

Mailing Date: JUN 06 2007

[Appeal](#)

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 06-2642
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W01-340689
	:	
v.	:	LID - 37905
	:	
BANK STREET LIMITED	:	
PARTNERSHIP	:	
1-3-5-7 BANK ST. AND	:	
230 MARKET ST.	:	
	:	
PHILADELPHIA, PA 19106-2825	:	
PHILADELPHIA COUNTY : LICENSE NO.	:	
R-AP-SS-384	:	

BEFORE: JUDGE THAU

APPEARANCES:

For Bureau of Enforcement
Erik S. Shmukler, Esquire
Pennsylvania State Police
6901 Woodland Avenue
Philadelphia, PA 19142

For Licensee
Paul L. Herron, Esquire
1700 Market Street
Suite 3112
Philadelphia, PA 19103-3914

ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation that was issued on November 21, 2006, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (Bureau) against Bank Street Limited Partnership (Licensee), License Number R-AP-SS-384.

The citation¹ charges Licensee with a violation of Section 13.102(a)(3) of the Liquor Code [40 Pa. Code §13.102(a)(3)]. The charge is that on October 12, 2006, Licensee, by servants, agents or employes, sold and/or served an unlimited or indefinite amount of alcoholic beverages for a fixed price, in that domestic beers and well drinks were served for the set price of \$10.00.

An evidentiary hearing was conducted on April 30, 2007 at the Philadelphia State Office Building, 1400 West Spring Garden Street, 13th Floor, Room #1, Philadelphia, Pennsylvania. Licensee's Counsel submitted an Admission, Waiver and Authorization² in which Licensee: admits to the violation charged in the citation and that the Bureau complied with the applicable investigatory and notice requirements of the Liquor Code, authorizes the Administrative Law Judge to enter an Adjudication based on a summary of facts and prior citation history as provided by the bureau, and waives the right to appeal this Adjudication.

The following Findings of Fact and Conclusions of Law are entered.

FINDINGS OF FACT:

On October 12, 2006, at approximately 10:00 p.m., Bureau Enforcement Officers entered the licensed premises. There was a scheduled promotion going on that evening. The Officers received wrist bands, each paying \$10.00. From 10:00 p.m. to 12:00 midnight, anyone who paid the \$10.00 charge could drink as many alcoholic beverages as they wanted. (N.T. 5-6)

CONCLUSIONS OF LAW:

The citation is **sustained** as charged.

PRIOR RECORD:

Licensee has been licensed since July 8, 1996, and has had three prior violations:

Adjudication No. 01-1392. \$1,200.00 fine.

1. Sales between 2:00 a.m. and 7:00 a.m. May 12
and 26, 2001.
2. Failed to require patrons to vacate the premises not later than
one-half hour after the required time.
May 26 and June 3, 2001.

3. Permitted patrons to possess and/or remove alcoholic beverages after 2:30 a.m.
May 26, 2001.

1. Commonwealth Exhibit No. B-2, N.T. 5.
2. Judge's Exhibit No. J-1, N.T. 4.

Adjudication No. 01-1719. \$50.00 fine.
Issued worthless checks in payment for malt or brewed beverages. May 31,
June 13 and July 5, 2001.

Adjudication No. 03-1901. Fine \$300.00.
Used loudspeakers or devices whereby music could be heard
outside.
June 14 and 28, 2003.

PENALTY:

Section 471 of the Liquor Code [47 P.S. §4-471] prescribes a penalty of license suspension or revocation or 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.

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 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 shall 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.

Accordingly, you are hereby notified that one point has been assigned to your record.

I adopt the jointly recommended penalty of a \$400.00 fine.

ORDER:

Imposition of Fine

THEREFORE, it is hereby ordered that Licensee pay a fine of \$400.00 within 20 days of the mailing date of this Order. In the event the aforementioned fine is not paid within 20 days from the mailing date of this Order, Licensee's license shall be suspended or revoked.

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, Pennsylvania 17110-9661

Assessment of Points

IT IS FURTHER ORDERED that one (1) point is hereby assessed against the record of Bank Street Limited Partnership, License No. R-AP-SS-384, as required by 40 Pa. Code §3.122(d).

Retaining Jurisdiction

Jurisdiction is retained to ensure compliance with this Adjudication.

Dated this 30th day of May, 2007.

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.