

Mailing Date: AUG 02 2007

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 06-2774
LIQUOR CONTROL ENFORCEMENT	:	
	:	
v.	:	Incident No. W01-342394
	:	
YS KIN'S ASIAN	:	
AMERICAN RESTAURANT INC.	:	LID - 53084
1910 W. CHELTENHAM AVE.	:	
PHILADELPHIA PA 19138-2237	:	
	:	
	:	
PHILADELPHIA COUNTY	:	
LICENSE NO. R-SS-4145	:	

APPEARANCES:

FOR THE BUREAU OF ENFORCEMENT:

JAMES E. DAILEY, ESQ.

FOR THE LICENSEE:

LORI HAHN MASLIN, ESQ.

BEFORE: JUDGE WRIGHT

ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation that was issued on December 5, 2006, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter "Bureau") against YS Kin's Asian American Restaurant, Inc., License Number R-SS-4145 (hereinafter "Licensee").

YS Kin's Asian
American Restaurant, Inc.
Citation No. 06-2774

An Administrative hearing was held on Tuesday, June 5, 2007, pursuant to requisite and appropriate hearing notice. The parties stipulated to the service and receipt of the notice letter and the citation.

The citation charges Licensee with violation of Section 491(10) of the Liquor Code, 47 P.S. Section 4-491(10), in that on October 27, 2006, Licensee, by its servants, agents or employees, refilled liquor bottles.

FINDINGS OF FACT:

1. On October 27, 2006 at approximately 11:35 p.m., Enforcement Officer J. Kohler entered the premises, along with Officer Davis, also from the Bureau, an Officer from the Philadelphia Police Department Citywide Vice Squad and representative from the Philadelphia Department of Licenses & Inspections. The premises was open and operating at this time. One female bartender was tending bar and rendering service of alcoholic beverages to twenty-five patrons. A routine inspection of the premises was conducted at this time. One of the Licensee's, Mr. Yong Soo Na, was on the premises (N.T. 5-6).

2. The officer conducted a routine inspection of the entire first floor of the bar. The officers went into the office with the Licensee to get invoices and other records (N.T. 7).

3. While inspecting the office area of the premises, Officer Kohler observed many empty liquor bottles. There were 1.5 liter bottles along with several smaller bottles of the same brand of liquor. There were two or three sticky funnels lying on a shelf with the empty bottles (N.T. 8)

4. When first asked if he was refilling, Mr. Na stated that he had not refilled the bottles. Officers Kohler and Davis questioned Mr. Na further, and he admitted to refilling the liquor bottles. (N.T. 8-9).

CONCLUSIONS OF LAW:

On October 27, 2006, Licensee, by its servants, agents or employees, refilled liquor bottles, in violation of Section 491(10) of the Liquor Code, 47 P.S. Section 4-491(10).

PRIOR RECORD:

Licensee has been licensed since December 15, 2004, and has no record of prior violations.

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DISCUSSION:

Mr. Na testified in Court that he had empty bottles on the premises because he was taking inventory. He denied refilling bottles and said that the officers questioned him repeatedly. The officer was found to be credible. While the officers may very well have asked several times about the bottles, they were likely prompted to do so by the evidence before them. Empty bottles and funnels are highly suggestive of refilling, save a good explanation to the contrary. Licensee's explanation was not found to be credible to the Court.

In that all of the bottles were of the same brand, it appears that the Licensee was refilling for convenience in pouring or economics rather than to be deceptive. Nevertheless, refilling for any purpose can present health risk and is therefore not permissible.

After careful consideration, a \$400.00 monetary penalty shall be imposed. Licensee is advised that future violations of this nature will result in severe penalties, which may include suspension or revocation of the license.

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, Ys Kin's Asian American Restaurant, Inc., License Number R-SS-4145, 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:

YS Kin's Asian
American Restaurant, Inc.
Citation No. 06-2774

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

Dated this 26th 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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