

Mailing Date: MAY 03 2007

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 06-2199
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W01-337363
v.	:	
	:	LID - 51580
6850 INC	:	
6850 ELMWOOD AVE	:	
PHILADELPHIA PA 19142-2127	:	
	:	
	:	
	:	
	:	
PHILADELPHIA COUNTY	:	
LICENSE NO. R-AP-SS-EHF-1245	:	BEFORE: JUDGE SHENKLE

APPEARANCES:

For Bureau of Enforcement: Erik Shmukler, Esq.
For Licensee: John J. McCreesh, III, Esq.

ADJUDICATION

BACKGROUND:

The Bureau of Liquor Control Enforcement of the Pennsylvania State Police issued this citation on September 25, 2006. There are three counts in the citation.

The first count alleges that Licensee violated §437 of the Liquor Code, 47 P.S. §4-437, and §5.41 of the Liquor Control Board Regulations, 40 Pa. Code §5.41, on August 2, 2006, by operating the licensed premises without a valid health permit or license, which expired on April 30, 2006.

The second count alleges that Licensee violated §493(12) of the Liquor Code, 47 P.S. §4-493(12), on August 2, 2006, by failing to keep records on the licensed premises.

The third count alleges that Licensee violated §102 of the Liquor Code, 47 P.S. §1-102, on August 2, 2006, on the basis that the licensed premises was not a *bona fide* restaurant because there were insufficient food items and seating.

A hearing was held on Wednesday, March 14, 2007, in Plymouth Meeting, Pennsylvania. The parties stipulated to the timely service of the notice letter and the citation.

FINDINGS OF FACT:

1. Liquor Enforcement Officer Eric Gall inspected the licensed premises on August 2, 2006. There was no valid health permit posted. There was seating for only fourteen people. There was no food; the bartender stated that if anyone wanted food, they would order some hoagies or something. There were no beer or liquor receipts in the premises (N.T. 5-7).

2. Officer Gall contacted the owner, Dennis Meikle, by telephone, and asked if he knew where a valid health permit was located. Mr. Meikle stated that he had let it lapse since they were not serving food; he confirmed that there was no food on the premises. Mr. Meikle also said that the beer and liquor receipts were at the accountant's. He said that there were additional chairs in the back, but the officer could not find them (N.T. 8-10).

3. Officer Gall obtained a certificate from the Department of Licenses and Inspections of the City of Philadelphia which attests that there was no valid Preparing/Serving Food License issued to this establishment on the date of his inspection; it also states that the license expired on April 30, 2006, and that the renewal bill was paid on July 26, 2005 [sic] (Exhibit B-4).

4. Licensee's health permit has since then been renewed and there is now seating for 30 in the premises (N.T. 20-21).

CONCLUSIONS OF LAW:

Sustained as charged.

DISCUSSION:

There is a typographical error in the L & I certificate, but I am satisfied based on the testimony of Officer Gall about the admission of Mr. Meikle that the first count has been proven sufficiently. It is also apparent that Licensee's officer has received counseling from Mr. McCreesh and now understands that the premises is licensed as a restaurant and must continue to fulfill that function at all times it is open to the public in the future.

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 of 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 will 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.

PRIOR RECORD:

Licensee has been licensed since September 23, 2003, and has had two prior violations, as follows:

Citation No. 04-2256. \$1,000.00 fine and 2 days suspension.

1. Sales on a portion of the premises not covered by the license.
September 5 and 25, 2004.
2. Sales on Sunday between 2:00 a.m. and 11:00 a.m. September 5, 2004.
3. Sales between 2:00 a.m. and 7:00 a.m. September 25, 2004.

Citation No. 06-0360C. \$2,000.00 fine and 5 points under Act 239 of 2004.

- Licensee ordered to comply with 47 P.S. §4-471.1.
1. Sales to a minor. January 26, 2006.
 2. Sale of malt or brewed beverages for off-premises consumption.
January 26, 2006.

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. Penalties are allocated as follows:

- Count 1 – a fine of \$300.00.
- Count 2 – a fine of \$100.00.
- Count 3 – a fine of \$300.00 plus two points under Act 239 of 2004.

ORDER

THEREFORE, it is hereby ORDERED that Licensee, 6850, Inc., License No. R-AP-SS-EHF-1245, pay a fine of seven hundred dollars (\$700.00) 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 that two (2) points are hereby assessed against the record of Licensee, 6850, Inc., License No. R-AP-SS-EHF-1245, as required by 47 P.S. §479(d)(9).

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 24th day of April, 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.