and then executed a search warrant inside the premises, identifying themselves to Florence Furman (N.T. 8-10).

2. The detectives searched the bar area and the two floors above it, which were apartments or rooms. They recovered numerous weapons from various locations within the bar and the third floor bedroom, as well as a bag containing numerous packets of PCP from the third floor bedroom (N.T. 10-11).

3. On the third floor of the building containing the licensed premises there was a little office area and a large bedroom containing exercise equipment, a bed, a refrigerator, and a TV. The bag containing PCP was a Crown Royal bag in the refrigerator. There was also a bag containing a substance which tested positive for the presence of marijuana (N.T. 13).

4. In the course of his investigation, Detective Seidel learned that the owner of this licensed premises was "the Furman family." Three members of the Furman family were arrested for alleged narcotics violations, two males and a female. Detective Seidel identified Florence Furman, seated next to Mr. Taraskus during the hearing, as having been present when the search warrant was executed (N.T. 18).

5. Records of the PLCB indicate that Leroy Furman is Licensee's president, stockholder and a director; that Florence Furman is Licensee's secretary/treasurer and a director; that Rudolph Fox is a director; and that Fred Vitello is a director.

6. Controlled substances were seized only from the living areas of the building, not the tavern area. Access to the living area was through the bar, using a staircase to the third floor. The area where the controlled substances were found is not licensed by the Board (N.T. 19-21).

7. Florence Furman, Licensee's secretary/treasurer, came to the premises after the police seized it. The policy of Licensee was against allowing any drugs in the premises, and Mrs. Furman was never aware of any drug activity there during the 28 years since issuance of this license. Neither she nor her husband Leroy were arrested, although her son, Lionel Furman, was (N.T. 24-26, 29).

8. Mrs. Furman leased a small apartment on the third floor of the building, except for a small room she kept as an office, to Ronald Moore. This lease was in effect on May 1, 2006. No one employed by Licensee used that apartment. Since the closure of the premises, Mrs. Furman has not heard from Mr. Moore (N.T. 26-27, Exhibit L-1).

#### CONCLUSIONS OF LAW:

Licensee violated §7.31(a) of the Liquor Control Board Regulations, 40 Pa. Code 7.31(a), by failing to return its Restaurant Liquor License and Wholesale Liquor Purchase Permit Cards to the Board after the licensed establishment had not been in operation for a period of fifteen consecutive days between May 2 and July 10, 2006.

The evidence was insufficient to prove that Licensee violated §471 of the Liquor Code, 47 P.S. §4-471, and §780-101, et seq., of the Pennsylvania Controlled Substance, Drug, Device and Cosmetic Act, 35 P.S. §780-101, on May 1, 2006, by possessing and/or selling a controlled

substance on the licensed premises or on premises contiguous or adjacent thereto or used in connection therewith.

DISCUSSION:

When a licensee is charged under §471 of the Liquor Code for the unlawful acts of its employees or patrons, the Pennsylvania Supreme Court has held that “some element of scienter on the part of the licensee is required to endanger the license,” if the underlying conduct violates the Crimes Code rather than a standard of conduct set forth in the liquor laws. *PLCB v. TLK, Inc.*, 518 Pa. 500, 544 A.2d 931 (1988). Although the court did not list every form that such guilty knowledge could take, two principles in particular were expressly approved:

The first is that if a licensee knew or should have known of illegal activities by an employee or patron, the licensee is liable. The second principle is that a licensee may defend his license by demonstrating that he took substantial affirmative steps to guard against a known pattern of illegal activities. – 544 A.2d at 933

The citation in *TLK* was sustained on the basis of a single drug sale initiated in the licensed premises. However, the requisite scienter was established by a six-month investigation at the premises by an undercover narcotics agent:

Agent Way testified that he was able to purchase drugs from a patron of the establishment, and that he observed drug sales between patrons, sales of stolen goods, the use of drugs in the bathroom, and a drug sale take place in the presence of the bartender. Due to the pervasive nature of this illicit activity, it may be said that the licensee should have known of the misconduct of his employee.

-- 544 A.2d at 944

There was nothing like such evidence in the present case. There was no evidence of drug possession, use or trafficking in the licensed premises at all. The only instance in which drugs were found was the occasion when the search warrant was executed, and on that occasion the only drugs found were in the leased apartment of a person who had no connection to the licensed business.

I find that the circumstance that one reaches the third-floor apartment by using a staircase which leads from the licensed premises is insufficient to establish that Licensee knew or should have known of the presence of controlled substances in that area.

The idea that Licensee can be held liable because it is owned by “the Furman family” and one person, Lionel Furman, was arrested as a result of the execution of the search warrant, is nothing more than guilt by vague association. Lionel Furman’s guilt was not established in this proceeding, and there was no showing that he had any connection with or responsibility for the licensed premises managed by his mother.

However, the charge in Count 1 of failure to return its license to the Board when the premises was not in operation for fifteen consecutive days, must be sustained. I cannot accept the excuse that Mrs. Furman was prohibited by the police from entering the building. The duty to return the license was absolute.

PRIOR RECORD:

Licensee has been licensed since April 30, 1979, and has had prior violation since July 1, 1987, the date of establishment of the Office of Administrative Law Judge, as follows:

Citation No. 91-1177. 3 days suspension and thereafter until conditions verified.

1. Not a *bona fide* restaurant in that food items, eating utensils, dishes, cooking utensils and chairs at tables were insufficient.
2. Used loudspeakers or devices whereby music could be heard outside.
3. Permitted dancing and/or entertainment without an amusement permit.
4. Minors frequenting.

Citation No. 91-2398. \$600.00 fine.

1. Not a *bona fide* restaurant in that food items, eating utensils, dishes, cooking utensils and chairs at tables were insufficient.
2. Operated the licensed establishment without a valid health permit or license.

Citation No. 92-1145. \$200.00 fine and 4 days suspension.

1. Sales to minors.
2. Permitted dancing without an amusement permit.
3. Not a *bona fide* restaurant in that chairs at tables were insufficient.

Citation No. 94-1795. Two days suspension with thereafter conditions.

1. Operated without a valid health permit or license. July 12, 1994.

Citation No. 95-0812. 1 day suspension with thereafter conditions.

1. Not a *bona fide* restaurant (insufficient food and chairs at tables). March 20, 1995.

Citation No. 95-2226. 3 days suspension.

1. Not a *bona fide* restaurant (insufficient food and dishes). August 17, 1995.
2. Operated without a valid health permit or license. August 17, 1995.

Citation No. 95-2311. \$100.00 fine. Fine not paid and license suspended for 1 day.

1. Failed to post a notice of suspension. August 7, 1995.

Citation No. 96-2476. \$200.00 fine and 1 day suspension. Fine not paid and license suspended for 1 day and thereafter until fine paid.

1. Sold alcoholic beverages while liquor license suspended. October 8, 1996.

Citation No. 99-0471. \$100.00 fine and 2 days suspension with thereafter conditions.

1. Loudspeakers could be heard outside. November 1, 1998.
2. Not a *bona fide* restaurant (failed to provide food upon request).  
December 10, 1998.
3. Operated without a valid health permit or license.  
October 14, November 1, December 4, 10, 1998, and January 20, 1999.

Citation No. 00-1448. \$400.00 fine and 3 days suspension with thereafter conditions.

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

Citation No. 03-0428. \$250.00 fine and 1 day suspension.

1. Loudspeakers could be heard outside. February 15, 2003.

Citation No. 04-1832. \$100.00 fine.

1. Failed to maintain coil cleaning records. September 9, 2004.
2. Failed to clean coils at least once every 7 days. September 9, 2004.

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 \$50.00 to \$1,000.00 range, or both, for violations of the type found in this case.

ORDER

THEREFORE, it is hereby ORDERED that Count No. 1 of Citation No. 06-1961 is SUSTAINED and that Licensee, L F. C Incorporated, License No. R-AP-12516, shall pay a fine of two hundred dollars (\$200.00) 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 Count No. 2 of Citation No. 06-1961 is DISMISSED.

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 23rd day of August, 2007.

---

David L. Shenkle, J.

jb

**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.**