

Mailing Date: AUG 7 2007

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

|  |   |                                 |
|--|---|---------------------------------|
| PENNSYLVANIA STATE                     | : |                                 |
| POLICE, BUREAU OF                      | : | Citation Nos. 05-2177           |
| LIQUOR CONTROL ENFORCEMENT             | : | & 06-2369                       |
|  | : | (consolidated for adjudication) |
| v.                                     | : |                                 |
|  | : | Incident Nos. W01-315538        |
| FALCONS OF MANAYUNK                    | : | W01-336488                      |
| 600 SPRING GARDEN ST                   | : |                                 |
| 1 <sup>st</sup> FLOOR MEZZANINE & BSMT | : | LID - 3199                      |
| PHILADELPHIA PA 19123-3506             | : |                                 |
|  | : |                                 |
|  | : |                                 |
| PHILADELPHIA COUNTY                    | : |                                 |
| LICENSE NO. CC-1785                    | : | BEFORE: JUDGE SHENKLE           |

APPEARANCES:

For Bureau of Enforcement: Erik S. Shmukler, Esq.  
For Licensee: Edward A. Taraskus, Esq.

**ADJUDICATION**

BACKGROUND:

The Bureau of Liquor Control Enforcement of the Pennsylvania State Police issued these citations on October 25, 2005, and October 18, 2006, respectively. The citations, as consolidated for adjudication purposes only, allege as follows:

CITATION NO. 05-2177

There are three counts in this citation.

The first count alleges that Licensee violated §5.32(a) of the Liquor Control Board Regulations, 40 Pa. Code §5.32(a), on August 11, 12 and 14, 2005, by permitting the use on the inside of the licensed premises of a loudspeaker or similar device whereby the sound of music or other entertainment, or the advertisement thereof, could be heard outside.

The second count alleges that Licensee violated §471 of the Liquor Code, 47 P.S. §4-471, and §955 of the Pennsylvania Human Relations Act, 43 P.S. §955, by engaging in unlawful discrimination, in that on August 18, 2005, Licensee admitted female patrons free of charge while charging an admission fee to male patrons.

The third count alleges that Licensee violated §§401(b) and 406(a)(1) of the Liquor Code, 47 P.S. §§4-401(b) and 4-406(a)(1), on August 11, 12, 14 and 18, 2005, by selling alcoholic beverages to nonmembers.

CITATION NO. 06-2369

There are three counts in this citation.

The first count alleges that Licensee violated §471 of the Liquor Code, 47 P.S. §4-471, and §955 of the Pennsylvania Human Relations Act, 43 P.S. §955, by engaging in unlawful discrimination, in that on August 1, 2006, Licensee admitted female patrons free of charge while charging an admission fee to male patrons.

The second count alleges that Licensee violated §13.102(a) of the Liquor Control Board Regulations, 40 Pa. Code §13.102(a), on August 1, 2006, by discounting the price of alcoholic beverages for a period or periods other than a consecutive period of time not to exceed two hours in a business day.

The third count alleges that Licensee violated §13.102(a) of the Liquor Control Board Regulations, 40 Pa. Code §13.102(a), on August 2, 2006, by discounting the price of alcoholic beverages between 12:00 midnight and 3:00 a.m.

A hearing was held on Monday, April 2, 2007, in Plymouth Meeting, Pennsylvania. The parties stipulated to the timely service of the notice letters and the citations.

FINDINGS OF FACT:

CITATION NO. 05-2177

1. Liquor Enforcement Officer Justin Clarke arrived at the licensed premises at about 11:55 p.m. on August 11, 2005. As he approached the premises he heard loud bass tones emanating from it, at a distance of 60 feet. He entered the premises after waiting in a small line of five or ten people. He was asked for identification and searched for weapons, then allowed into a vestibule, where a woman behind a counter requested \$25 as a cover charge for the R & B singer Keyshia Cole. He paid, received a ticket, and was allowed in (N.T. 4-6, 10).

2. A disk jockey was providing entertainment, using eight large loudspeakers. This was the source of the music the officer had heard outside. The officer purchased beer at a bar in the premises, once upon entering and again at 12:30 a.m. on August 12. The officer's membership in the club was not questioned, and he has never been a member of it (N.T. 7-9).

3. When the officer left the premises at about 1:00 a.m., he continued to hear the music from inside as far as 220 feet away from it. During this one-hour visit, Officer Clarke did not see any food service or any sign that a special event was going on, apart from Klieg lights outside which could be seen from Delaware Avenue (N.T. 10-11).

4. Officer Clarke visited the premises again on August 14, 2005. He again heard loudspeaker music outside the premises and was permitted to enter and purchase an alcoholic beverage without question as to membership. Again, there was no sign of a special event or party being conducted (N.T. 11-15).

5. Officer Clarke entered the premises again with Liquor Enforcement Officer Jamie Cooper (a woman) at about 7:20 p.m. on August 18, 2005. Officer Clarke was charged \$5 to

enter, but the woman at the counter said that there was no charge for Officer Cooper, since it was “Ladies Night.” Neither officer was challenged as to membership. Both officers purchased alcoholic beverages. Chicken wings and pasta were available near the bar. There were no patrons, apart from the officers, during this visit, which ended before 9:00 p.m. There was no entertainment, although a disk jockey was just getting set up, and began playing toward the end of the visit (N.T. 16-18).

6. Bureau officers obtained records from Licensee which included a contract for catered events on August 4, 11, 14 and 18, 2005, from 9:00 p.m. to 3:30 a.m. Officer Clarke visited the premises on August 4, 2005, at about 11:00 p.m., but found that it was not open (N.T. 24-26).

7. The event of August 4, 2005, was cancelled by the caterer. During the event of August 11-12, 2005, there were macaroni and cheese, chicken wings, collard greens and mashed potatoes available on the topmost floor of this three-floor premises. On August 18, food was served in the basement, because that was the only floor open on that date (N.T. 29-30).

#### CITATION NO. 06-2369

1. Liquor Enforcement Officer Hamilton Ringgold heard radio advertising during the summer of 2006 indicating that Tuesdays were “Ladies Night” at the licensed premises; that is, there would be no cover charge for women (N.T. 5).

2. On Tuesday, August 1, 2006, Officer Ringgold (a man) and Officer Cook (a woman) arrived at the licensed premises at 10:20 p.m. Officer Ringgold was required to pay a \$15 cover charge, but Officer Cook was allowed to enter without charge. The understanding was that the cover charge entitled patrons to two hours of non-premium drinks for two dollars per drink. Officer Ringgold purchased beer for himself and vodka and cranberry juice for Officer Cook on three occasions during this visit, including once after midnight. On each occasion he paid four dollars, two dollars for each drink (N.T. 5-9).

#### CONCLUSIONS OF LAW:

##### Citation No. 05-2177

Count No. 1 – Sustained as charged.

Count No. 2 – Sustained as charged.

Count No. 3 – Licensee violated §§401(b) and 406(a)(1) of the Liquor Code, 47 P.S. §§4-401(b) and 4-406(a)(1), on August 18, 2005, by selling alcoholic beverages to nonmembers.

##### Citation No. 06-2369

Count No. 1 – Sustained as charged.

Count No. 2 – The evidence submitted did not prove that Licensee violated §13.102(a) of the Liquor Control Board Regulations, 40 Pa. Code §13.102(a), on August 1, 2006, by discounting the price of alcoholic beverages for a period other than two hours in a business day.

Count No. 3 – The evidence submitted did not prove Licensee violated §13.102(a) of the Liquor Control Board Regulations, 40 Pa. Code §13.102(a), on August 2, 2006, by discounting the price of alcoholic beverages between 12:00 midnight and 3:00 a.m.

DISCUSSION:

As to the third count of Citation No. 05-2177, I am constrained to find that Licensee was entitled to serve alcoholic beverages to nonmembers during the period of a catered event, on the authority of *Post 162 A.M.D.G. Catholic War Veterans of Philadelphia, PA*, Citation No. 05-1692 (PLCB opinion mailed July 5, 2007) and the authorities cited therein.

However, the officers purchased alcoholic beverages at 7:20 p.m. on August 18, 2005, and left the premises prior to 9:00 p.m., the scheduled start of the catered event. Therefore, I find a violation of this count for this date.

As to the second and third counts of Citation No. 06-2369, no evidence was presented to prove the usual price of alcoholic beverages in the licensed premises. Therefore, I have no basis to conclude that the prices charged represented any discount at all.

PRIOR RECORD:

Licensee has been licensed since March 9, 1934 and has had prior violations since July 1, 1987, the date of establishment of the Office of Administrative Law Judge, as follows:

Citation No. 97-2108. \$100.00 fine.

1. Failed to return liquor license and wholesale liquor purchase permit cards to the Board after licensed establishment had not been in operation for a period of fifteen (15) consecutive days.

Citation No. 00-1498. \$700.00 fine.

1. Improper admissions of members. May 14, 2000.
2. Permitted patrons to possess and/or remove alcoholic beverages after 3:30 a.m. April 16, 2000.
3. Sales to nonmembers. April 30, 2000.

Citation No. 01-2264. \$500.00 fine.

1. Sales to nonmembers. June 21 and October 6, 2001.

Citation No. 03-0573. \$400.00 fine.

1. Loudspeakers could be heard outside.  
December 15, 22, 2002, and January 19, 2003.

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 these cases. Penalties are assessed as follows:

Citation No. 05-2177

- Count No. 1 – a fine of \$600.00.
- Count No. 2 – a fine of \$300.00.
- Count No. 3 – a fine of \$600.00.

Citation No. 06-2369  
Count No. 1 – a fine of \$400.00.  
Count No. 2 – DISMISSED.  
Count No. 3 – DISMISSED.

ORDER

THEREFORE, it is hereby ORDERED that Licensee, Falcons of Manayunk, License No. CC-1785, shall pay fines totaling one thousand nine hundred dollars (\$1,900.00) within 20 days of the mailing date of this order. In the event the fines are not paid within 20 days, Licensee's license will be suspended or revoked. Jurisdiction is retained.

The fines 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 31st day of July, 2007.

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David L. Shenkle, J.

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**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.**