

Mailing Date: MAR 08 2007

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 06-1987
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W01-337269
v.	:	
	:	LID - 13602
R.J.H., INC.	:	
2301 FRANKFORD AVE.	:	
PHILADELPHIA, PA 19125-2009	:	
	:	
	:	
	:	
	:	
PHILADELPHIA COUNTY	:	
LICENSE NO. R-AP-SS-OPS-9114	:	

**BEFORE:** JUDGE THAU

APPEARANCES:

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

For Licensee  
Edward Taraskus, Esquire  
1315 Walnut Street  
Ste 1002  
Philadelphia PA 19107

**ADJUDICATION**

BACKGROUND:

This proceeding arises out of a citation that was issued on August 29, 2006, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (Bureau) against R.J.H., Inc. (Licensee), License Number R-AP-SS-OPS-9114.

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

The first count charges Licensee with a violation of Section 5.41 of the Pennsylvania Liquor Control Board Regulations [40 Pa. Code §5.41]. The charge is that August 1, 2006, Licensee, by servants, agents or employes, failed to display on the licensed premises documentary evidence that the premises meets all sanitary requirements for a public eating place.

The second 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 August 1, 2006, Licensee, by servants, agents or employes, failed to keep records on the licensed premises.

An evidentiary hearing was conducted on February 5, 2007 at the Philadelphia State Office Building, 1400 West Spring Garden Street, 13<sup>th</sup> Floor, Room 1, 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 August 1, 2006 and completed it on August 2, 2006. (Commonwealth Exhibit No. B-1, N.T. 11)

2. The Bureau sent a notice of alleged violations to Licensee at the licensed premises by certified mail-return receipt requested on August 10, 2006. The notice alleged violations as charged in the citation. (Commonwealth Exhibit No. B-1, N.T. 11)

Count Nos. 1 and 2:

3. Two Bureau Enforcement Officers arrived at the subject premises at 2:20 p.m., August 1, 2006, at a time when it was open and in operation. The Officers identified himself as Bureau Enforcement Officers and advised he was there to conduct an administrative inspection. There was an employe on duty who advised one Officer that she did not know where the Municipal Health License was as the Officer could not locate it. (N.T. 5-8)

4. The Officer questioned the employe regarding Licensee's records. The employe did not know where they were. (N.T. 9-10)

5. The Officer spoke to Licensee's Sole Corporate Officer on the telephone during the inspection. The Officer asked Ms. Hibbs whether there were any invoices on the premises but did not recall her response. (N.T. 16-17)

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1. Commonwealth Exhibit No. B-2, N.T. 11.

6. Ms. Hibbs advised the Officer, while on the telephone, that the records were in the back of the bar. She further advised the Officer that the employe on duty was not a regular employe and was just simply filling in for a few days. The employe did not know where things were. The health license was posted behind the bar. It was propped up and not placed on the wall. Licensee has snacks and other items in front of the health license. (N.T. 19-23)

CONCLUSIONS OF LAW:

1. The notice requirements of Liquor Code Section 471 [47 P.S. §4-471] have been satisfied.

Count No. 1:

2. The Bureau has **failed** to prove that on August 1, 2006, Licensee, by servants, agents or employes, failed to display on the licensed premises documentary evidence that the premises meets all sanitary requirements for a public eating place.

Count No. 2:

3. The Bureau has **failed** to prove that on August 1, 2006, Licensee, by servants, agents or employes, failed to keep records on the licensed premises.

DISCUSSION:

I find Licensee's testimony to be credible and entirely consistent with that presented by the Bureau.

Interestingly, there is a distinction between the requirements regarding the display of the Municipal Health license and that of the liquor license. Liquor Code Section 467 [47 P.S. §4-467] requires that the liquor license must be constantly and conspicuously exposed under a transparent substance.

The words "constantly and conspicuously" are not present in the regulation requiring a licensee to display a Municipal Health license (40 Pa. Code §5.41). I therefore conclude that displaying the Municipal Health license as Licensee did satisfies the regulation.

ORDER:

NOW THEREFORE, it is ordered that Citation No. 06-1987, issued against R.J.H., Inc., License No. R-AP-SS-OPS-9114, is DISMISSED.

Dated this 28<sup>th</sup> 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.**