

Mailing Date: MAY 21 2007

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 06-2323
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W01-335817
v.	:	
	:	LID - 53853
GIA'S 8184 LLC	:	
319 MARKET ST	:	
PHILADELPHIA PA 19106-2103	:	
	:	
PHILADELPHIA COUNTY	:	
LICENSE NO. R-SS-13523	:	BEFORE: JUDGE SHENKLE

APPEARANCES:

For Bureau of Enforcement: Erik S. Shmukler, Esq.
For Licensee: Edward B. McHugh, Esq.

ADJUDICATION

BACKGROUND:

The Bureau of Liquor Control Enforcement of the Pennsylvania State Police issued this citation on October 11, 2006. There are two counts in the citation.

The first count alleges that Licensee violated §404 of the Liquor Code, 47 P.S. §4-404, on July 14, 2006, by failing to adhere to the conditions of the agreement entered into with the Board placing additional restrictions upon the subject license.

The second count alleges that Licensee violated §§401(a) and 406(a)(1) of the Liquor Code, 47 P.S. §§4-401(a) and 4-406(a)(1), on July 14, 2006, by selling, furnishing and/or giving alcoholic beverages on a portion of the premises not covered by the license.

A hearing was held on Tuesday, March 20, 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 Tara Amato visited the licensed premises at about 2:00 p.m. on July 14, 2006. She took a seat at one of approximately eleven tables set up on the pavement in front of the premises. There were also about four tables on an outside deck at the side of the premises. She ordered a glass of wine, which was served to her by a waiter. She paid the waiter for the wine and then left the premises (N.T. 6-7).

2. There was an orange notice of application placard in the window of the premises which stated that Licensee had made application for the right to serve alcoholic beverages at an outside seating area, a sidewalk café. Records of the board show that this application was still pending on the date of the officer's visit. Licensee did not have authority to serve alcoholic beverages at an outside seating area on July 14, 2006 (N.T. 7-8, Exhibit B-3).

3. A letter from the Board's Director of Licensing dated May 4, 2005, refers to a Conditional Licensing Agreement signed by the sole member of this company and the Board's Chief Counsel. The letter states that one of the conditions is that "Gia's agrees that it will not file an application for a sidewalk café permit or outdoor extension without first meeting and consulting with the Old City Civic Association." (Exhibit B-4).

CONCLUSIONS OF LAW:

The evidence presented did not prove that Licensee violated §404 of the Liquor Code, 47 P.S. §4-404, on July 14, 2006, by failing to adhere to the conditions of the agreement entered into with the Board placing additional restrictions upon the subject license.

Licensee violated §406(a)(1) of the Liquor Code, 47 P.S. §4-406(a)(1), on July 14, 2006, by selling alcoholic beverages on a portion of the premises not covered by the license.

DISCUSSION:

I agree with the argument of Licensee's counsel concerning the effect of the Conditional Licensing Agreement. The only restriction relevant to this case was the proviso that Licensee would not apply for an outdoor extension of premises without first "meeting and consulting with the Old City Civic Association." In order to prove a violation of this clause, it would be necessary to prove that Licensee had not met with the Association as required. This was not done, so the first count will be dismissed.

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 May 4, 2005, and has had no prior violations.

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 assessed as follows:

- Count No. 1 – Dismissed.
- Count No. 2 – a fine of \$200.00.

ORDER

THEREFORE, it is hereby ORDERED that Licensee, GIA's 8184 LLC, License No. R-SS-13523, 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 that one (1) point is hereby assessed against the record of Licensee, GIA's 8184 LLC, License No. R-SS-13523, as required by 40 Pa. Code §3.122(d).

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 15th day of May, 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.