

Mailing Date: JUL 26 2007

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 06-2051
LIQUOR CONTROL ENFORCEMENT	:	
	:	
v.	:	Incident No. W01-337270
	:	
LA TIGRE INC.	:	
622 N. 35 TH ST.	:	LID - 34866
PHILADELPHIA PA 19104-1941	:	
	:	
	:	
PHILADELPHIA COUNTY	:	
LICENSE NO. R-960	:	

APPEARANCES:

FOR THE BUREAU OF ENFORCEMENT:

JAMES E. DAILEY, ESQ.

FOR THE LICENSEE:

EX PARTE

BEFORE: JUDGE WRIGHT

ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation that was issued on September 5, 2006, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter "Bureau") against La Tigre, Inc., License Number R-960 (hereinafter "Licensee").

An Administrative hearing was held on Wednesday, February 21, 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 437 of the Liquor Code, 47 P.S. Section 4-437, and Section 5.41 of the Liquor Control Board Regulations, 40 Pa. Code Section 5.41, in that on August 1, 2006, Licensee, by its servants, agents or employes, operated the licensed establishment without a valid health permit or license, which expired during the month of April, 2006.

FINDINGS OF FACT:

1. The Bureau of Enforcement conducted an investigation of the licensed premises which began on August 1, 2006 and ended August 8, 2006. A notice of violation letter was sent to the licensed premises on August 15, 2006 by certified mail, return receipt requested. The mailing was signed as received. The Bureau sent a citation to the licensed premises dated September 5, 2006 by certified mail, return receipt requested. That mailing was signed as received on September 7, 2006. A citation hearing notice was sent to the licensed premises on January 4, 2007 by the Office of Administrative Law Judge by certified mail, return receipt requested and first class mailing. That mailing was returned unclaimed (N.T. 9-11 and Exhibits B-1 and B-2).

2. Officer Brian Fetterolf is employed by the Bureau of Enforcement and was so employed on August 1, 2006 when he conducted an investigation of the licensed premises. Officer Fetterolf arrived at the premises at approximately 1:35 p.m. in order to conduct a routine inspection of the premises. At that time, the premises was open and operating (N.T. 5-6).

3. The officer identified himself to the female bartender on duty. There were approximately two patrons present (N.T. 6).

4. The officer inspected all licensed areas of the premises. The female bartender did not know whether or not there was a current health permit on the premises. However, the officer did not see one (N.T. 7).

5. The officer subsequently verified that the premises did not have a health permit and that it had expired on April 4, 2006. Certified records of the city of Philadelphia, Department of Licenses and Inspections indicate that the license expired on April 30, 2006 and that the renewal fee was not paid until August 7, 2006 (Exhibit B-3).

CONCLUSIONS OF LAW:

All statutory prerequisites for notice to the Licensee were satisfied.

On August 1, 2006, Licensee, by its servants, agents or employes, operated the licensed establishment without a valid health permit or license, which expired during the month of April, 2006, in violation of Section 437 of the Liquor Code, 47 P.S. Section 4-437, and Section 5.41 of the Liquor Control Board Regulations, 40 Pa. Code Section 5.41.

PRIOR RECORD:

Licensee has been licensed since December 14, 1994, and has a record of prior violations as follows:

Citation No. 96-1594. \$400.00 fine. Fine not paid and license suspended for one day and thereafter until fine paid.

1. Used loudspeakers or devices whereby music could be heard outside.
May 16, June 13 and 21, 1996.

Citation No. 97-1972. \$500.00 fine. Fine not paid and license suspended for one day and thereafter until fine paid.

1. Used loudspeakers or devices whereby music could be heard outside.
July 12, 1997.

Citation No. 98-0723. One day suspension with thereafter conditions.

1. Operated the licensed establishment without a valid health permit or license.
March 19, 1998.

Citation No. 98-1791. \$50.00 fine. Fine not paid and license suspended for one day and thereafter until fine paid.

1. Operated the licensed establishment without a valid health permit or license.
August 25, 1998.

Citation No. 00-1589. \$200.00 fine and five days suspension.

1. Operated the licensed establishment without a valid health permit or license.
March 3, April 8, May 20, June 23, 24, July 12, 16 and August 8, 2000.
2. Used loudspeakers or devices whereby music could be heard outside.
March 3 and July 16, 2000.
3. Failed to require patrons to vacate the premises not later than one-half hour after the required time.
April 8, 2000.
4. Sales between 2:00 a.m. and 7:00 a.m.
April 8, 2000.
5. Sunday sales after 2:00 a.m.
July 16, 2000.

6. Permitted patrons to possess and/or remove alcoholic beverages after 2:30 a.m.
April 8, 2000.
7. Not a bona fide restaurant in that they failed to maintain sufficient food items and chairs at tables.
August 8, 2000.

Citation No. 02-0978. Four days suspension.

1. Not a bona fide restaurant in that food items, eating utensils, dishes and chairs were insufficient.
February 22 and April 11, 2002.
2. Operated the licensed establishment without a valid health permit or license.
April 11, 2002.

DISCUSSION:

The Licensee has a long history of violations, several of which include failure to have a health permit. However, there have been no violations since 2002. Under the circumstances, a \$400.00 monetary penalty shall be imposed.

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, La Tigre, Inc., License Number R-960, 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:

La Tigre, Inc.
Citation No. 06-2051

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

Dated this 12th 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.

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